



Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with crossed Applications for Dispute Resolution under the Residential Tenancy Act (the Act).

The Landlords filed their application on June 11, 2025. The Landlords' application includes these claims:

- I want compensation for my monetary loss or other money owed
- I want to retain all or a part of the tenant's security and/or pet damage deposit
- I want to include a request for the landlord to pay me back for the cost of the filing fee

This hearing also dealt with a cross-application filed by the Tenants under the Act on July 3, 2025. The Tenants' application includes these claims:

- I want my security and pet damage deposit returned that the landlord is retaining without cause
- I want to include a request for the tenant to pay me back for the cost of the filing fee

Service of the Landlords' Application and Evidence

The Landlords testified that the Proceeding Package and evidence were served on the Tenants on June 13, 2025, by pre-agreed email. The Tenants acknowledged receipt of the documents, and did not raise any concern regarding service of the documents. Therefore, I find the Tenants were served with the Landlords' Proceeding Package and evidence in accordance with the Act.

The Tenants did not submit any separate response evidence in respect of the Landlords' application.

Service of the Tenants' Application and Evidence

The Tenants testified that they served the Proceeding Package and evidence on July 6, 2025, by pre-agreed email. The Landlords acknowledged receipt of the Proceeding Package and did not raise any concerns regarding service of the documents. Therefore,

I find the Landlords were served with the Tenants' Proceeding Package and evidence in accordance with the Act.

The Landlords did not submit any separate response evidence in respect of the Tenants' application.

Issues to be Decided:

1. Are the Landlords entitled to a Monetary Order for monetary loss or other money owed?
2. Are the Landlords entitled to retain all or a portion of the Tenants' security deposit in satisfaction of the monetary award requested?
3. Are the Landlords entitled to recover the filing fee for the Landlord's application from the Tenant?
4. Are the Tenants entitled to the return of the security and pet damage deposit?
5. Are the Tenants entitled to recover the filing fee for the Tenants' application from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The tenancy agreement states that this tenancy began on May 1, 2025 for a fixed term ending on April 30, 2026, and that the tenancy will continue on a month-to-month basis afterward. The monthly rent was \$3,200.00, due on the first day of the month. The Tenants paid a security deposit in the amount of \$1,600.00 and a pet damage deposit in the amount of \$1,600.00 on April 2, 2025. A copy of the tenancy agreement was submitted into evidence by the Landlords.

The Tenants did not move into the rental unit.

The Landlords' agent, DO, said the Tenants viewed the rental property in late March of 2025 and signed the lease on April 1, 2025. The Tenants were told they could take early possession of the rental unit. On April 25, 2025, the Tenants informed the Landlords that they were not moving in. The Landlords submitted into evidence emails between the parties dated April 25, 2025.

The Tenants said they viewed the rental unit on March 24, 2025 around 1:00 p.m. after they saw the advertisement. When the Tenants arrived at the rental unit, there was dirt and clutter everywhere, but the Tenants decided that the rental unit had potential and could see past this clutter and mess.

The Tenants said they were interested in the rental unit and therefore reached out to DO. On April 1, 2025, DO indicated that if the Tenants were not going to sign the lease,

the Landlords will re-list the rental unit. The Tenants felt a bit of pressure in signing the tenancy agreement, but decided to proceed with the contract.

The Tenants said on April 9, 2025, the Landlords informed them that they could take possession a week early on April 24, 2025, and that this is when the move-in inspection would take place. In an email laying out what the walk-through pertains, it notes that the Tenants and property manager are to walk through the rental unit together and ensure there are no deficiencies.

The Tenants said they arrived at the rental unit on April 24, 2025 with some of their personal belongings as they were told they could begin moving in on this date. The Tenants were able to access the rental unit and look around without DO present since DO said she would be late and pushed back the move-in inspection time.

The Tenants said they were shocked to find that the rental unit was extremely dirty. There were signs of mold in the windowsills of the kitchen area. The Tenants also noticed that there was water penetration next to the exterior door leading onto the deck which caused damage to the floor and bottom of the cabinet bases. The Tenants also noted damage to the outside of the building. Due to the damage to the outside of the building and the water damage on the inside of the building, the Tenants were concerned of potential mold within the walls. The Tenants submitted into evidence photos of the windowsills, exterior wall, and damaged cabinet bases.

The Tenants continued to inspect the rental unit and noted cracks in the ceiling and mold in the shower floor and drywall in one of the guestrooms. DO then contacted the Tenants to inform them that she could not attend the scheduled move-in inspection on April 24, 2025, and pushed it to May 1, 2025. The Tenants submitted photos of the ceiling cracks and shower floor and guestroom.

On April 25, 2025, the Tenants emailed DO indicating they will not be taking occupancy of the rental unit because the rental unit was not in the condition represented to the Tenants. The Tenants were told and verily believed that the rental unit would be clean, without mold and fit for inhabiting and on reliance on those representations signed the lease agreement. However, those representations turned out to be false.

The Tenants' legal counsel argues that the Tenants were induced to enter into an agreement based on a misrepresentation of the Landlord's agent DO, whether intentionally or negligently, as to the fitness for habitation of the rental unit. Thus, the Tenants have a right to rescind the contract.

The Landlords said they mitigated their loss by immediately advertising the rental unit on Facebook, Castanet, and their own website. The Landlords were able to find a new tenant for June 15, 2025.

There is no dispute that the Tenants provided their forwarding address to the Landlord on June 4, 2025 by email.

On June 11, 2025, the Landlord filed an application seeking compensation for monetary loss.

On July 3, 2025, the Tenants filed a cross-application seeking the return for their security and pet damage deposits.

Analysis

Are the Landlords entitled to a Monetary Order for monetary loss or other money owed?

To be awarded compensation for a breach of the Act, the Landlord must prove:

- the Tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the Landlord acted reasonably to minimize that damage or loss

The Landlord seeks \$4,800.00 in compensation for loss of rent for the period from May 1 to June 14, 2025.

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Section 16 of the Act states that the rights and obligations of the parties begin from the date the tenancy agreement is entered into. They do not begin when the Tenants take possession.

Based on the parties' submissions and tenancy agreement, I find that the Tenants breached the tenancy agreement and failed to pay rent for the month of May 2025.

Further, section 7 of the Act states that a landlord who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

I find the Landlord mitigated their loss by immediately advertising the rental unit and re-renting the place to the new tenant on or about June 15, 2025.

While misrepresentation may invalidate a contract between the parties, I do not find that to be an element here. Based on testimony of the parties, the evidence provided, and on a balance of probabilities, I do not find any evidence to support the Tenants' claim that the Landlords' agent misled the Tenants about the fitness for habitation of the rental unit. While the Tenants claim that there was mold in the rental unit and that the rental unit was dirty, I find there is insufficient evidence to show that the substance on the windowsill or the shower floor was mold. Furthermore, I am unable to draw the

conclusion that the Landlords' agent has misrepresented the condition of the rental unit. While the rental unit may not be meticulously clean, I certainly do not find the rental unit to be so "dirty" or unfit for inhabiting. I find if the Tenants were concerned about the mold and the cleanliness did not meet their standards, they could have requested the Landlords to conduct a mold assessment or conduct further cleaning of the rental unit. I do not find there were misrepresentation on the part of the Landlords. Furthermore, the Tenants had the opportunity to view and inspect the rental unit on March 24, 2025, and had the opportunity to consider their observations, and signed the tenancy agreement on April 1, 2025. As such, I do not find the Tenants are entitled to rescind the contract.

Based on the above, I find the Landlords are entitled to a Monetary Order for unpaid rent for the period from May 1 to June 14, 2025, under section 67 of the Act, in the amount of \$4,800.00.

Are the Landlords entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay any security deposit or pet damage deposit to the tenant or make an application for dispute resolution to claim against it.

Section 38(3)(b) of the Act states a landlord may retain from a security deposit or a pet damage deposit an amount that at the end of the tenancy remains unpaid.

There is no dispute that the Landlords received the Tenants' forwarding address on June 4, 2025. The Landlords made their application on June 11, 2025, therefore, I find that the Landlords did make their application within 15 days of receiving the forwarding address.

Under section 72 of the Act, I allow the Landlords to retain the Tenants' security deposit and pet damage deposits of \$3,200.00, plus interest in the amount of \$12.91, in partial satisfaction of the monetary award.

I issue the Landlords a Monetary Order for the remainder of the award that remains unsatisfied, as outlined in the conclusion section of my decision.

Are the Landlords entitled to recover the filing fee for the Tenants' application from the Tenant?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Are the Tenants entitled to recover the filing fee for the Landlord's application from the Tenant?

As the Tenants were not successful in their application, I find that the Tenants were not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$1,687.09** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$4,800.00
Less: security deposit and pet damage deposit plus accrued interest	-\$3,212.91
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$1,687.09

The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 3, 2025.

Residential Tenancy Branch