Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDCL-S FFL
Tenants: MNSD MNDCT FFT

Introduction

This hearing dealt with applications from both the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a Monetary Order for compensation for damage or loss under the *Act*, regulation or tenancy agreement; and authorization to retain a portion of the tenants' security deposit in satisfaction of this claim pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The tenants applied for:

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The parties testified that they were in receipt of each other's applications and evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment to the Landlord's Application for Dispute Resolution

At the outset of the hearing, one of the tenants provided a different last name than the name stated in the landlords' application. The tenant confirmed her legal last name, therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the landlords' application to correct the tenant S.F.'s last name.

Issue(s) to be Decided

Is the landlord entitled to retain a portion of the security deposit in satisfaction of their claim against the tenants? If not, are the tenants entitled to the return of the security deposit, or a doubling of the security deposit?
Is either party entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?
Is either party entitled to recover the filing fee for their application from the other party?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. Both parties confirmed the following information pertaining to the tenancy agreement:

- This tenancy began on September 1, 2017 as a one-year fixed-term tenancy agreement with a scheduled end date of August 31, 2018, however the tenancy ended early by mutual agreement on March 31, 2018.
- The monthly rent of $4,500.00 was payable on the first of the month.
- A security deposit of $2,000.00 and a pet damage deposit of $250.00 was paid by the tenants at the beginning of the tenancy. The landlords returned the $250.00 pet damage deposit to the tenants, which was confirmed by the tenants. The landlord continues to hold the $2,000.00 security deposit.
- A condition inspection of the rental unit was completed by the tenants and the landlords at the beginning and end of the tenancy, and the tenants confirmed receipt of a written report for both inspections.
- The tenants provided their forwarding address in writing to the landlords on March 24, 2018, which was confirmed by the landlords.

- Both parties confirmed that the tenants did not provide authorization in writing to allow the landlords to withhold all or a portion of the security deposit.
- There have been no prior arbitration awards allowing the landlords to retain all or a portion of the security deposit.
- On April 10, 2018, the landlords filed an Application for Dispute Resolution to retain a portion of the security deposit in satisfaction of their claim for unpaid utilities owed by the tenants.
- On September 27, 2018, the tenants filed an Application for Dispute Resolution seeking the return of the security deposit and compensation for damaged property and aggravated damages due to emotional stress.

I have addressed the claims by each party separately below.

Landlords' Claim

The landlords' claim is set out in their Monetary Order Worksheet, submitted into evidence, as follows:

Item	**Amount**
Fortis Gas – billing reconciliation to January 19, 2018	$154.94
Fortis Gas – billing reconciliation to March 16, 2018	$103.51
BC Hydro-Electric – billing reconciliation to March 20, 2018	$854.39
Landlords' Total Monetary Claim	**$1,112.84**

The landlords have applied to retain a portion of the security deposit in satisfaction of their monetary claim for unpaid utilities owed by the tenants.

The landlords submitted into evidence a copy of the tenancy agreement in support of their claim that the tenants were obligated to pay "for gas & electric costs" as set out in Section 3(b) and Addendum #3 of the tenancy agreement, and that the tenants failure to pay these costs in full amounted to a failure to comply with the tenancy agreement on the part of the tenants. The term pertaining to utilities payment set out in the second paragraph of Addendum #3 states as follows:

> *Payment of electric and natural gas utility charges is in addition to the monthly rent and payable at the time rent is due. Electric and Natural Gas utilities have been set-up on equalized billing. The initial utility charges to be paid along with the rent is (i) BC Hydro (Electricity) - $100/month, and (ii) Fortis BC (Natural Gas) -*

$59/month. Tenant is responsible to pay Landlord the amount due on the equalized billing reconciliation for electric and natural gas utilities. The amount of equalized payment shall be adjusted periodically to coincide with any adjustments done by each utility. Landlord shall regularly provide copies of the electric and natural gas utility bills to the Tenant. If Tenant converts its rental from the house to a main floor only rental, the monthly utility charges will be adjusted accordingly. Tenant is responsible for the connection/ disconnection/ payment of any other utilities.

During the hearing, I asked the landlords to confirm the monthly consumption costs for the tenants' electricity and gas usage from the start of the tenancy, September 2018 to the end of the billing period in the middle of March 2018, as the tenancy ended at the end of March 2018. The landlords confirmed that they are claiming the amount of actual consumption costs, less the monthly equalized payments made by the tenants during the course of the tenancy.

The landlords testified that they provided the tenants with copies of the utility bills in October 2017, December 2017 and February 2018. The tenants acknowledged receipt of bills in October and February but disputed being provided with the bills in December 2017 as they stated they never received these emails from the landlords. The landlords submitted into evidence copies of emails sent to the tenants dated December 19, 2017 in relation to the gas bill and December 21, 2017 in relation to the electricity bill. The emails appear to have the tenants' correct email address, and appear to have attachments referenced as utility bills. The tenants stated that in January 2018 they requested copies of the bills from the landlords.

The tenants testified that at the beginning of the tenancy they did not fully understand what was agreed upon in terms of the utility payments, however they acknowledged that they understood the nature of the landlords' dispute as it was explained in the hearing.

The tenants explained in their written submission their understanding of the utility payment arrangement, as follows:

When the Tenancy agreement was signed, the landlords and tenants agreed the utilities would be set up on equalized billing payment plan and paid accordingly. Both parties had discussed what equalized billing is and that once a year, the utility company (Fortis BC and BC Hydro) would do an equalized billing reconciliation. On the reconciliation dates from the utility companies, the tenants

would be responsible to pay the amount owing or refunded the credit if they had over paid throughout the year. The tenants understanding of the agreement was that when the utility company would put forward the reconciliation, the tenants would be notified and respond accordingly. It was never discussed that the reconciliation would be at the leisure of the landlord or at the End of Tenancy, as that was not agreed upon within our tenancy agreement.

Tenants' Claim

The tenants filed an Application for Dispute Resolution seeking compensation for loss of property due to mold damage, aggravated damages due to emotional stress, and the return of the security deposit.

The tenants' claim is set out in their Monetary Order Worksheet, submitted into evidence, as follows:

Item	**Amount**
Loss of property	$1,075.00
Aggravated damages	$2,250.00
Return of the security deposit	$2,000.00
Tenants' Total Monetary Claim	**$5,325.00**

Loss of Property
The tenants claim that their belongings stored in the carport were damaged by mold due to the fact that the landlords did not enclose the carport as agreed to at the beginning of the tenancy.

The tenants referred to the "Addendum to Condition Inspection Report" included with their tenancy agreement. Under Section X.2 "Items intended to be completed during the Tenancy", Item #3 is listed as follows:

Frame-in & enclose Carport, with double garage door and access exterior door on front Siding to be done at a later time.

The tenants testified that they began storing personal items in the carport at the beginning of the tenancy, with the understanding that it would be enclosed and weatherproofed. The tenants written submission states that a garage door was installed by mid-October 2017, but the garage was not fully weatherproofed at that time. By

November 2017 they discovered some of their personal items were moldy and had to be disposed of. The tenants testified that they reported this issue to the landlord at that time, and subsequently moved the remainder of their belongings to a storage unit.

The landlords contend that it was not agreed that the carport would be weatherproofed for the purposes of storage.

Aggravated Damages
The tenants claim that tenant S.F. suffered emotional stress as a result of the landlords' actions, resulting in the tenant seeking counselling services at a cost of $150 for 15 sessions.

The tenants testified to the following actions by the landlord which caused the stress:

- Landlords' direction that tenants take down their above-ground pool
- On two occasions the landlords included blank "eviction" notices in their correspondence to the tenants, which the tenants interpreted as "intimidation"
- Landlords' application for dispute resolution claiming utilities owed
- During a telephone conversation landlord H.S. told tenant S.F. that she was "ungrateful" and verbally berated tenant S.F.
- Tenant S.F. had a previous personal and employment relationship with the landlords as a family support worker. The prior relationship compounded the stress felt by tenant S.F. as a result of the tenancy relationship breakdown.

The landlords contend that there are many causes of stress in any person's life that might require counselling and therefore they should not be responsible for the payment of the counselling costs incurred by tenant S.F.

I confirmed with the parties that the "eviction" notice referred to a standard 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and that the two occasions upon which the blank notices were provided to the tenants, they were included with correspondence from the landlords requesting payment be made for utilities owed.

The landlords written submission stated that they had received direction from the municipal authority that the tenants' pool would require fencing, otherwise the landlords' liability insurance could be invalidated, and that is why they directed the tenants to take down the pool.

Return of Security Deposit
The landlord continues to hold the $2,000.00 security deposit.

A condition inspection of the rental unit was completed by the tenants and the landlords at the beginning and end of the tenancy, and the tenants confirmed receipt of a written report for both inspections.

The tenants provided their forwarding address in writing to the landlord on March 24, 2018, which was confirmed by the landlord.

The landlords filed their Application for Dispute Resolution seeking to retain the security deposit on April 10, 2018, which is within 15 days of the end of the tenancy on March 31, 2018.

Analysis

Section 67 of the *Act* provides that an arbitrator may determine the amount of the damage or loss and order compensation to the claimant, if an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement.

The burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the tenancy agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Section C of Residential Tenancy Policy Guideline #16. Compensation for Damage or Loss examines the issues of compensation in detail, and explains as follows:

> *The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:*

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

Landlords' Claim

I find that Addendum #3 of the tenancy agreement is elaborately worded, mainly due to the landlords choice of setting up utility payments on equalized billing, which requires additional diligence on the part of both parties – the landlord to ensure bills are regularly provided to the tenants and that actual consumption is correctly calculated – and on the part of the tenants to monitor their actual consumption to mitigate against unexpected costs due at reconciliation.

Section 6(3) of the *Act* provides that a term of a tenancy agreement is not enforceable if it is not expressed in a manner that clearly communicates the rights and obligations under it.

I have considered whether the elaborate wording of Addendum #3, and the tenants supposition that they did not clearly understand their obligations regarding utilities payments may constitute a term that is not enforceable.

However, I have considered the tenants' written submission regarding their understanding of the utility bill payment arrangement. I find that the tenants understood the obligations of the utilities term in the tenancy agreement regarding the requirement to pay both the monthly equalized payments, and any outstanding amounts upon reconciliation, however, the tenants take issue with the fact the reconciliation was calculated by the landlords, and that the calculation was done at the end of the tenancy. I note that each utility bill provides information regarding the amount paid by equalized billing and the actual cost of consumption for the billing period. Therefore, the tenants had the opportunity to determine through their own calculations the amount that would be required at reconciliation. Given that Section 3(b) of the tenancy agreement required the tenants to pay gas and electricity costs, whether or not the cost was paid by equalized billing or on a consumption basis, I do not find the tenants argument that they are not responsible for the full amount of the cost of utilities consumed because the

reconciliation date was scheduled for a date past the end of the tenancy to be a valid one.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants understood that they were responsible for paying for the amount of gas and electricity they used during the tenancy, and I find that the tenants failed to comply with the tenancy agreement by failing to pay for the full amount of the utilities consumed during the tenancy. The landlords provided utility bills and calculations to prove the exact value of the loss claimed based only on the consumption cost of utilities by the tenants. The landlords provided copies of the bills to the tenants and communicated with the tenants to explain what was owed. As such, I find that the landlords are entitled to a monetary award for the cost of utilities owed by the tenants in the amount of $1,112.84.

Tenants' Claim

Loss of Property

When the tenants decided to store their personal belongings in the carport, it was not enclosed. The tenants made a decision to store their belongings in an area of the property that was not protected from the elements nor designed to provide an expectation of being weatherproofed. The frame-in and enclosure of the carport is listed under "Items intended to be completed during the Tenancy" and no specific date of completion is provided. Further, I note that the tenancy agreement does not indicate storage included as a service or facility as part of rent. As such, I do not find that the tenants have proven that their loss of property due to mold is a result of the landlords' failure to comply with the *Act*, regulations or tenancy agreement. As such, the tenants claim for loss of property is dismissed.

Aggravated damages

In addition to other damages, an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses (intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.). Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not

contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed. It must also be sufficiently significant in depth, or duration, or both, that the damage represents a significant influence on the wronged person's life. Aggravated damages are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenants requested $2,250.00 in their Application for "aggravated and emotional damages caused by stress and issues with the landlords" as part of their monetary claim. The tenants testified that tenant S.F. attended counselling sessions as a result of stress caused by the landlords and submitted a letter from the tenant's therapist in support of their claim, which explained, in part, as follows:

> *She initially presented with symptoms of high anxiety, panic attacks and hypervigilance. She was emotionally dysregulated and upset. Her symptoms included self-doubt and repeatedly checking things, overgeneralized and pessimistic thinking, tearfulness and social withdrawal. She was clearly experiencing high levels of distress, and acting in ways which were out of character for her. Her former rental situation was identified as a source of these stresses.*

As explained at the beginning of the "Analysis" section, a claimant must prove that the damage or loss **stemmed directly from a violation of the tenancy agreement or contravention of the *Act* on the part of the respondent**.

Although I sympathize with the tenant S.F. and the fact that she has suffered distress, I find that the tenants did not establish that the actions by the landlords, as described by the tenants in their testimony and submitted evidence, contravened the *Act*, regulations or tenancy agreement. The landlords' actions regarding the tenants' pool was a reasonable request given the explanation provided by the landlords. The landlords' application for dispute of unpaid utilities was made in accordance with the *Act*. The landlords' sent blank notices to end tenancy to the tenants on two occasions, with correspondence stating that payment of utilities was owed. The tenants may have interpreted this as intimidation, but the action was not in contravention of the *Act*. The tenants reported being verbally "berated" by the landlord, which is clearly unprofessional

in a business relationship such as a tenancy, however, there is not a provision in the *Act* or tenancy agreement to address mean-spirited or discourteous communication.

The therapist's letter stated that the rental situation was "a" source of the tenant's stress, but did not indicate that it was the sole cause of the tenant's stress.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I do not find that the tenants have submitted sufficient evidence to prove that the landlords failed to comply with the *Act*, regulations or tenancy agreement.

As I have not found that the landlords failed to comply with the *Act*, regulations or tenancy agreement, I do not find that the damages for loss of property due to mold and aggravated damages due to emotional stress claimed by the tenants are a result of the landlords' failure to comply with the *Act*, regulations or tenancy agreement. As such, the tenants' claim for compensation related to these items is dismissed without leave to reapply.

Security Deposit

The *Act* contains comprehensive provisions on dealing with security deposits. Under section 38 of the *Act*, the landlord is required to handle the security deposit as follows:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> **…**
>
> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
>
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
>
> …
>
> (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

In this matter, the tenancy ended on March 31, 2018, and the parties agreed that the landlords were in receipt of the tenants' forwarding address as of March 24, 2018.

Therefore, the landlords had 15 days from March 31, 2018, which is the later date, to address the security deposit in accordance with the *Act*.

The landlords filed an Application for Dispute Resolution on April 10, 2018, which is within 15 days of the end of the tenancy, to retain a portion of the security deposit as required under section 38 of the *Act*.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlords applied to retain a portion of the security deposit in compliance with section 38(1) of the *Act*, and therefore the tenants are not entitled to any doubling of the security deposit. However, the landlords may only retain a portion of the security deposit in satisfaction of their monetary claim of $1,112.84 awarded in this decision.

Summary of Monetary Award

In summary, I find that the landlords are entitled to a monetary award of $1,112.84 for the utility costs owed to them by the tenants.

Further to this, as the landlords were successful in this application, I find that the landlords are entitled to recover the $100.00 filing fee from the tenants. As the tenants were not successful in their application, they must bear the cost of their application fee.

Therefore, the total amount owed by the tenants to the landlords is $1,212.84.

However, the landlords continue to retain the tenants' $2,000.00 security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenants to the landlords of $1,212.84, against the $2,000.00 security deposit held by the landlord. As a result, the landlord is required to return to the tenants $787.16 of the security deposit to which the landlords have no entitlement.

As such, I issue a Monetary Order in the tenants' favour for the return of the remaining amount of the security deposit still held by the landlords in the amount of $787.16.

A summary of the monetary award in favour of the tenants is provided as follows:

Item	**Amount**
Monetary claim awarded to the landlords	$1,112.84
Recovery of filing fee for this Application to the landlords	+ $100.00
Total monetary award in favour of landlords	= $1,212.84
LESS: Security deposit held by landlords	($2,000.00)
Total Monetary Order in Favour of TENANTS	**$787.16**

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of $787.16 for the return of the remaining security deposit to which the landlords have no entitlement.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 *Residential Tenancy Act*.

Dated: October 31, 2018

Residential Tenancy Branch