



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDCL-S, FFL
For the Tenant: MNDCT, OLC, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- a \$4,162.00 monetary order for compensation for monetary loss or other money owed – holding the security and pet damage deposits; and
- recovery of the \$100.00 Application filing fee.

The Tenants filed a claim for:

- an Order for the Landlord to Comply with the Act or tenancy agreement;
- an \$8,400.00 monetary order for compensation for monetary loss or other money owed; and
- recovery of the \$100.00 Application filing fee.

The Tenants, R.D. and C.D, the Landlord, M.S., and the Landlord's husband, F.G., an agent for the Landlord (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that recording the hearing was prohibited, therefore, anyone who was recording anything was required to stop immediately.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Where I have quoted the Parties' testimony or documentary submissions, I attempted to reproduce their words as spoken or written.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Should the Landlord be required to comply with the Act and/or tenancy agreement, and if so, in what way?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the \$100.00 application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on April 1, 2020 and ran to March 31, 2021, and from then it operates on a monthly basis. They agreed that under the tenancy agreement the Tenants owe the Landlord a monthly rent of \$3,500.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,750.00, and a pet damage deposit of \$1,750.00 ("Deposits"). The Landlord acknowledged that she still holds the Deposits.

TENANTS' CLAIMS:

#1 Order for the Landlord to Comply with the Act or Tenancy Agreement

The Tenants said that this claim involves the Landlord's utilities bills. The Tenant, R.D., said:

The claim is because they asked for utilities. They want us to pay over \$150.00 a month. When they asked after nine months, we kept asking for the bill. Can we know how much? They never give us. On December they said you owe us that much. When they give us the bill, we realized they can't separate the upper suite from the lower suite. I asked for the meter. We find out that they don't have meters. My husband went to the City to see if they are different. The City told us they are not legal - they don't have separation. How can I pay over \$150.00? Who has the right? I don't want to pay something I don't use. They said we'll take \$50.00 off, first \$800.00, \$1,000.00, \$4,000.00. I want to see the meter and how much we owe.

The Landlord said:

The whole thing started when they started asking to bring in a hot tub. I told them no, because the electricity will go up. And they never got my permission, but they brought a hot tub in. I started noticing the electricity bill creeping up. In December I noticed a bit of a jump; I told her this was happening, because of your hot tub.

When I called her, she got really upset and said 'send me the bill', which we did. It was during Christmas time; she was even more upset. We started back and forth'ing and that's when she refused.

I was trying to work with them. At some point, because I was not able to communicate with him, and her husband had written an email to me to call this number. I asked my son-in-law – a PhD: a very calm man. 'Would you please call him and work with him?' So, my son-in-law called him. They agreed to only pay for electricity and nothing else.

She called me back: not going to pay anything. The contract clearly says any utilities over \$150.00 - they have to pay. We showed them the lower level, the back yard. . . they knew that. I am a property manager, so they know that this property has one meter for gas, one for electricity, and a hot water tank in the basement. The reason we said \$150.00 was that the average was this per month in the past. They have an electrical cost agreed by them in the tenancy agreement, the addendum, and in email. They have brought in commercial equipment, an electrical ladder.... They started breaking the contract the second or third month.

It was inside a couple weeks, then later in a parking lot not belonging to them. During Covid we were cooperating. When they come to pay their utility bill, they are not paying. The lower tenant contributes \$50.00, and we pay \$100.00. The rest belongs to them.

The Tenant said:

First, they start speaking about the addendum; it's not written on the lease. They send an addendum and we signed it, but never received it back with their signature.

Second, all . . . my husband's equipment and the hot tub: we never had anything in writing that doing it is illegal. All communications are by phone, never in writing. We have asked them several times about – before we moved in – if the lady [in the other unit] had access to my garden. We were never informed that the suites don't have meters.

Regarding emails back and forth when I decided to put everything in writing, but they broke the lease – it's all in writing. They keep saying on December 21 – they gave me an opportunity – is my right as a tenant. She's not my boss, not paying me. On December 21st, I had an email from Landlord it states. . . , however, it looks like I tried to take advantage of every opportunity. They never told us where to park. The house - I'm paying for the house and the parking.

In the Landlord's email to the Tenant dated December 21, 2020, the Landlord states:

After reading your email I talked to the RTC and explained the situation. After hearing the situation, they directed us to give you notice, and then if the situation is not solved peacefully, they advised us to take the case to RTC for arbitration.

Attached please find PDF copies of electricity and Gas charges for 2020 and the year before I will forward the Water usage as well if you want to have a copy.

. . .

I have been working with you guys in a civilized and kind manor to keep a friendly landlord tenant relationship and it has been the case so far and in the past; however, it looks like you try to take advantage any opportunity you get. You should be aware we are very abiding law of this country and province. I do not want this mater to escalate and go to arbitration and further action that we have the right to take.

Please forward this email to your husband and send his email to me as well as he is on the contract as well and he never gave his email address to us.

Regards
[Landlord]

[reproduced as written]

The tenancy agreement, which was signed by the Parties, states the following about the utilities owing by the Tenants during the tenancy. In section 3. of the tenancy agreement, the following handwritten note follows what is included in the rent: "Tenant agrees that the cost of utility will not exceed \$150/month, otherwise tenant will pay the extra." There are indistinguishable initials beside this statement.

In the addendum to the tenancy agreement, which was signed by the Parties, it states:

19. Additional

- a. An Additional fees will be added to the rent to cover the cost of gas and utilities if the monthly cost exceed \$150 per month.

#2 Monetary Compensation → \$8,400.00

The Tenants explained that this matter involves their lack of privacy in the backyard, as the tenant in the lower suite sometimes enters the backyard, despite the Tenants' understanding that it is for their use, alone.

In the hearing, the Landlord said:

The main problem is that their issue of privacy and a private back yard. The other tenant's been living there four years before them. The lower tenant has access only for dumping recycling material and garbage. . . .

In answer to the question of the basis for their \$8,400.00 claim, the Tenant said:

I tried to mitigate the problem. Sent over an email and I said if tenant is not stopping coming into my garden to throw the garbage - they assured us that she will never come into the garden. Nine months, eight months - we were asking to do something about the garbage. There were two garbage cans. I put it in writing. The claim of \$8,400.00 is because they didn't take action.

I offered a solution. Put the garbage by their gate and get it outside their garage. They say it is a common area after so long. In the beginning it was not common. The common was in the front. We asked them several times and we'll do it. When I put it in writing, I said let me have my garden until I moved out. We offered them the solution, but they never answer back

In answer to how this affects their enjoyment of the residential property, the Tenant said:

The lady never cleans the garbage. Worms, very dirty. Two times a day, three times a day we see her. That has impacted my privacy. The kitchen window we can see her all the time from my kitchen. We were aware of the unit.

When we moved in, they said no one coming in. In the advertising they say a very private backyard. \$3,800.00 – 'very private backyard'.

After the incident with the Landlord, the Landlord said it is common area. Tell the lady with no mask not to come into our back garden. A guest of the tenant came to our door and threatened us, because Landlord told them it was a common area. We called the police and they told the lower people not to come in our garden.

Need to mitigate the problem? We need to find a solution for *them*?

The \$8,400.00 is 20% of the rent [for a year], because of the many times they take our privacy. Even three days ago, another person came and looked at the hot tub; no proper notice. We have another video threatening us in the backyard. I'm paying for that land.

The Landlord said:

I just want to say that we are under oath and we should not be saying things that are not true. They never called us for eight or nine months; we were there immediately when they have a problem. Also, [the other tenant] asked them if I can help them with the garbage and she said no, she'll take care of it. [The other tenant] will take her garbage to work most times. She has her recycling – can't put it at the front.

There's nothing in the tenancy agreement that says it is private. That back yard is 'private', in that neighbours can't see inside, dogs can't run away. It's private, but

not exclusive. She has been upstairs taking care of their dog, mingling with each other, but all of a sudden after eight months, they started this problem. [The other tenant] went to put her garbage . . . She said that when she went to put her garbage out, [the Tenant] started screaming at her, and saying give me my privacy . . .

They call the police on us. I went over there to give them their notice. They started shouting at us. We are not safe here. The police came in 45 minutes – we didn't go; we cancelled the apartment showing.

With a good tenant. We had about eight or nine people to see the property that weekend. It was before Easter Saturday, instead of Easter Sunday. When can we come and show the property, because they said they are leaving in . . .?

When we go to give them it in writing, they start the jazz with the police. Why get the police involved? Why can't we work it out like civilized people?

[emphasis added]

LANDLORD'S CLAIMS:

The Landlord's claims are for unpaid rent and utilities she says that the Tenants owe. In her amended application for dispute resolution, the Landlord said that she claims \$855.00 in unpaid rent, which she later explains as being added for what the Tenants owe in utilities for February, March, and April 2021. This is in addition to the Landlord's claim for \$2,820.00 in unpaid utilities, for a total claim of \$3,705.00. The Landlord only referred to a specific claim for unpaid rent in a spreadsheet listing the Tenant's rent payments from the beginning of the tenancy through February 2021.

#1 Rent Owing

The Landlord submitted a spreadsheet with the "Rental Income" for the rental unit address. This spreadsheet indicates that the Tenant paid full rent from April 1, 2020 through February 2021; however, the Landlord indicated that the Tenant's two payments equalling the rent owing in February 2021 were stopped, and the Landlord incurred a "chargeback fee" of \$7.50 for each of the two payments that were stopped for February 2021. The Landlord, therefore, claimed \$3,515.00 owing in unpaid rent and bank fees from the Tenants.

However, in the Landlord's Application, she focused on the amount of utilities that the Tenants owe, rather than the strictly unpaid rental income.

#2 Utilities Owing

The Landlord said:

In our contract, clearly in two places, it states that every utility over \$150.00 they are responsible. And text message – when they wanted to bring in a hot tub. They acknowledge they are paying for this. When utilities are \$440.00 or \$490.00 for a house that was \$150.00 for utilities, it was quite surprising. We want to get our money.

The water bill comes every four months and gas every month, hydro every two months. We have submitted all the bills. – sent to them, as well. They owe us \$4,162.74

We submitted revised evidence on April 8th, and again a few days ago, which corrected the spreadsheet; and we gave a copy to them, and you as well. The last copy was on Sunday. They sent the hydro bill just a few days ago, so I couldn't do the exact amount owing to April 12 – I don't care about the rest of the month.

The average monthly payments – \$450.00+ for them. It was an amount for 12 months, not 15 months.

The Tenant said: "I'm more than happy to pay the difference, if they show me the difference between our suite and the others."

The Landlord's **Hydro bills** submitted are as follows:

	Billing Period	Electricity Bill	Wattage (kWh)	Amount > \$150.00
1	Dec 11/19 → Feb 10/20	\$207.26	1758	n/a
2	Feb 11/20 → Apr 8/20	\$157.68	1207	n/a
3	Apr 9/20 → Jun 9/20	\$249.91	2062	n/a

4	Jun 10/20 → Aug 10/20	\$311.34	2479	\$161.34
5	Aug 11/20 → Oct 8/20	\$314.98	2486	\$164.98
6	Oct 9/20 → Dec 9/20	\$454.93	3449	\$304.93
7	Dec 10/20 → Feb 9/21	\$491.59	3779	\$341.59
8	Feb 10/21 → Mar 31/21	\$449.40	2,764	\$299.40
		\$2,637.09	TOTAL	\$1,272.24

However, “utilities” includes electricity, gas, and water, according to the tenancy agreement.

I compared the electricity bills for the residential property in December through February of the year prior to the Tenants’ arrival, versus the December through February of when they lived there. The latter bill was \$284.33 higher and the electricity usage 2021 kilowatts higher than in the prior year. 115% more electricity was used in the residential property with the only differing factor being that the Tenants lived there.

The Landlord submitted a chart indicating utilities -- the Hydro, water and gas bills for the years 2018, 2019, and 2020. He included totals for each category, as well as monthly averages for all utilities for each year. The totals and averages were:

2018: \$3,000.75 = \$250.10/month

2019: \$3,266.67 = \$272.22/month

2020: \$5,962.68 = \$496.90/month

The Landlord is basing his claims on average monthly amounts, (compared to averages for two years prior to the Tenants living in the rental unit). The Landlord provided these averages, rather than the calculations for the actual amounts the Tenants owe above \$150.00 per month for the months they lived there. It is not my job to add up the gas, hydro and water bills to find out the amount the Tenant owes.

The Landlord also amended her claim from having forgiven \$600.00 of the total amount owed by the Tenant for utilities, to adding \$855.00 that they owe for February, March, and April 2021, since the Tenants were not moving out until the end of April. The Landlord did not indicate how she came to \$855.00 for the additional utilities she says are owing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Policy Guideline #16 ("PG #16") states: "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 claiming compensation to provide evidence to establish that compensation is due."

As I advised the Parties in the hearing, the burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Further, an applicant must prove the following, pursuant to PG #16:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

[the "Test"]

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. According to PG #16:

A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

TENANTS' CLAIMS:

#1 Order for the Landlord to Comply with the Act or Tenancy Agreement

Based on the evidence before me overall, and specifically in reference to the tenancy agreement and the addendum quoted above in this regard, I find that the Tenants agreed to pay the Landlord any amount higher than \$150.00 for the utilities charged to

the residential property each month. I find that the Tenants have not provided sufficient evidence to establish that the Landlord is not complying with the Act or tenancy agreement in this regard. As such, I dismiss this claim without leave to reapply. The amount claimed by the Landlord will be addressed in the section for the Landlord's claims.

#2 Monetary Order → \$8,400.00

The Tenants are claiming a refund of twenty percent of their rent for a year, because they feel another tenant has breached their right to privacy, and because the Landlord has not done anything about this.

As part of the Test, the Tenant must first establish that the Landlord violated the Act or tenancy agreement. The question before me is whether the Tenants have proven on a balance of probabilities that the backyard is part of their private portion of the residential property or if it is a common area for all tenants.

The Tenant did not point me to anything in the tenancy agreement, which states that the yard is for their sole and exclusive use. I find they relied on a statement in an advertisement that referred to the residential property as having a "very private backyard". I find I agree with the Landlord that the yard is "private", but not "exclusive" to the Tenants. I find that the back yard is a common area for all of the tenants of the residential property, and is not for the exclusive use of the Tenants' family. Accordingly, I reject the Tenants' claim for compensation in this regard and I, therefore, dismiss their claim without leave to reapply.

LANDLORD'S CLAIMS:

#1 Rent Owing

The Landlord submitted the spreadsheet, which indicates that the Tenants owe her \$3,515.00 in rent, including two bank chargeback fees of \$7.50 each. However, this is inconsistent with the Landlord's original and amended claims, which focus only on the outstanding utilities owing by the Tenants.

As a result, I find that the Landlord did not provide the Tenants with sufficient notice of this claim for rental income owing, separate from utilities owing. Accordingly, I dismiss this claim without leave to reapply.

#2 Utilities Owing

Based on the evidence before me overall in this matter, I find that the Tenants have not paid the Landlord anything for utilities owing over the course of the tenancy. However, I find that the Landlord's claim for utilities are based on averages of the amounts billed each month, rather than the actual amounts above \$150.00 that the Tenants owe for each utility, each month. I find this is not a sufficiently accurate calculation for a monetary award under the Act. Further, it is not my job to add up the gas, hydro and water bills to find out the amount the Tenants owe in each category, as I have done for the hydro bills above. As such, without such calculations before me, I find that the Landlord has not provided sufficient evidence to meet her burden of proof on a balance of probabilities in this regard.

However, given my findings in the Tenants' first claim that they owe the Landlord utilities payments, I find it appropriate pursuant to Policy Guideline #16 ("PG #16") and section 67 of the Act to award the Landlord with a nominal amount for this claim. I award the Landlord with **\$1,300.00** or \$100.00 per month for the 13 months of the tenancy, which I find is significantly less than may have been owing for all of these utilities. Otherwise, I dismiss this claim without leave to reapply.

Summary and Set Off

I have dismissed the Tenants' claims without leave to reapply, as I found the Tenants did not provide sufficient evidence that the Landlord had failed to comply with the Act or tenancy agreement in terms of the utilities owing. Further, the Tenants failed to prove on a balance of probabilities that the back yard is for their private and exclusive use. Rather, I found that it is a common area of the residential property, which is private from the view of next-door neighbours. As such, this claim was dismissed without leave to reapply.

The Landlord's claims are also dismissed without leave to reapply, as the Landlord failed to provide sufficient evidence to meet her burden of proof on a balance of probabilities. The exception to this is a nominal award that the Landlord is granted of **\$1,300.00** for utilities owed to her by the Tenants, pursuant to PG #16 and section 67 of the Act.

As both Parties were primarily unsuccessful in their claims against each other, I decline to award recovery of the \$100.00 application filing fee to either Party. These claims are both dismissed without leave to reapply.

I authorize the Landlord to retain \$1,300.00 of the Tenants' \$1,750.00 security deposit. I Order the Landlord to return the Tenants' remaining security and pet damage deposits of \$2,200.00, and I grant the Tenants a Monetary Order of **\$2,200.00**, in this regard, which must be served on the Landlord.

Conclusion

Both Parties are primarily unsuccessful in their claims, as neither Party provided sufficient evidence to meet their respective burden of proof on a balance of probabilities.

However, the Landlord proved that the Tenants owe her utilities' payments, but she failed to provide sufficient evidence of how much is owed to her. As such, the Landlord is awarded a nominal amount of **\$1,300.00** from the Tenants for utilities owing over the course of the 13-month tenancy. The Landlord is authorized to deduct \$1,300.00 from the Tenants' \$3,500.00 security and pet damage deposits retained for this claim.

The Landlord is **Ordered** to return the Tenants' remaining Deposit amount of \$2,200.00 to the Tenants, as soon as possible. The Tenants are granted a Monetary Order of **\$2,200.00** from the Landlord in this regard.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 26, 2021

Residential Tenancy Branch