



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S FFL / MNDCT, MNSD, FFT

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The landlord’s for:

- authorization to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ application for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$450.57 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This matter was reconvened from a prior hearing on December 3, 2021. I issued an interim decision setting out the reasons for the adjournment that same date (the “**Interim Decision**”). This decision should be read in conjunction with Interim Decision.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:51 am in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 am. Tenant EC attended the hearing. He was assisted by GS who also acted as his translator. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding form. I also confirmed from the teleconference system that EC, GS, and I were the only ones who had called into this teleconference.

In the Interim Decision, I order the tenants to, within three days of receiving the Interim Decision, serve the landlord with copies of:

- 1) A copy of the notice of dispute resolution package;
- 2) A copy of the Interim Decision;

- 3) A copy of all documentary evidence submitted to the RTB in support of this application; and
- 4) A copy of the notice of reconvened hearing.

GS testified that the due to a medical condition he has, he was unable to serve the documents within the ordered timeframe. He testified that in December his medical condition worsened, and he had to double the dosage of medication that he was taking. He testified that, as soon as he was well enough, he served the landlord with the required materials via UPS. He provided a tracking number confirming delivery on January 19, 2022 (reproduced on the cover of this decision).

I am satisfied that the landlord received this package, and did so more than 14 days prior to this hearing. In the circumstances, I find it appropriate to proceed with the hearing and deem that he was served in accordance with the Act. The landlord has filed his own application which was scheduled to be heard on December 3, 2021. Since making that application, he has not taken any steps to participate in the dispute resolution process. He knows, or reasonably ought to know, that there was a hearing scheduled for February 11, 2022. Yet despite this, he has not taken any steps to advance his claim or to respond to the tenants'.

As the landlord has failed to engage with this process entirely, I do not find that an adjournment of these hearings would accomplish anything, and I think it likely that the landlord would not attend a further reconvened hearing. Had the landlord attended this hearing, and asked for an adjournment due to late service by the tenants, I might have been inclined to grant such a request as it would have demonstrated some engagement with the process. However, in the present circumstances, adjourning this hearing would serve little purpose. As such, I proceeded with the hearing in the landlord's absence.

Preliminary Issue – Effect of Landlord's Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord bears the evidentiary burden to prove the facts necessary to make out his claims are more likely than not true. As the landlord has not attended this hearing, find that he has failed to discharge this evidentiary burden. Accordingly I dismiss his application, in its entirety, without leave to reapply.

The balance of this decision will address the tenants application.

Issues to be Decided

Are the tenants entitled to:

- 1) a monetary order of \$450.57;
- 2) the return of their security deposit (\$750); and
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant and GS, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting December 1, 2019. The tenants vacated the rental unit on December 3, 2020. Monthly rent was \$1,500. The tenants paid the landlord a security deposit of \$750, which the landlord continues to hold in trust for the tenants.

The tenants provided the landlord with their forwarding address in writing on July 15, 2021. The landlord made an application against the security deposit on June 3, 2021.

The rental unit is an upper unit of single-detached house. The lower level is divided into three separate rental units. The tenancy agreement stipulates that the tenants were required to pay 60% of the hydro and electrical bills. GS stated that the remaining 40% was to be paid by the occupants of the lower three units. The utilities for the residential property were in the tenants' name. GS stated that the landlord would collect the lower unit occupant's share of the utility bills and provide the proceeds to the tenant.

GS stated that the landlord did not provide the tenants with 40% of the hydro or utility bills for the final month of the tenancy. The tenants submitted a BC Hydro bill dated December 17, 2020 for \$965.18 and a Fortis BC bill dated December 7, 2020 for \$211.26. The tenants seek a monetary order for \$450.57, representing 40% of these amounts.

The tenants also seek the return of the security deposit, as the landlord has failed to make out a claim against it.

Analysis

1. Security Deposit

Section 38(1) of the Act requires the landlord to either return a security deposit to the tenants or make a claim against the security deposit within 15 days of the later of the tenancy ending or receiving the tenants' forwarding address. The landlord applied against the security deposit prior to receiving the tenants' forwarding address, so he complied with this section. As such, the penalty clause at section 38(6) of the Act does not apply.

However, as I have dismissed the landlord's application, I find that he has no entitlement to retain any portion of the security deposit. As such, I order the landlord to return the security deposit to the tenants.

2. Utilities

The tenancy agreement requires the tenants to pay 60% of the BC Hydro and Fortis bills. I accept GS's testimony that the landlord is responsible for paying the remaining 40%, and that the landlord is responsible for collecting this amount from the occupants of the lower units of the residential property. I accept GS' uncontroverted testimony that the landlord failed to reimburse the tenants 40% of the final BC Hydro and final Fortis bills. The combined total of these two bills is \$1,176.44. 40% of this amount is \$470.58.

I note that this amount is \$20 more than the amount claimed by the tenants. I attribute this discrepancy to a minor arithmetical error on their part when making their application. I find it appropriate to amend the tenants' claim to increase the amount they have sought in connection to the utilities from \$450.57 to \$470.58. I order the landlord to pay the tenants.

Pursuant to section 72(1) of the Act, as the tenants have been successful in the application, they may recover the filing fee from the landlord.

Conclusion

Pursuant to sections 62, 67, and 72 of the Act, I order that the landlord pay the tenants \$1320.58, representing the following:

Description	Amount
Security Deposit	\$750.00
Utilities	\$470.58
Filing fee	\$100.00
Total	\$1,320.58

I order the tenants to serve a copy of this decision and attached order as soon as possible after receiving this decision, in accordance with the Act.

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 11, 2022

Residential Tenancy Branch