



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNDCT, RP, OLC**
 MNDCT, CNR, RP
 OPC, OPR, MNDL-S, MNDCL, MNRL, FFL

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with hearings filed by both the landlord and the tenant pursuant the *Residential Tenancy Act* (the "Act").

The tenants filed two applications. The first sought:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62.

The tenants' second application sought:

- A monetary order for damages or compensation pursuant section 67;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- An order for repairs to be made to the unit, site or property pursuant to section 32.

The landlord sought the following in his application:

- An order of possession for cause pursuant to sections 47 and 55;
- An Order of Possession for unpaid rent pursuant to sections 46 and 55;

- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for unpaid rent pursuant to sections 26 and 67;
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord was represented at the hearing by his agent/brother, SC. Both of the tenants attended the hearing, accompanied by an interpreter who was duly affirmed to translate the proceedings. The tenants were also represented by their counsel SI. As all parties were present, service of documents was confirmed. The tenants acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package; the landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package, however was not able to confirm whether he received all of the tenants' evidence. I advised the landlord's agent that if the tenants referred to a piece of evidence that was not in his possession, the landlord's agent should interrupt the testimony to let me know. The landlord's agent did not interrupt the tenants for this reason at any time during the hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

At the commencement of the hearing, it was confirmed that the tenants moved out of the rental unit on November 30, 2021. As the tenancy has ended, the following issues under dispute are dismissed without leave to reapply pursuant to section 62(4) of the *Act*.

For the tenants:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62.

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- An order for repairs to be made to the unit, site or property pursuant to section 32.

For the landlord:

- An order of possession for cause pursuant to sections 47 and 55;
- An Order of Possession for unpaid rent pursuant to sections 46 and 55;

Although both parties indicated their issues and remedies sought expanded beyond what each party applied for, all were advised that this hearing was limited to the issues for compensation identified in each parties' respective applications and filed amendments in accordance with rules 2.2 and 6.2 of the Residential Tenancy Branch Rules of Procedure. No additional claims would be considered.

Preliminary Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties achieved a partial resolution of their disputes. I recorded the following settlement:

- The Tenants will meet the landlord's agent at his house at 5:00 p.m. on April 8, 2022 to retrieve the items that remained at the rental unit when the tenancy ended.
- The tenants confirm that their lawyer's address is their forwarding address as of today's date. If counsel is no longer representing the tenants, counsel will advise the landlord forthwith and provide a further forwarding address for the tenants.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion.

Issue(s) to be Decided

Are the tenants entitled to a monetary order?

Is the landlord entitled to a monetary order? Can the landlord retain the tenants security deposit? Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord's agent gave the following testimony. He is the brother of the actual owner of the rental property and acted as his brother's agent throughout the tenancy.

The fixed one year tenancy began on May 18, 2021 with rent set at \$2,800.00 payable on the 18th day of each month. The landlord collected a security deposit of \$1,400.00 which he continues to hold. The rental unit is a townhouse, approximately 1600 square feet, approximately 4 years old. The landlord did not do a condition inspection report with the tenants at the commencement of the tenancy.

The tenants moved out of the rental unit on November 30, 2021. The rental unit is now occupied by a new set of tenants who moved in approximately February 25th.

The landlord seeks to recover \$5,784.00 for unpaid rent and utilities. The landlord's agent testified that the tenants paid rent in the amount of \$2,800.00 each month from May to October, 2021. On October 23, 2021, the tenants "extorted" the landlord into returning rent for the month of October. The landlord relies to his translation of text messages in "WeChat" as evidence of the extortion he alleges was perpetrated by the tenants. He describes the log as the tenant harassing the landlord with threat that the house is unsafe to live in due to natural gas leaks.

According to the logs provided by the landlord, the tenant sends a message at 20:58 on October 22, 2021:

I was just cooking around 7:00 PM , turned on two stove tops, the whole time had the window open and fume hood was on, after finish cooking and was eating I start to feel headache, body feel weak, my husband is the same, same as few days ago's symptoms. You haven't received my calls, text message not replied, the three of us are outside, it is already past 9:00 PM , kid has not finished dinner

At 21:43 on October 22, 2021, the landlord responded (not the agent for today's hearing):

*Deposit and \$3000 return to you, [tenant] already paid rent for November 18th.
And the remaining money send to [tenant].
Give time to move house
With out cost live, at most one more month
Garage door needs repair*

At 10:03 the following day, the tenant writes:

*Other terms follow what you said last night, compensate with a moving fee
\$3000, return deposit (\$1400 deposit) , and return the prepay of \$2800 rent.*

And at 10:12 on October 23, 2021, the landlord writes:

I can immediately give \$2800 back to you, but can not delay, November 18 must move out. We won't calculate the daily rate. Deposit depends on repairing things to the original state, fix the garage door then return to you.

In the landlord's evidence package, the landlord provides a document entitled,
0_Transaction_Record_Oct_23rd.jpg

This document reads:

October 23, 2021.

Transaction record:

*You rental payment for the month of October 18th was received. You indicated to me you are ~~under financial hardship~~, and so I am returning to you the rent in the amount of 2800 CAD for period Oct 18th to Nov 18th's rent. This month's rent owed is waived.
Signed, landlord.*

(reproduced as written, including crossed out words)

The landlord's agent states he wants to renege on this deal. He now seeks to recover the \$2,800.00 already returned to the tenants plus rent for the month of November of \$2,800.00, plus an additional \$184.00 for utilities. In his evidence package, the landlord provided an invoice from BC Hydro in the amount of \$80.81 from August 17 to October 15, 2021 and another from Fortis Gas in the amount of \$102.93 from September 14 to October 15, 2021.

The landlord also originally sought \$1,610.00 for damage to the garage door caused by the tenants. After consulting with the strata corporation, the door did not require

replacement and it was instead repaired by a handyman who invoiced the landlord \$210.00.

In his application, the landlord seeks \$5,267.00 for *“actual damage, October’s rent and damage to the landlord’s health via stress because the relationship in this tenancy was strained and broken entirely at the hands of the tenants. The goal of the tenants was to entrap the landlord with legal threats of supposed wrong doing and extort benefits from the landlord.”*

The landlord’s agent testified that he and the landlord both have suffered from stress. In his written material, called **8_compensation_for_undue_stress.pdf** the landlord states, *“I guess \$750 or some fraction of this amount seems reasonable in compensation for being the victim of their extortion and other reasons for stress”*.

The tenant’s counsel submits the following argument. The tenants moved out at the end of November however there was no intention on their part to end the tenancy. After the agreement with the landlord to move out made on October 23rd, the tenants found another place to temporarily reside and entered into a month to month agreement at the other residence. The landlord failed to give them the promised \$3,000.00 and they returned to that place in December and have continued to reside there.

When the tenants tried to access the rental unit in December, they found themselves locked out. When they had vacated the rental unit on November 30th, they acknowledge that they took most of their furniture and belongings, however a mattress was left behind.

The tenants argue that the landlord seeks to recover rent beyond November 30th however he is not entitled to it because the tenancy has ended.

Regarding the garage door, there was no condition inspection report done at the commencement of the tenancy. There is no proof that any damage was done to the garage door during the tenancy by the tenants. This invalidates the landlord’s claim.

Lastly, the tenants seek compensation from the landlord in the amount of \$3,000.00. In their application, the tenants state: *“The landlord has agreed that he will compensate \$3000 cash for us to move out in both verbal agreement and WeChat message (Oct 20, 2021). We understand that both verbal and WeChat agreement are also considered part of tenancy agreement, so the landlord must comply.”* The tenants’ counsel submits that the landlord and the tenants entered into an agreement whereby the landlord would

return October's rent. According to counsel, the tenants relied upon this and arranged to get a new living accommodation and never got it. Since it was not received, the agreed to \$3,000.00 is still outstanding.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

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

First, I turn to the landlord's claim for unpaid rent. According to the landlord's own document, **1_unpaid_rent_and_utilities.pdf**, the tenants paid all the rent, including rent spanning the period from October 18, 2021, to November 18, 2021. On October 23rd, the landlord, chose to return the full amount of rent to the tenants. I do not find the landlord obligated to do so in any way and he made this choice voluntarily. I do not find any breach of the *Act* causing me to allow the landlord to "renege" on his agreement to return rent from October 18 to November 18 to the tenant and I dismiss the landlord's application seeking it's return.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

Pursuant to section 44(1)(f), I find the tenancy ended on November 30, 2021 when the tenants vacated the rental unit. As I have already found that rent was paid (and voluntarily returned) for the period spanning October 18, 2021 to November 18, 2021, (as cited by the landlord in his document dated October 23, 2021, **0_Transaction_Record_Oct_23rd.jpg**), I find the tenants are liable for compensating the landlord with rent for the 11 day period from November 19 to November 30, 2021 on a pro-rated daily basis. [$\$2,800.00 / 30 \text{ days} \times 11 \text{ (days)} = \$1,026.66$]. The landlord is awarded **\$1,026.66** for rent pursuant to section 67 of the *Act*.

In his evidence package, the landlord provided an invoice from BC Hydro in the amount of **\$80.81** from August 17 to October 15, 2021 and another from Fortis Gas in the amount of **\$102.93** from September 14 to October 15, 2021. The utilities were used by the tenants during these times and utilities were not included in the tenancy agreement. I award the landlord these amounts as compensation pursuant to section 67 of the *Act*.

Section 21 of the Regulations state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Section 17 of the Regulations states that it is the landlord's responsibility to schedule the inspection at the commencement of the tenancy. The landlord acknowledged that no condition inspection report was done with the tenants at the commencement of the tenancy. Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put himself in a position where he cannot prove, on a balance of probabilities, the existence of the damages allegedly caused by the tenants when the tenancy ended. Though his testimony bears some weight, he has not met the burden of proof to show me the difference in condition of the garage door between move-in and move-out. As the onus to prove their case falls upon the applicant, I find the landlord has not provided sufficient evidence to satisfy me the tenants damaged the garage door and I dismiss the landlord's claim of \$210.00 to repair it.

Lastly, the landlord claims 5,267.00 for *"actual damage, October's rent and damage to the landlord's health via stress"*. I have already found that the landlord is not entitled to recover October's rent. The landlord did not provide sufficient evidence or testimony to satisfy me he is entitled to "actual damage" as he never explained what that was for and he never drew my attention to any specific documents to corroborate this claim. Regarding the landlord's claim of damage to the landlord's health, the landlord did not attend the hearing to give any evidence as to his own personal health or how it has

diminished due to any actions of the tenants. Nor was my attention drawn to any medical opinions from doctors or mental health professionals to corroborate a claim for “damaged health via stress”. Lastly, while the landlord states, *“I guess \$750 or some fraction of this amount seems reasonable in compensation for being the victim of their extortion and other reasons for stress”*, the landlord did not provide any scale for me to base a compensatory award upon if he had been successful in proving he suffered from damaged mental health. I find the landlord has provided insufficient evidence to satisfy me of a damage or loss attributed to a breach of the *Act*, regulations or tenancy agreement by the tenants (points 1 and 2 of the 4 point test) and failed to prove the value of the damage or loss (point 3 of the 4 point test). This portion of the landlord’s claim is dismissed without leave to reapply.

The landlord’s agent is not a party to the tenancy agreement and therefore has no rights or obligations under the *Act*. The landlord’s agent is barred from claiming for damage to his mental health under the Residential Tenancy *Act*.

The tenants seek \$3,000.00 compensation as fulfillment of a promise made by the landlord. While section 7 of the *Act* allows an arbitrator to award compensation to a landlord or a tenant for not complying with the *Act*, regulations or tenancy agreement, I do not have the authority to award compensation for not following through on a promise. I do not find any breach of the *Act*, regulations or tenancy agreement by the landlord in this case. I dismiss the tenant’s claim without leave to reapply.

The landlord was only partially successful in his application. The landlord’s filing fee will not be recovered.

The landlord continues to hold the tenant’s security deposit in the amount of \$1,400.00. In accordance with the offsetting provisions of section 72, I order that the landlord retain a portion of the tenant’s security deposit in partial satisfaction of the monetary award and that the remainder of it be returned to the tenants.

Item	Amount
Pro-rated rent from November 19 to 30, 2021	\$1,026.66
BC Hydro	\$80.81
Fortis Gas	\$102.93
Less tenant’s security deposit	(\$1,400.00)
Total	(\$189.60)

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$189.60.

The following settlement terms were recorded pursuant to section 63:

- The Tenants will meet the landlord's agent at his house at 5:00 p.m. on April 8, 2022 to retrieve the items that remained at the rental unit when the tenancy ended.
- The tenants confirm that their lawyer's address is their forwarding address as of today's date. If counsel is no longer representing the tenants, counsel will advise the landlord forthwith and provide a further forwarding address for the tenants.

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: March 21, 2022

Residential Tenancy Branch