



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSDS-DR FFT
For the landlord: MNRL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order of \$5,848.64 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain all of part of the tenants' security deposit, and to recover the cost of the filing fee. The tenants applied for a monetary order of \$10,094.00 for the return of their security deposit and to recover the cost of the filing fee.

The hearing commenced on May 6, 2022 and concluded after 65 minutes. Attending the teleconference hearing was landlord and their counsel, AR (counsel), the tenant and a tenant agent, DI (agent). Counsel was not affirmed as they have already sworn an oath when called to the Bar of BC. The other participants were affirmed testimony. All parties were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed having been served with documentary evidence in response to an application by the other party and having had the opportunity to review that evidence, I find the parties have been sufficiently served as required by the Act.

Preliminary and Procedural Matters

Pursuant to section 64(3)(c) of the Act, the landlord's application was amended to reflect the correct names of both tenants.

In addition, the parties were advised that the tenants' application was being refused, pursuant to section 59(5)(c) of the Act because their application for dispute resolution did not provide sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the Act.

The tenants failed to upload and serve a Monetary Order Worksheet (Worksheet) or similar document to set out how they arrived at the amount of \$10,094.00 being claimed. Based on the above, I find that proceeding with the tenants' monetary claim at this hearing would be prejudicial to the landlord to speculate at how they arrived at the amount claimed. In other words, it is not up the arbitrator or respondent to speculate at how the applicant arrived at a specific amount being claimed.

The tenants have at liberty to reapply; however, are reminded to submit a completed Worksheet at the time an application is made and to ensure the respondent and the Residential Tenancy Branch (RTB) are served with the completed Worksheet. The tenants may include any additional pages to set out the details of their dispute in their application, as required. The filing fee is not granted to the tenants due to incomplete details as noted above.

In addition, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to the parties.

The hearing continued with consideration of the landlord's application only.

Furthermore, I find the landlord neglected to account for their request for a "\$1,500.00 fine for abuse of process" against the tenants. I dismiss this portion of their application for two reasons without leave to reapply. Firstly, I find the landlord failed to account for the \$1,500.00 in their claim for \$5,848.64 and that it would be prejudicial to add that amount at the hearing. Secondly, the Act does not provide me the authority to issue fines as an Arbitrator. The landlord may wish to contact the RTB Compliance and Enforcement Unit (CEU). The RTB CEU have the authority to conduct investigations of landlords and tenants and if determine necessary, may also issue administrative penalties under the Act. The RTB CEU website is located at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement>

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2019 and required vacant possession to be provided to the landlord as of June 1, 2022. The tenants paid a security deposit of \$1,5000.00 at the start of the tenancy, which the landlord continues to hold. Monthly rent was \$3,000.00 per month and was due on the first day of each month and did not include water, electricity, cable, heat and gas.

The landlords monetary claim of \$5,848.64 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of July 2020 rent	\$1,900.00
2. Full August 2020 rent	\$3,000.00
3. Unpaid utilities	\$848.64
4. Filing fee	\$100.00
TOTAL	\$5,848.64

The landlord filed their application on October 20, 2021. The landlord confirmed that on August 30, 2020 the landlord received a text from the tenants which confirmed their written forwarding address. The landlord testified that the tenants vacated on September 1, 2020 based on a Mutual Agreement to End Tenancy dated June 26, 2020 (Mutual Agreement). The Mutual Agreement is signed by both parties and indicates that the tenancy will end on September 1, 2020 at 1:00 p.m. The landlord continues to hold the tenants' security deposit of \$1,500.00, which has accrued \$0.00 in interest under the Act. I will address the security deposit later in this decision as the landlord has claimed against the tenant's security deposit.

The landlord testified that they had a verbal agreement that the tenants would surrender their security deposit to the landlord, which the tenants disagreed with during the hearing. The landlord stated that the parties were having a verbal negotiation, when asked why the landlord waited over one year to file an application claiming against the tenants' security deposit.

Both parties confirmed that none of the security deposit has been returned to the tenants as of the date of the hearing.

Regarding item 1, the landlord has claimed \$1,900.00 for the amount owing by the tenants for July 2020 rent. The tenants admitted to only paying \$1,100.00 for July 2020 rent. The landlord presented a June 24, 2020 document claiming that a second mutual agreement was formed, which was not signed by either of the parties and which I will address later in this Decision.

The parties did agree to signing another document as part of the Mutual Agreement dated June 26, 2020 entitled "Consideration and the Release Agreement (Release Agreement)", which I will address further below.

Regarding item 2, the landlord has claimed \$3,000.00 for August 2020 rent. The tenants referred to 1 and 2 of the Release Agreement, which states:

1. The Property must be sold between June 24, 2020 and August 30, 2020.
2. The Landlord will provide the Tenants one month of rent-free accommodation commencing from the Subject Removal date as stipulated in the Sale and Purchase contract of the Property.

The position of the tenants is that the tenants do not owe August 2020 rent as the conditions of sale of the home were removed on August 30, 2020, which makes that date the sale date. The landlord in a letter claims it was sold on September 4, 2020, however the landlord failed to present any documentary evidence to support that the completion date of the sale of the property was September 4, 2020. As such, I will deal with this item further below.

Regarding item 3, the landlord has claimed \$848.64 in unpaid utilities. According to the tenancy agreement, the monthly rent did not include utilities. The tenants' copy of the tenancy agreement and addendum includes term #20 that the tenant will pay 100% of utilities for the rental address. The landlord failed to provide any utility bills to support any of the \$848.84 being claimed.

The tenants deny that they owe the utility bills being claimed but referred to "g" of their document entitled "Answer to Notice of Dispute" which reads as follows under "g":

g) Utilities I told [REDACTED] he can deduct out of the security deposit as I owed \$848.64. [REDACTED] owed me 20% of the utilities total \$394.00 so he could have deducted $\$848.64 - 20\% = \169.72 [REDACTED] owes me \$169.72 out of \$848.64. [REDACTED] owes me total of $\$394 + 169.72 = \563.72 . I owe [REDACTED] \$678.92 as final utilities bill. $\$678.92 - \$563.72 = \$115.20$ I owe [REDACTED] for utilities.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

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.

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 what is reasonable to minimize the damage or losses that were incurred.

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.

Security deposit – As the landlord filed their application on October 20, 2021 and the landlord confirmed that on August 30, 2020 the landlord received a text from the tenants

which confirmed their written forwarding address, I find that section 38(1) of the Act applies and states:

Return of security deposit and pet damage deposit

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.

[emphasis added]

There is no dispute that the tenants vacated the rental unit on September 1, 2020 based on a Mutual Agreement to End Tenancy dated June 26, 2020 (Mutual Agreement). The Mutual Agreement is signed by both parties and indicates that the tenancy will end on September 1, 2020 at 1:00 p.m. Although the landlord testified that they had a verbal agreement that the tenants would surrender their security deposit to the landlord, the tenants denied that such a verbal agreement was formed. I have considered the document submitted by the tenants; however, which I have pasted below:

g) Utilities I told [REDACTED] he can deduct out of the security deposit as I owed \$848.64. [REDACTED] owed me 20% of the utilities total \$394.00 so he could have deducted $\$848.64 - 20\% = \169.72 [REDACTED] owes me \$169.72 out of \$848.64. [REDACTED] owes me total of $\$394 + \$169.72 = \$563.72$. I owe [REDACTED] \$678.92 as final utilities bill. $\$678.92 - \$563.72 = \$115.20$ I owe [REDACTED] for utilities.

Given "g" above, I find the tenants' math does not make sense and is contradictory as the tenancy agreement states that no utilities were included in the monthly rent, which I find makes the tenants liable for 100% of the \$848.64. Therefore, I rely on the first sentence of "g" and I deduct \$848.64 from the tenants' \$1,500.00 security deposit,

leaving a balance owing of \$651.36 owing by the landlord to the tenant, which I will address in item 3 below. As the landlord has returned no portion of the \$651.36 owing, and as the landlord waited over one year and filed their application on October 20, 2021, and the landlord has claimed to retain the security deposit, I find I must double the tenant's security deposit balance from **\$651.36** to **\$1,302.72**. This is pursuant to section 38(6) of the Act which applies and states:

- 38(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.**
[emphasis added]

I will now address the remainder of the landlord's application.

Item 1 - The landlord has claimed \$1,900.00 for the amount owing by the tenants for July 2020 rent. The tenants admitted to only paying \$1,100.00 for July 2020 rent. I find the Mutual Agreement and Release Agreement do not state that the tenants are granted any discount for July 2020 rent. Therefore, I find the tenants breached section 26 of the Act that applies and states:

Rules about payment and non-payment of rent

26(1) 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.

[emphasis added]

I find the tenants failed to present any compelling evidence to support that they had any right under the Act to withhold the \$1,900.00 owing from July 2020 rent. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$1,900.00** as claimed for this portion of their claim.

Item 2 - The landlord has claimed \$3,000.00 for August 2020 rent. The tenants referred to 1 and 2 of the Release Agreement, which states:

1. The Property must be sold between June 24, 2020 and August 30, 2020.
2. The Landlord will provide the Tenants one month of rent-free accommodation commencing from the Subject Removal date as stipulated in the Sale and Purchase contract of the Property.

I agree with the position of the tenants that they do not owe the landlord August 2020 rent as the conditions of sale of the home were removed on August 30, 2020, which makes that date the sale date. I have no other evidence before me to support that the closing date of the sale was after August 30, 2020 and therefore, I find the landlord has failed to meet the burden of proof. Therefore, I dismiss this portion of the landlord's claim without leave to reapply, due to insufficient evidence.

Item 3 – The landlord has claimed \$848.64 in unpaid utilities. I find the tenancy clearly indicates that monthly rent did not include utilities. Furthermore, I find that the tenants' evidence under "g" above is contradictory as the tenants claim the landlord owes 20% of the utilities but have failed to provide documentary evidence to support that the tenancy agreement stated such. Furthermore, the first sentence of "g" states that the tenants told the landlord they can deduct out of the security deposit as I owed \$848.64. Therefore, I grant the landlord the full amount of \$848.64 as claimed and find the remainder of the tenant's explanation below to be contradictory to the documentary evidence before me. The amount of \$848.64 has already been accounted for above in the security deposit portion.

Item 4 - As the landlord's application had some merit, I grant the landlord **\$100.00** pursuant to section 72 of the Act for the full recovery of the cost of the filing fee.

Based on the above, I find the landlord has established a total monetary claim as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Unpaid portion of July 2020 rent	\$1,900.00
2. Full August 2020 rent	dismissed
3. Unpaid utilities	\$848.64
4. Filing fee	\$100.00
Subtotal	\$2848.64
<i>Less double the security deposit balance owing (\$651.36 x 2)</i>	<i>-(1,302.72)</i>
TOTAL OWING BY TENANTS TO LANDLORD	\$1,545.92

Based on the above, I find the tenants owe the landlord a balance owing of **\$1,545.92** after offsetting the amounts owing and I grant the landlord a monetary order in that amount pursuant to section 67 of the Act.

Conclusion

The landlord's application is partly successful.

The tenants' application has been refused pursuant to sections 59(5)(c) and 59(2)(b) of the Act. The tenants are at liberty to reapply.

I note that this decision does not extend any applicable time limits under the Act.

The landlord has established a total monetary claim of \$2,848.64 and has been authorized to retain \$848.64 from the tenants' security deposit. The \$651.36 balance owing has been doubled to \$1,302.72 as the landlord failed to comply with section 38 of the Act. I deduct the tenant's \$1,302.72 amount owing from the landlord's \$2,848.64 amount owing and after offsetting the amount, I find the tenants owe the landlord a balance of **\$1,545.92**. The landlord has been granted a monetary order in that amount. Should the landlord require enforcement of the monetary order, the landlord must first serve the tenants with the monetary order and a demand letter. The order may then be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

The tenants are reminded that they can be held liable for all costs related to enforcing the monetary order.

This decision will be emailed to the parties as indicated above.

The monetary order will be emailed to the landlord only for service on the tenants as necessary.

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 18, 2022

Residential Tenancy Branch