



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL**

Introduction

On May 05, 2022, this hearing began by conference call. The landlord attended. KD attended for both tenants ("the tenant"). Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. Both parties acknowledged service. At the beginning of the hearing, neither party made any adjournment or accommodation requests.

The parties were informed that one hour was scheduled for the hearing. The testimony of both parties was not completed in that time and lasted 1.5 hours.

The hearing was adjourned by Interim Decision to allow the parties to complete the submission of evidence by Written Submissions.

Pursuant to directions in the Interim Decision, each party submitted Written Submissions and the landlord submitted a Reply.

The hearing involved an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

This Arbitrator's discretion in the *Act* in how to proceed must be exercised in a manner that meets the requirements of procedural fairness in the circumstances of a particular matter.

Considering the issues, the lengthy testimony, the substantial documentary

evidence, and the principles of procedural fairness, I find there is no need for the hearing to be reconvened.

Accordingly, I make this Decision considering all relevant and admissible evidence before me.

Issues:

Is the landlord entitled to the relief requested?

Background:

The parties submitted substantial documentary evidence and testimony in a lengthy hearing and in Written Submissions. Not all the evidence is referenced in my Decision. Only key relevant and admissible facts and findings are referenced.

This tenancy began on July 1, 2019, for a fixed term ending June 30, 2020, and for a monthly rent of \$1,600.00. The tenant paid a security deposit of \$1,025.00 which the landlord holds.

The original written tenancy agreement required the tenant to vacate at the end of the fixed term, with the reason listed as "Landlord Primary Residence". The agreement included the provision the tenant would pay 2/3 of the hydro bill which was paid by the landlord.

On June 30, 2020, the parties signed a new written tenancy agreement on the RTB form, for a tenancy starting on July 1, 2020, and a monthly rent of \$2,050.00. The tenant vacated on February 1, 2022.

This is the second hearing between the parties. A Decision was entered on October 22, 2021 to which both parties referred during the hearing. The hearing number is recorded on the first page.

The previous hearing involved a cross application between the parties. The applications included the following: the tenant applied to cancel a Two Month Notice to vacate for Landlord's Use; the landlord applied for an Order of Possession and a Monetary Order. The landlord relied on the second agreement for a fixed term ending June 30, 2021 to support their claim for an Order of Possession of the rental unit.

The Arbitrator in the previous Decision concluded that the requirement in the June 30, 2020 agreement that the tenant vacate at the end of the fixed term, was not enforceable. The Arbitrator found the landlord had made unilateral alterations to

the agreement. The Arbitrator stated:

I therefore find the vacate clause is unenforceable and as a result, I find the tenancy is now a month-to-month tenancy.

In the previous Decision, the Arbitrator considered the tenant's evidence that the landlord increased their monthly rent starting July 1, 2020, above the rent increase provisions of the Act.

Section 43(5) provides that "If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase

The Arbitrator found the parties had entered into a new tenancy agreement that replaced the former tenancy agreement. The parties had renegotiated different terms and the new rent agreement was enforceable. The Arbitrator stated:

I find this was not a rent increase that was imposed by the landlord. I find the parties entered into a new tenancy agreement that replaced the former tenancy agreement, as the parties may and did in fact renegotiate different terms in a new tenancy agreement. This was a fairly negotiated agreement based on the circumstances at the time.

Now that the vacate clause is not enforceable due to my findings, and the tenancy is on a month-to-month basis, the tenant is not obligated to enter into a new tenancy agreement hereafter. So long as the current tenancy agreement remains in effect, to increase the rent the landlord will have to give the tenant a Notice of Rent Increase in the approved form, with three full months of advance notice, and for an amount that does not exceed that calculated under section 22 of the Regulation.

Based on the above, I find the tenants have failed to prove a violation of the Act by the landlord. Therefore, I dismiss the tenants' claim for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, without leave to reapply.

The Arbitrator dismissed the landlord's application for a Monetary Order with leave to reapply, stating (underlining added):

For clarity for the parties, the tenants were contractually obligated to begin paying the monthly rent of \$2,050 on July 1, 2020, and to continue each month thereafter, until their rent has increased in accordance with the Act and Regulation.

While I have dismissed the landlord's application seeking monetary compensation for ~~unpaid~~ monthly rent, the dismissal was **with leave to reapply**.

The tenants should be aware that should they fail to pay the rent deficiency owed forthwith, the landlord may serve them with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and to file another application seeking monetary compensation.

Please note that I have not determined or made findings that the tenants owe unpaid monthly rent or the unpaid utility charges, as consideration of that matter on the landlords' application was dismissed, with leave to reapply.

As they believed the rent increase was unlawful, the tenants had not paid rent for the months of July, August and September 2021 as they believed they overpaid rent. They paid less than the full rent for October, November and December 2021.

The landlord submitted a spreadsheet showing the rent owed and paid. The landlord calculated the tenant owed rent of \$8,100.00.

While some payment was made on the amount owing for hydro, the landlord's spreadsheet showed a balance owing of \$1,350.25. The landlord testified that copies of all invoices were provided to the tenant.

The tenant testified as follows. They denied they owed rent in the amount claimed. The landlord raised the rent in bad faith by "using the vacate clause as a loophole to raise rent as they please". The landlord unlawfully increased the rent considering and avoiding lawful rent restrictions. They experienced "duress of short notice" and were provided with adequate information and forms.

The tenant also questioned the landlord's calculation of hydro outstanding and asserted the copies they were provided were not conclusive, saying:

There has been an incident where the landlords' calculations of hydro owing were in far excess of the actual amount owing.

The landlord claimed a Monetary Order for outstanding rent and utilities in the total amount of \$9,450.25.

Analysis

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 this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The claimant (the landlord) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The above-noted criteria are based on sections 7 and 67 of the Act.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations, or a tenancy agreement.

These sections state as following:

- 7 (1) 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.

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

. . .

67. Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the Decision of the previous Arbitrator and repeat their findings here that the tenant agreed to a rent increase effective July 1, 2020 in the amount of \$2,050.00.

I have considered all the evidence submitted I find the landlord's submissions to be persuasive, professional and forthright. Their evidence package was well-organized and complete. Their testimony was credible, forthright, and convincing.

I accept the landlord's credible evidence setting out the amounts paid and due. I find the tenant owe rent of \$8,100.00 and hydro bills of \$1,350.25.

I find the landlord is entitled to a monetary award for these amounts. As the landlord was successful in this matter, I award the landlord reimbursement of the filing fee. I direct the landlord deduct the security deposit from the award.

Summary of Award

ITEM	AMOUNT
Outstanding rent	\$8,100.00
Hydro bills owing	\$1,350.25
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$1,025.00)
TOTAL	\$8,525.25

I grant the landlord a Monetary Order of **\$8,525.25**

Conclusion

I grant the landlord a Monetary Order of **\$8,525.25. This Order must be served on the tenants. This Order may be filed and enforced in the Courts of the Province of BC.**

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: July 27, 2022

Residential Tenancy Branch