Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on February 5, 2021. The Landlord applied for multiple monetary items, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlord was represented at the hearing by an agent (referred to as the Landlord). The Tenants were also present at the hearing. All parties provided testimony. The Tenant acknowledged receiving the Landlord's application, amendment, and evidence. This Notice of Hearing was received first, and the Tenants received the Landlords evidence, which was all put on a USB stick and delivered to them around January 5, 2021. The Landlord's amendment was contained on the USB stick. The Tenants stated they were able to open the files on the USB stick, but there was a large volume of files, audio clips and videos. The Landlord did not provide any breakdown of what portions of the audio and video files were relevant, and did not submit an RTB – 43 form (digital evidence details).

The Landlord confirmed receipt of the Tenants' evidence package on January 28, 2021. Most of the evidence was printed and served. However, some video/audio recordings were put on a USB stick which the Landlord received. However, the Tenants also failed to provide an RTB – 43 form (digital evidence details) for their digital evidence. With respect to the Tenants' documentary evidence, on paper, I find this was sufficiently served on the Landlord on January 28, 2021, the day it was served in person.

The admissibility of the digital evidence will be further addressed below. First, I turn to the following Rules of Procedure:

3.10.3 Digital evidence submitted directly to the Residential Tenancy Branch or through Service BC

Parties who submit digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43).

3.10.4 Digital evidence served to other parties

Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43). Parties who serve digital evidence to the Residential Tenancy Branch and paper evidence to other parties must provide the same documents and photographs, identified in the same manner in accordance with Rule 3.7.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Both parties have failed to provide an RTB-43 form, which is intended to help make evidence identifiable and organized. I note both parties were able to open the files on each other's USB drives. However, due to the large volume of files, I find both parties prejudiced each other by not providing accurate timestamps and details for all audio and video recordings. It is difficult to ascertain which portions of each audio and video files are relevant, without the RTB-43 form. Given this, I find the *audio and video* files of

each party are not admissible. I will only consider the photos and documents, as those files were easily accessible and identifiable.

In other words, the Landlord's evidence, such as photos and documents (all on the one USB stick), are admissible, with the exception of the audio and video files. The Tenants evidence will also be admissible, with the exception of their audio and video files.

It is also noteworthy that neither party specifically referred me to any of their digital evidence, as they were presenting their case. Documents were only ever loosely referred to in passing by each of the parties. I note the following Rule:

> ***7.4 Evidence must be presented***
>
> *Evidence must be presented by the party who submitted it, or by the party's agent.*

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage or loss under the Act, and for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

Both parties agree that monthly rent was $1,700.00 and was due on the first of the month. Both parties also agree that the Landlord holds a security deposit in the amount of $850.00. This rental unit was the upper floor of a house, and the Landlord lived in the lower unit the whole time. The parties agree that the yard was shared between the units. The parties agree that the tenancy started on April 1, 2019, and ended on September 30, 2020.

The Landlord provided a spreadsheet and an amendment which spoke to the following items:

1) $1,700.00 – unpaid July 2020 rent

The Landlord stated that he issued a 2 Month Notice to End Tenancy for Landlord's Use (the Notice) at the end of June 2020, and the effective date was supposed to be August 31, 2020. The Landlord stated that they expected August rent to be withheld due to the Notice they issued, but now they want the Tenants to pay $1,700.00 for July rent, as that amount was never paid.

The Tenants stated that the Landlord came by on July 17, 2020, for an inspection, and at that time, they had a conversation with him about all the work they did in the yard, and in particular, the front yard. The Tenants stated the Landlord was pleased with what they did, and offered them July rent free, as compensation for the work they did to improve the house's appearance.

The person at the hearing for the Landlord acknowledged that the Landlord attended the unit on July 17, 2020, and at that time, he agreed to forgive July rent as compensation for the front yard work that was done by the Tenants. The Landlord subsequently decided he didn't want to pay this amount, and only wanted to pay the Tenants $600.00, at most. The Landlord's representative at the hearing acknowledged that the Landlord does not like conflict and confrontation, and didn't feel comfortable saying no to giving them July rent as compensation.

2) $105.98 – Grass Seed for Back and Front Yard
3) $20.00 – Yard Roller to flatten lawn
4) $20.00 – Lawn Rake to level ground
5) $86.00 – Over-seeder to lay grass seed
6) $20.00 – Fertilizer Spreader
7) $125.00 – Gravel to repair yard
8) $23.48 – Fertilizer for lawn
9) $47.98 – Landscape fabric to restore yard
10) $45.25 – Temporary Fencing to put around seeded lawn

The Landlord explained that the above noted items were all required to restore the lawn and gardens to their original state, before the Tenants moved in. The Landlord explained that he lived in the basement for the duration of the tenancy and shared the use of the yard with the Tenants. The Landlord explained that as soon as they moved

in, the Tenants started putting in small veggie gardens, raised beds, and a greenhouse in the back yard. The Landlord explained that this happened incrementally, and the Tenants' footprint slowly started to expand. The Landlord stated he gave permission for the Tenants to put up the greenhouse and to put in some veggie gardens but after doing so, he started to feel the Tenants were taking up too much room. The Landlord stated he did not say anything to the Tenants about scaling back, and appears to have allowed the Tenants to continue their use, without directly addressing the matter with them, even though he was living on the property and sharing the yard with them.

The Landlord stated that in the front yard, the Tenants also put down new seed, moved gravel around, and tried to improve the curb appeal/usability, and feel of the yard. The Tenants stated that they did this in the early part of 2020, and they had just seeded the front lawn in and around the time the Landlord indicated he wanted to end their tenancy. The Tenants stated that they stopped caring for the lawn around this time, and it dried out over a few weeks in the warmer weather.

The Tenants stated that they never did anything in the yard without asking the Landlord first, and deny that they did it behind his back. The Tenants stated that the Landlord was always around, as he lived downstairs, and would come out at times and even offer to help. The Tenants stated that before they moved out, they levelled and seeded the lawn, and restored it to its original conditions. The Tenants stated they removed the raised beds, and did their best to return it to the way it was.

The Landlord refutes that the Tenants returned the property to its original condition and did a bad job restoring the yard (left wood chips down under the soil/grass seed), and did not properly level the yard in the back. Further, the Landlord stated that the lawn was not properly grown in in the back or the front when the Tenants left. The Landlord provided some photos of the front yard taken at the end of the tenancy, to show the newly seeded lawn had largely died, and needed to be reseeded. The Landlords also provided photos of the back yard to show that the Tenants had spread dirt, and seed down, but it was not properly prepped, levelled, and the grass had not filled back in by the time the Tenants moved out. The Tenants had also left a layer of wood chips under the seeded lawn.

The Landlord is seeking the above noted costs to put the yard back to its original condition, prior to the tenancy.

11) $512.41 – Hydro charges

The Landlord pointed to the tenancy agreement which shows that monthly rent does not include electricity, or internet, and that the Tenants agreed to pay for 50% of hydro costs. The Landlord stated that they roughly estimated that electricity would be $210.00 per month, so at the start of the tenancy, the Landlord began collecting $105.00 per month, which was half of what the estimated usage was. The Landlord stated that the estimates slowly proved to be out of line with usage, as bills continued to come in over time, and they noticed that the Tenants were using more than they were paying for.

The Landlord stated that they never provided any bills or notification of unpaid utilities until this hearing. The Landlord stated that although they gave the Tenants the wifi password, this was only done out of kindness, and was never an amount that was formally charged to the Tenants. The Landlord stated that these amounts only relate to hydro, not internet fees. The Landlord provided a detailed breakdown off all hydro bills, and all payments over the tenancy. Copies of the bills were provided into evidence.

The Landlord explained that the Tenants paid $1,470.00 over the course of their tenancy for hydro, but half of the overall bill is $1,982.41, which leaves a balance owing of $512.41.

The Tenants assert that it was clearly agreed upon at the start of the tenancy that their $105.00 utility payment each month included a $30.00 internet charge, and that they only owed $75.00 per month for hydro, and no more. The Tenants stated they did not pay close attention to the written tenancy agreement when they signed it. The Tenants state they should not owe any more for utilities, because they agreed with the Landlord they only owed $75.00 per month for hydro.

12)$389.79 – Storage Fee

The Landlord explained that this amount is for costs they incurred as a result of having to store their belongings for an additional month at the end of the tenancy. The Landlord stated that the Tenants were given a valid Notice to End Tenancy for Landlord’s Use, which was effective on August 31, 2020. However, the Tenants failed to move out on time, and stayed for an extra month. The Landlord provided a receipt for this item. The Landlord stated that they issued the Notice for Landlord’s Use of the Property, because they needed the space, and when the Tenants refused to move out, it cost them money to be without the space they were legally entitled to.

The Tenants stated that there was a storage shed in the back yard, which they had emptied out by the effective date of the Notice, so if the Landlord needed storage, he could have used that for the month of September. The Landlord stated that the storage locker they rented was 15x20, so they would not have been able to put it all in the shed.

13) $228.90 – Septic tank flush

The Landlord stated that they cleared the septic tank before the tenancy started, and they had to flush it at the end of the tenancy. The Landlord stated that they feel the Tenants ought to be responsible for this item.

The Tenants stated they should not be responsible for sewage or septic issues, as this is the Landlord's responsibility.

14) $114.14 – Dump fees

The Landlord explained that this amount is to cover expenses they incurred to remove and dispose of the piles of compost left behind by the Tenants. The Landlord provided a couple of photos to show that the Tenants constructed and maintained piles of compost in order to supply their green house and garden with soil. The Landlord stated that when the Tenants left, they disassembled the raised beds, and greenhouse, but they never properly removed their compost piles. The Landlord stated that they also had to pay to dispose of some of the wood chips left behind by the Tenants veggie garden area. The Landlord explained that the Tenants only raked out the woodchips, and covered it with soil, which was not a sufficient base for a lawn or seed.

The Tenants do not dispute that they put in a compost area to help with their veggie garden but stated that they asked for permission before doing so. The Tenants feel that since they had permission to put it in, that they shouldn't have to pay to take it out. The Tenants also feel the wood chips did not need to be removed and could have been left under the dirt.

Analysis

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my analysis. A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence (photos and invoices) and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I find there is no evidence that the Landlord complied with this portion of the Act (conducting the inspections or completing the reports). This has created difficulties for the Landlord when trying to establish the condition of the yard and landscape at the start and end of the tenancy.

1) $1,700.00 – unpaid July 2020 rent

I have considered the testimony and evidence that was presented on this matter, and I note there is no dispute that monthly rent was set at $1,700.00 per month. It is also undisputed that the Tenants received August rent free as part of the Notice they received. Regarding July rent, I note the Landlord's agent specifically stated in the hearing that the Landlord attended the rental unit on July 17, 2020, and at that time, he came to a verbal agreement with the Tenants that July rent would be forgiven for the Landscape work that was done in the front yard. I note the Tenants relied on this agreement, and do not feel it is fair for the Landlord to change his mind, afterwards.

I find that there was a meeting of the minds on July 17, 2020, when the parties agreed that July rent would be forgiven, regardless of the fact this agreement was not put in writing. It appears that after this agreement was made, the Landlord wished to change the amount and the terms of what was offered. However, I find it was too late, and the Landlord was not legally entitled to back out of the verbal agreement reached when he attended the rental unit, or upon application for dispute resolution. There is insufficient evidence showing there was any duress, or coercion, and it appears both parties intended to come to that agreement at the time. The Landlord suggested he was happy with the improvement of the curb appeal of his home, which is why this agreement was entertained in the first place. I find the Tenants were not required to pay rent for July, as there was an agreement in place whereby the Landlord would forgive July rent, for work done in the front yard. I do not find the Landlord can unilaterally change or back out of this agreement after the fact. I dismiss this item, in full.

2) $105.98 – Grass Seed for Back and Front Yard
3) $20.00 – Yard Roller to flatten lawn
4) $20.00 – Lawn Rake to level ground
5) $86.00 – Over-seeder to lay grass seed
6) $20.00 – Fertilizer Spreader
7) $125.00 – Gravel to repair yard
8) $23.48 – Fertilizer for lawn
9) $47.98 – Landscape fabric to restore yard
10) $45.25 – Temporary Fencing to put around seeded lawn

I have reviewed the evidence and testimony on this matter, and I note the following portion of Policy Guideline #1 – Landlord and Tenant Responsibility for Residential Premises:

> ***PROPERTY MAINTENANCE***
>
> *1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.*
>
> *2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.*

I have reviewed and considered the totality of the situation before me, and I note the Landlord lived in the basement suite, beneath the rental unit, and the Landlord and the

Tenants all shared the yard, without any clear arrangement or agreement regarding the use of the yard. It appears the Landlord gave explicit verbal consent for the erection of a greenhouse, and some veggie beds, early on in the tenancy. However, it also appears the Landlord observed as the Tenants' footprint expanded somewhat as more potted plants were added, temporary fences were added, and other small gardening/landscaping projects were done. Even though the Landlord was living at the house, there is no evidence that the he ever took steps to clearly articulate or communicate if he had an issue with the Tenants' use of the yard. The Tenants assert that the Landlord was often around, observing, and even offering to help.

I find the Landlord's awareness of what was going on, combined with his inaction, and lack of clear communication on the use of the yard, front and back, amounted to implicit consent that the Tenants were using the yard in a largely mutually acceptable manner for the majority of the tenancy, until the parties stopped getting along towards the end of the tenancy.

Policy Guideline #1 lays out general guidelines for what each party is responsible for in terms of yard use, and structures. However, it is important to note that these are guidelines only, and do not represent an absolute rule. That being said, it appears there was explicit consent for some of the yard projects the Tenants undertook, and I find there was also implicit consent for some of the other expanded uses and other projects, given the observations made by the Landlord along the way and lack of clear communication on his part. I find the Landlord's inaction and silence on exterior matters over the course of many months substantially contributed to the issues at the end of the tenancy. If the Landlord had an issue with the Tenants' use of the yard, he should have clearly communicated the issues in a more timely manner, and ideally in writing.

In any event, as the applicant on this matter, the onus is on the Landlord to prove his claim, including proving that the Tenants violated the Act, an agreement, or the regulations. I note there is an absence of information and evidence showing what the yard was like before the Tenants moved in. It does not appear the Landlord completed a move-in or move-out inspection, nor did he complete and provide any copy of any condition inspection report, which is a violation of the Act, and the regulations.

Although the Tenants were required to restore the yard to its original condition before they moved out, the absence of evidence showing what the original state was is problematic for the Landlord's claim. The Landlord should have conducted a move-in inspection, completed the appropriate condition inspection report, and also obtained photos or other evidence showing what state the yard was in at the beginning of the

tenancy. It is not sufficiently clear what exactly the Tenants were required to do prior to moving out, without further evidence. I find the Landlord has failed to sufficiently demonstrate that the Tenants were required to do more than they did prior to moving out, in order to return the yard to its original state.

With respect to the back yard, it appears the yard structures and gardens the Tenants put in were largely removed by the Tenants, and efforts were made to level and re-seed the lawn. With respect to the front yard, I note the Tenants did some work on the yard, moved gravel, spread new soil, modified garden beds, and put down new seed so that there could be a lawn, rather than a gravel covered yard. Although the lawn did not properly grow in by the time the Tenants vacated, and the Landlord was not happy with where and how gravel was spread, I note the Landlord's agent at the hearing stated that the Landlord was initially happy with the changes to the front yard, as they were an improvement to the curb appeal of the house, which is why the parties had a conversation about the Tenant's being compensated (for July's rent) for their work in the front yard.

The Landlord has provided little to no evidence regarding what the yard was like at the start of the tenancy, such that I could find the Tenants ought to be responsible for further work or materials needed to change the yard, following the tenancy, beyond what they did. The Landlord's lack of evidence showing what the yard was like before the tenancy, combined with the Landlord's non-confrontational approach, and unclear/indirect communication style makes it difficult to ascertain what was agreed to, what wasn't agreed to, and what was explained to the Tenants, both before work was done in the yard, as well as after it was noticed.

Without further evidence from the Landlord, I find there is insufficient evidence the Tenants were required to do more than they did, prior to moving out. I dismiss the Landlord's application for items #2-10, in full.

11) $512.41 – Hydro charges

Having reviewed this matter, including evidence and testimony, I note there is no evidence to demonstrate that the parties ever formally agreed to hydro payment terms that were different than what was in the tenancy agreement. I acknowledge that the Landlord did not follow up in a very timely manner in terms of collecting on unpaid amounts. However, the tenancy was not particularly long in duration, and I do not find he is precluded from collecting on amounts owing in accordance with the written tenancy agreement the parties signed at the start of the tenancy. I note this agreement

clearly indicates that the Tenants are responsible for half of the electricity charges. Having reviewed the bills and the spreadsheet, I find the Tenants have not paid the full amounts, when viewed in totality.

There is no evidence that the wifi/internet the Landlord offered to the Tenants had anything to do with the amount of hydro they were liable for. Absent a clear written agreement indicating otherwise, I find the Tenants are liable for half the hydro charges, as specified in the tenancy agreement, and I find the Landlord is entitled this this amount, in full. I award $512.41.

12) $389.79 – Storage Fee

Having reviewed this matter, I note there is no dispute that the Tenants took an extra month to move out, past the effective date of the Notice they received. Although the Tenants paid rent for the month of September 2020, I find that by staying in the rental unit for an extra month, they caused the Landlord to suffer a loss, in the amount of one month's storage fees because part of the reason the Notice was issued in the first place, was so they could take over the space. I find the Tenants are liable for some of this cost.

However, I note the following relevant portions of the **Policy Guideline #5 – Duty to Minimize Loss**:

> This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible.

I decline to award the full amount of this cost, as the Landlord could have taken steps to partially mitigate the losses for September storage fees by utilizing, or partially utilizing all storage options available to them at the house. I do not find it clear why the Landlord could not have used the shed for some of their storage needs, particularly in the dry summer months, which could have reduced the cost and size of their remaining storage needs at the facility for September. The Landlord only requests one month's worth of storage, and I accept that this was done to help mitigate the amounts the Tenants' are liable for. However, I find the Landlord only partially mitigated losses, and could have reasonably done more to keep the costs lower, as stated above. As such, I only award a portion of the Landlord's claim for this item, $173.45.

13) $228.90 – Septic tank flush

I have reviewed the evidence and testimony on this matter, and I note the following portion of Policy Guideline #1 – Landlord and Tenant Responsibility for Residential Premises:

> ***SEPTIC, WATER AND OIL TANKS***
> *1. The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.*
>
> *2. The landlord is responsible for winterizing tanks and fields if necessary.*

I decline to award this item, as it is the Landlord's responsibility to flush, empty and maintain the septic system. I do not find the Tenants are responsible for any of this amount, particularly in the absence of evidence showing they neglected the system.

14) $114.14 – Dump fees

I have reviewed the evidence and testimony relating to this item. The Tenants do not dispute that they put in a compost bin for their use, and that they left it behind. This appears to be an item that was clearly not present before the Tenants moved in. I note that unless there is an agreement to the contrary, where a tenant changes the landscaping (including adding a compost), he or she must return the yard to its original condition when they vacate. In this case, it is not disputed that the Tenants failed to do so. Although the Landlord allowed the compost piles/bins to be constructed, I find the Tenants are still responsible for removing them. I accept the costs submitted on this matter are largely related to the removal and disposal of the compost piles. I award this item, in full, $114.14.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his application, I order the Tenant to repay half the $100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	**Amount**
Total of items listed above (#11, 12, 14)	$800.00

Half the filing fee	$50.00
Less: Security and pet Deposit currently held by Landlord	($850.00)
TOTAL OWING TO LANDLORD:	**$0.00**

Conclusion

The Landlord is granted permission to retain the security deposit, in full satisfaction of all money owed. No further monetary order will be issued.

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: February 8, 2021

Residential Tenancy Branch