



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL, MNDL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on September 09, 2021 (the “Application”). The Landlords applied as follows:

- For compensation for monetary loss or other money owed
- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- To keep the security deposit
- For reimbursement for the filing fee

This was an adjourned matter. The first hearing occurred April 22, 2022, and an Interim Decision was issued the same date. This Decision should be read with the Interim Decision.

The second hearing occurred May 30, 2022. The Landlords appeared at the second hearing. Nobody appeared at the second hearing for the Tenant. I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlords provided affirmed testimony.

The Landlords were ordered in the Interim Decision to re-serve their evidence on the Tenant. The Landlords testified that they re-served their evidence as required. I am satisfied based on the undisputed testimony of the Landlords that they re-served their evidence as required and find pursuant to section 71(2) of the *Act* that the evidence has been sufficiently served on the Tenant. The Landlords’ evidence is admitted.

I have not considered the Tenant's evidence because the Tenant did not attend the second hearing to present it as required by rule 7.4 of the Rules.

Pursuant to rule 7.3 of the Rules, I proceeded with the hearing in the absence of the Tenant. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Landlords entitled to compensation for monetary loss or other money owed?
2. Are the Landlords entitled to compensation for damage caused by the tenant, their pets or guests to the unit or property?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Unpaid Fortis BC bills	\$563.99
2	Unpaid utility bill from the City	\$586.51
3	Garbage Bill	\$94.00
4	Labour for garbage removal	\$200.00
5	Loss of rent for June	\$925.00
6	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,469.50</b>

The Landlords testified as follows. There was a written tenancy agreement between the parties. The tenancy started May 01, 2020, and was a month-to-month tenancy. Rent was \$1,850.00 due on the first day of each month. The Tenant paid a \$925.00 security deposit.

At the first hearing, Landlord S.D. testified that the Tenant moved out of the rental unit June 06, 2021, and this was the date the keys were returned. The Tenant testified that they moved out of the rental unit May 31, 2021, and it was the Landlords who refused to take the keys back earlier.

The Landlords testified as follows.

The Tenant only provided their forwarding address verbally, never in writing.

The Landlords did not have an outstanding Monetary Order against the Tenant at the end of the tenancy.

The Tenant did agree in writing via text message that the Landlords could keep the security deposit towards unpaid utility bills.

Both parties did a move-in inspection together.

The parties did not do a move-out inspection together and the Tenant was not offered two opportunities, one on the RTB form, to do a move-out inspection.

The Landlords testified that the Tenant paid Fortis BC and City utility bills throughout the tenancy until the end of the tenancy. The Landlords testified that the parties agreed the Tenant would pay for gas and water; however, the Tenant failed to pay \$563.99 for gas bills and \$586.51 for water bills for periods during the tenancy.

The Landlords sought \$94.00 for the cost of removing and disposing of garbage the Tenant left in and outside the rental unit at the end of the tenancy.

The Landlords sought \$200.00 for the cost of hiring someone to assist with removing the garbage the Tenant left in and outside the rental unit at the end of the tenancy.

The Landlords sought loss of June rent because the Tenant did not move out until June 06, 2021, and therefore the Landlords could not re-rent the unit for June. The Landlords testified that the Tenant gave notice ending the tenancy and was supposed to move out May 31, 2021, but did not do so. The Landlords stated that they could not re-rent the unit immediately because of the garbage left in and outside the rental unit at the end of the tenancy.

The Landlords submitted the following documentary evidence:

- Receipts
- Photos of the rental unit and yard at the end of the tenancy
- Text messages between the parties
- Contact information for the Tenant
- Bills

### Analysis

#### ***Security deposit***

Section 38(4)(a) of the *Act* states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

The text messages the Landlords relied on to show the Tenant agreed to the security deposit being kept are from May 28, 2021. In reply to the Landlords texting the Tenant about paying an outstanding gas bill of \$434.47, the Tenant states:

I will when I get a few extra bucks. Or if you'd like we can take it off the damage deposit along with the water bill...

I find the agreement contemplated by section 38(4)(a) of the *Act* must be clear and unequivocal for a landlord to rely on it. I do not find the text message from the Tenant outlined above to be a clear and unequivocal statement that the Landlords can keep a specific amount of the security deposit for specific amounts owed. I find section 38(4)(a) of the *Act* does not apply.

I accept that the Tenant did not move out of the rental unit until June 06, 2021, because the text messages in evidence show the Tenant was still in the rental unit June 03, 2021, contrary to the Tenant's testimony. I prefer the testimony of Landlord S.D. over the testimony of the Tenant. I find the tenancy ended June 06, 2021.

I accept the undisputed testimony of the Landlords that the Tenant never provided them with a forwarding address in writing. Sections 38(1) and 39 of the *Act* state:

**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.

**39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Given the Tenant did not provide the Landlords with a forwarding address in writing, section 38(1) of the *Act* has not been triggered and the Landlords were entitled to claim against the security deposit when they filed the Application.

## ***Compensation***

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I accept the undisputed testimony of the Landlords and based on it, as well as the documentary evidence, I find the following.

I accept that the Tenant was required to pay for gas and water bills during the tenancy pursuant to the tenancy agreement between the parties. I accept that the Tenant failed to pay \$563.99 of gas bills and \$586.51 of water bills for periods during the tenancy. The Landlords are entitled to recover these amounts and are awarded the amounts sought.

I accept that the Tenant left items and garbage in and outside the rental unit at the end of the tenancy in breach of section 37 of the *Act*. I accept that the Landlords had to have the items and garbage removed and that this cost \$94.00 and \$200.00 as claimed. I find the amounts sought reasonable and note that the Tenant did not attend the second hearing to dispute the amounts sought. The Landlords are awarded the amounts sought.

I do not accept that the Landlords are entitled to June rent. I accept that the Tenant did not move out of the rental unit, or hand the keys back, until June 06, 2021, and therefore I award the Landlords rent for the period in June that the Tenant still had possession of the rental unit. However, I do not accept that the Landlords could not have re-rented the unit starting June 07, 2021. I do not accept that the Tenant left the rental unit in such a state that it could not be re-rented immediately because the Landlords' evidence does not support this. I award the Landlords \$370.00 being the daily rent rate for six days in June.

Given the Landlords have been partially successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

### **Summary**

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Unpaid Fortis BC bills	\$563.99
2	Unpaid utility bill from the City	\$586.51
3	Garbage Bill	\$94.00
4	Labour for garbage removal	\$200.00
5	Loss of rent for June	\$370.00



6	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$1,914.50</b>

The Landlords can keep the \$925.00 security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a Monetary Order for the remaining \$1,544.50 pursuant to section 67 of the *Act*.

### Conclusion

The Landlords can keep the \$925.00 security deposit. The Landlords are issued a Monetary Order for the remaining \$1,544.50. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 23, 2022

---

Residential Tenancy Branch