Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: MNDCT, MNETC, FFT
Fort he landlord: MNDL-S, FFL

Introduction

This review hearing was convened in response to a review consideration decision rendered pursuant to section 79 of the Residential Tenancy Act (the Act) on July 12, 2022 (the review decision).

This hearing dealt with a cross application. The tenants' application pursuant to the Act is for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- an authorization to retain the tenants' security and pet damage deposits (the deposits), under Section 38;
- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants MP (the tenant) and JK and landlord NP (the landlord) attended the hearing. The landlord was assisted by advocate ML. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00."

Preliminary Issue – Service of the Review decision

The July 05, 2022 decision (the original decision) states:

> The tenants, MP and JK (tenants) attended the teleconference hearing, were affirmed and the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.
> […]
> As the landlord did not attend the hearing, and pursuant to RTB Rules 7.1, 7.3 and 7.4, which address consequences for failing to attend a dispute resolution proceeding, after the mandatory 10-minute waiting period, the landlord's application was dismissed with leave to reapply as the tenants affirmed that the landlord failed to serve them with their landlord's application.

The Review decision states:

> I order that a new hearing of the original application take place. The decision and order(s) issued on July 5, 2022 are suspended until that hearing is completed. Notices of the time and date of the hearing are included with this Review Consideration Decision for the review applicant to serve to the review respondent within 3 days of receipt of this Decision. The review applicant [the landlord] must also serve a copy of this Decision to the other party. I further order the review applicant to serve the review respondent with their current address for service together with the notice of hearing and decision. At the new hearing, the review applicant will be required to demonstrate how the documents outlined above have been served to the other party.

The landlord served the Review decision and the July 13, 2022 notice of review hearing via registered mail. The tenants confirmed they received the review decision and the July 13, 2022 notice of review hearing and that they had enough time to review these documents.

Based on the testimony of both parties, I find the landlord served the Review decision and the July 13, 2022 notice of review hearing in accordance with section 89(1)(c) of the Act.

Preliminary Issue – Service of the tenants' application

The tenant affirmed he served the notice of hearing and the evidence (the tenants' materials) via registered mail. The landlord confirmed receipt of the tenants' materials. The tenants confirmed receipt of the landlord's response evidence.

I find the tenants served the tenants' materials and the landlord served the response evidence in accordance with section 89(1)(c) of the Act.

Preliminary Issue – Service of the landlord's current application

The landlord is not sure if he served the landlord's notice of hearing. The tenant confirmed receipt of the landlord's evidence, but not the landlord's notice of hearing.

Rule of Procedure 3.1 states:

> 3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package
> **The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following**:
> a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
> b) the Respondent Instructions for Dispute Resolution;
> c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
> d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].
>
> (emphasis added)

Based on the testimony offered by both parties, I find the landlord did not serve the notice of hearing.

I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The landlord submitted a new application (the new application) with the same claims contained in this application. The new application is scheduled to be heard on a future date.

Preliminary Issue – Tenants' claims

The tenant's application indicates a claim in the total amount of $36,906.45, including compensation for 12 months of rent. The monetary order worksheet indicates four claims, including compensation for an illegal rent increase.

At the outset of the hearing the tenant affirmed he is only seeking a monetary order for two claims: 12 months of rent under section 51(2) of the Act and compensation for an illegal rent increase.

The landlord affirmed he understands the tenants are seeking a monetary order for 12 months of rent under section 51(2) of the Act and compensation for an illegal rent increase.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the tenants' application to withdraw their other claims.

Preliminary Issue – Correction of MP's Name

At the outset of the hearing the tenant corrected the spelling of his first name.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

Preliminary Issue – Deposits

The tenant served the forwarding address via registered mail on June 21, 2022. The landlord confirmed receipt of the tenants' forwarding address "around that time" or in the first week of July 2022.

Both parties confirmed their current addresses for service. The addresses for service are recorded on the cover page of this decision.

Considering that the tenants did not submit a claim for the return of the deposits, and the landlord's new application requests an authorization to retain the deposits, I will not deal with the deposits in this application.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties: the evidence must be presented by the party who submitted it.

Both parties agreed the tenancy started on September 01, 2012 and ended on June 30, 2021. Monthly rent was $1,530.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of $675.00 and a pet damage deposit in the amount of $675.00. The landlord currently holds in trust the deposits in the total amount of $1,350.00. The tenancy agreement was submitted into evidence.

Both parties agreed the landlord served and the tenant received a Two Month Notice to End Tenancy for Landlord's Use (the Notice) on April 01, 2021. The tenant submitted a copy of the April 01, 2021. It states the landlord will occupy the rental unit and the effective date was June 01, 2021.

The tenant affirmed he moved out on June 30, 2021 because this is the earliest correct effective date of the Notice, as the landlord served the Notice on April 01, 2021. The landlord affirmed he authorized the tenants to move out on June 30, 2021 because the tenants asked to move out on that date.

The parties emailed each other on April 06, 2021:

> [tenant] If we can at least have until July 1st 2021 to vacate, we would greatly appreciate it.
> [landlord] In order to help you with the kids school and take some pressure off of you, I can let you stay till the kids school is over.
> […]
> Regarding renovations, I don't think I have time to do much as I don't have much time but for sure I will do painting.
> The small repairs I can do myself but the place has to be clean and no garbage should be left behind.

The landlord affirmed he has been occupying the rental unit since September 01, 2021. The landlord affirmed the tenants did not clean the 1,200 square feet, 3 bedroom rental unit and damaged it. The landlord replaced the carpet and removed the belongings abandoned by the tenant.

The landlord affirmed he worked on the repairs from July 01 to August 31, 2021, as the repairs were extensive. The landlord could not complete the repairs sooner because of his poor health condition. The landlord affirmed that his son has mental health problems, and the landlord helps his son.

The landlord submitted a receipt in the total amount of $7,200.00 dated July 04, 2021 indicating the landlord paid for:

- the carpet replacement and laminate flooring.
- Repair of tiles
- One door replacement
- Cabinet door repair and painting
- [not legible] countertop

The landlord submitted an invoice in the total amount of $400.00 dated July 06, 2021 for “junk removal”.

The landlord emailed the tenant regarding the damages:

> [July 03, 2021] There are stuff you left behind and much cleaning required which all together with repair of damages I estimate will cost thousands.
> [July 08, 2021] As per my previous email detailing the damages, below is the estimate for repair / clean up: Garbage removal: $400 Stove top replacement: $400 Carpet replacement: $3000 Broken tile replacement: $300 Broken door replacement: $300 Entry closet door missing: $200 Counter top replacement: $2000 Cabinet door repair: $1200 Cleaning: $400Total: $8200.

The landlord submitted photographs showing the rental unit before and after the repairs during the summer months. One of the photographs shows a Christmas tree.

The tenant affirmed the rental unit had wear and tear, and that the landlord removed a fence in the backyard before the tenancy ended. The tenant affirmed the junk removal is related to the fence material. The tenant affirmed the landlord did not conduct a move in

and move out inspection and that he is not responsible for the wear and tear and for removing the fence material.

The landlord submitted a letter signed by SP on May 20, 2022: “My name is SP, and I am [the landlord’s] son. I attest that my father has been living with me in the main unit of [rental unit’s address] since **September 01, 2022**.” (emphasis added)

The landlord submitted a letter signed by MS on May 18, 2022: “I am MS, and I am the downstairs tenant at [rental unit’s address], for the last three years, and was the downstairs neighbour to [the tenant]. I confirm that [the landlord] [empty space] since **September 01, 2022**.” (emphasis added)

The landlord affirmed that MS forgot to include the word “live” in the empty space, as he is not a native English speaker and he moved recently to Canada.

ML affirmed that he visits the landlord often, from July 01 to August 31, 2021 the landlord repaired the rental unit and the landlord has been occupying the rental unit since September 01, 2021.

The landlord submitted a copy of his British Columbia Driver’s Licence (the BCDL) indicating the landlord’s address is the rental unit’s address and that the BCDL was issued on January 31, 2022. The landlord affirmed that he changed the address on his BCDL on September 01, 2021 and that on January 31, 2022 he renewed his BCDL, as the old one expired. The tenant affirmed the landlord only changed his address on the BCDL on January 31, 2022.

The landlord submitted a letter from Canada Revenue Agency indicating the landlord’s address on March 14, 2022 is the rental unit’s address.

Both parties agreed the rental unit was the main floor and there was another rental unit in the basement. The gas and electricity bills were for both rental units and the tenant paid both bills.

The landlord submitted a utility bill for a billing period from January 01, 2022 to December 31, 2022 mailed to the landlord at the rental unit’s address.

The landlord submitted one electricity bill addressed to the landlord at an address next-door to the rental unit.

The landlord submitted electricity bills addressed to the landlord at the rental unit's address:

- Bill dated September 28, 2021, 981 kwh of consumption from July 27, 2021 to September 24, 2021;
- Bill dated November 29, 2021, 2,404 kwh of consumption from September 25, 2021 to November 25, 2021;
- Bill dated January 27, 2022, 2,906 kwh of consumption from November 26, 2021 to January 25, 2022;
- Bill dated March 29, 2022, 2,427 kwh of consumption from January 26, 2022 to March 25, 2022.

The landlord submitted gas bills addressed to the landlord at the **77 address. The landlord affirmed that the **77 address is the address where his ex-wife and his son live. The landlord used to live at this address and continues to pay for the gas bills. The landlord submitted the bills for the **77 address into evidence by mistake, as he keeps all the gas bills together.

The tenant affirmed the landlord continues to live at the **77 address and that his friends that live close to the rental unit observed that other people moved to the rental unit in October 2021.

The landlord submitted gas bills addressed to the landlord at the rental unit's address:

- Bill dated September 28, 2021, 0.1 GJ of consumption between August 27 and September 28, 2021;
- Bill dated October 28, 2021, 5.5 GJ of consumption between September 28 and October 28, 2021;
- Bill dated November 29, 2021, 11.4 GJ of consumption between October 28 and November 29, 2021;
- Bill dated December 30, 2021, 13.9 GJ of consumption between November 29 and December 30, 2021;
- Bill dated January 31, 2022, 21 GJ of consumption between December 30, 2021 and January 31, 2022;
- Bill dated March 01, 2022, 11.7 GJ of consumption between January 31 and March 01, 2022.

Both parties agreed the rental unit's heat and hot water run on gas. The landlord affirmed there was a very small consumption of gas from August 27 to October 28, 2021

because the landlord was repairing the rental unit until August 31, 2021 and he did not cook in the rental unit. The landlord did not need to use heat during the summer months.

The tenant affirmed that he installs furnace systems and that the furnace system requires gas all the time, even during the summer months.

The tenant affirmed the landlord submitted electricity and gas bills addressed to the landlord at three different addresses and that some of the gas bills for the rental unit's address indicate no consumption.

The tenants claim compensation in the amount of $960.00 for an illegal rent increase. The tenant affirmed the landlord increased rent by $80.00 effective on June 01, 2020. The tenant submitted a text message sent by the landlord on April 24, 2022: "It will be a rent increase of $80.00 from June".

The tenant paid monthly rent in the amount of $1,530.00 from June 01, 2020 to May 01, 2021.

The landlord did not serve a notice of rent increase.

The tenant did not know that the landlord was not authorized to increase rent without a notice of rent increase.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (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.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

RTB Rule of procedure 6.6 states that 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.

12 month compensation

Per section 51(2) of the Act, the onus of proof is on the landlord.

Sections 49(2) and (3) of the Act state:

> (2)Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy
>
> (a)for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
>
> (i)not earlier than 2 months after the date the tenant receives the notice,
>
> (ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
>
> (iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
>
> […]
>
> (3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if:

> (a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
> (b)the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

RTB Policy Guideline 50 states:

> A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:
> • accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
> • used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

Based on the landlord's testimony and the April 06, 2021 emails, I find the landlord authorized the tenants to move out on July 01, 2021. Thus, I find the parties agreed to change the Notice's effective date to July 01, 2021.

Furthermore, as the landlord served the Notice on April 01, 2021 and rent is due on the first day of the month, the earliest possible effective date of the Notice was June 30, 2021, per section 49(2)(a)(i) and (ii) of the Act.

Per section 51(2) of the Act, the landlord must have occupied the rental unit from July 01 to December 31, 2021.

RTB Policy Guideline 2A states:

> 6-month occupancy requirement
> The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).
> […]
> E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE
> If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

> • taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
> • used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice
> the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

The landlord informed the tenant on April 06, 2021 that he did not intend to do renovations: “Regarding renovations, I don’t think I have time to do much as I don’t have much time but for sure I will do painting”.

The two invoices submitted by the landlord are dated July 04 and 06, 2021. The landlord emailed the landlord on July 03 and 08, 2021 about the payment for the rental unit’s renovation.

I find the tenant’s testimony denying that he damaged the rental unit and abandoned items in the rental unit was convincing.

I find the landlord’s testimony about the rental unit’s renovation does not explain why the landlord needed to work on the renovations from July 01 to August 31, 2021. The landlord’s testimony about his health condition and the landlord’s son’s health condition was vague.

The photographs submitted by the landlord are not dated. The landlord’s testimony about when the photographs were taken was vague (“during the summer months”). One of the photographs shows a Christmas tree.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, that he could not move to the rental unit until September 01, 2021 because of repairs.

The letters dated May 18 and 20, 2022 both contain the same flaw: they indicate the landlord moved to the rental unit on September 01, 2022. Furthermore, the letter dated May 18, 2022 does not indicate that the landlord occupies the rental unit. I find the landlord’s testimony about the letter dated May 18, 2022 missing the word “live” was not convincing. As such, I find the letters dated May 18 and 20, 2022 have no credibility.

The landlord’s BCDL does not indicate when the landlord changed his address on the BCDL.

The Canada Revenue Agency letter indicates the landlord's address on March 14, 2022 and the utility bill is for a billing period starting on January 01, 2022. As noted above, the landlord must have occupied the rental unit from July 01 to December 31, 2021.

I accept the uncontested testimony that the gas and electricity bills are for the rental unit and the basement rental unit.

I find the electricity bills showing electricity consumption at the rental unit from July 27 to December 31, 2021 do not prove that the landlord occupied the rental unit, as the electricity bill is for the rental unit and the basement rental unit.

I find the tenant's testimony about gas usage for hot water was convincing. The gas bills from August 27 to October 28, 2021 indicate there was insignificant gas consumption during that period.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, that he occupied the rental unit from September 01 to December 31, 2021, or that the landlord ever occupied the rental unit.

As such, per section 51(2) of the Act, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of $18,360.00 (12 x $1,530.00).

For the purpose of educating the landlord, I note that the landlord may not allow the tenant to pay utilities bills for premises that the tenant does not occupy, as explained in Policy Guideline 1: "A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable5 as defined in the Regulations."

Illegal rent increase

Sections 41, 42 and 43 of the Act state:

> 41 **A landlord must not increase rent except in accordance with this Part.**
> 42
> **(1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies**:
> (a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
(3)A notice of a rent increase must be in the approved form.
(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.
43
(1)A landlord may impose a rent increase only up to the amount
(a)calculated in accordance with the regulations,
(b)ordered by the director on an application under subsection (3), or
(c)agreed to by the tenant in writing.
(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(emphasis added)

Based on the undisputed testimony and the residential tenancy agreement, I find the landlord was subject to section 43(1) of the Act.

Based on the undisputed testimony, I find the landlord did not serve a notice of rent increase and increased rent via text message, thus breaching section 42(3) of the Act.

Furthermore, per section 43.1 of the Act, landlords could not increase rent from April 01, 2020 to December 31, 2021.

Based on the undisputed testimony, I find the tenants overpaid rent by $960.00 ($80.00 per month from June 01, 2020 to May 01, 2021).

Section 43(5) of the Act states: “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.”

I award the tenants compensation in the amount of $960.00.

Filing fee and summary

The tenants were successful in this application. Pursuant to section 72 of the Act, I authorize the tenants to recover the $100.00 filing fee.

In summary:

ITEM	AMOUNT $
12 month compensation	18,360.00
Rent Increase	960.00
Filing fee	100.00
TOTAL	**19,420.00**

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the tenants a monetary order in the amount of $19,420.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision sets aside the original decision, per section 82(3) of 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: August 04, 2022

Residential Tenancy Branch