Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: **MNDL-S, MNDCL-S, FFL**
Tenants: **MNSDS-DR, FFT**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for the Tenant to pay to repair the damage that they, their pets, or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Sections 38 and 62 of the Act;
2. An Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Tenants' cross application pursuant to the Act for:

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, the Landlord's Translator, and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served his Notice of Dispute Resolution Proceeding package for this hearing to the Tenants by email on January 19, 2022 (the "L-NoDRP package"). The Tenants confirmed receipt of the L-NoDRP package by return email on January 19, 2022. I find that the Tenants were sufficiently served with the L-NoDRP package on January 19, 2022 in accordance with Section 71(2)(b) of the Act.

The Tenants applied for authorization to serve their Notice of Dispute Resolution Proceeding package and evidence by email (the "T-NoDRP package"). On February 25, 2022, the Tenants were granted authority to serve the Landlord with their T-NoDRP package and supporting documents by email. The Tenants served the Landlord with their T-NoDRP package, a total of seven documents, on March 10, 2022. The Landlord testified that he did not receive the substitution service order from the RTB but confirmed receipt of the T-NoDRP package minus the Tenants' evidence. I find that the Tenants service of the T-NoDRP package also included their evidence, and I find the Landlord was deemed served with the T-NoDRP package on March 13, 2022, in accordance with Sections 43(2) and 44 of the *Residential Tenancy Regulation* (the "Regulation").

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order for the Tenant to pay to repair the damage that they, their pets, or their guests caused during their tenancy?
2. Is the Landlord entitled to an Order for compensation for a monetary loss or other money owed?
3. Is the Landlord entitled to recovery of the application filing fee?

Tenants:

1. Are the Tenants entitled to an Order for the return of the security deposit?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on May 1, 2021. The fixed term ended on November 1, 2021, then the tenancy continued on a month-to-month basis. Monthly rent was $5,100.00 payable on the first day of each month. The Tenants testified that initially they paid first and last month's rent, plus a security deposit of $5,100.00. The Landlord claimed the Tenants paid a security deposit of $2,550.00 and a pet damage deposit of $2,550.00 because the Tenants mentioned getting a pet in the future for their children. The Landlord stated he used the security deposit to pay off the utilities. Pursuant to the tenancy agreement, internet, garbage collection, laundry, refrigerator, dishwasher, stove and oven, window coverings, furniture, carpets, and parking for two vehicles were included in the rent.

The Landlord said the Tenants participated in a move-in condition inspection on May 1, 2021, and that he gave a copy of the report to the Tenants. The Tenants confirmed receipt of the move-in condition inspection report. Both parties were requested to upload a copy of the move-in condition inspection report after the hearing, but neither party could produce it.

The Landlord testified that he requested the Tenants to participate in a move-out condition inspection but, he claims, the Tenants refused. The Landlord did not produce a copy of the move-out condition inspection report. The Tenants argued that they were never asked to do the move-out condition inspection, instead the Landlord forced them to move out four days early on December 27, 2021. The Tenants stated that they returned all keys and fobs to the Landlord on December 27, 2021. The Tenants uploaded a text message stream about cleaning and the return of the keys on December 27, 2021, it states:

Date	**Time**	**Message (T-Tenants/L-Landlord)**
Monday, December 27, 2021	*12:41 p.m.*	*L-Hello [Tenants]. The cleaner will.come.to house to.do clean in 2 pm today*
	12:58 p.m.	*T-Okay. We cleaned the kitchen already*
	1:13 p.m.	*L-Thanks. See you at 2 pm .cleaner will do their job*

Date	Time	Message (T-Tenants/L-Landlord)
	2:22 p.m.	*L-Hello [Tenants]. Keys and fob s* *Where do you put ?* *[another language]*
	2:29 p.m.	*L-Hello [Tenants]. Where do you put the two fobs of garage door and three key of the house ? We cannot find it*
	2:40 p.m.	*T-My wife will give it to you in 10 minutes*
	3:17 p.m.	*L-Thanks. Get it*

The Landlord testified that the Tenants' last day in the rental unit was December 31, 2021 to pick up their last pieces of furniture, this was also the day, the Landlord claimed, that the Tenants returned all the keys.

The Tenants stated that the Landlord hired someone to come in and clean the house on December 27, 2021, the Tenants never asked for this. The Tenants testified that they have full time help and it would not have cost them anything, other than what they pay their help, to clean the house. The Tenants believe they were deprived access to the unit for four days for which they paid. The Tenants testified that they returned to the residential property on December 31, 2021 to pick up the curbside recycling, but they did not enter the house.

The Tenants stated that the garage door did not work the whole time they resided in the rental unit. They maintained that they did not park their cars in the garage, and they only opened the one garage door that worked when they were bringing home grocery items.

The Tenants testified that on January 6, 2022, they received an email from the Landlord about stains on the carpet, and the cleaning bill. The Tenants claim this amount is unfair as they were not permitted to do their own cleaning prior to vacating the rental unit. The Tenants argue that they would have cleaned the unit themselves if they had access to it. The Tenants testified that they provided their forwarding address to the Landlord on January 6, 2022 by email. The Tenants uploaded a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit #RTB-41 form executed on February 14, 2022 attesting to the January 6, 2022 service of their forwarding address.

The Landlord claimed the Tenants damaged the garage door and he hired repair people to fix it. He uploaded the receipt for its repair which totalled $273.00. The Landlord did

not provide any photographic evidence for the damage he is claiming, or for the cleaning or repair compensation he is seeking. On the Landlord's NoDRP, the Landlord is claiming compensation for cleaning of the rental property, and repair and painting of the walls:

Landlord's claims	Amount
Garage door	$273.00
Cleaning	$698.00
Wall repair & painting	$2,700.00

In the hearing, the Landlord claimed $2,700.00 to change the carpets in the rental unit. This is not work that he has had done, but possibly an estimate for the work.

The Landlord wants compensation for outstanding city utility bills. He uploaded city bills from April 1, 2021 to December 31, 2021. These city bills provide a 10% discount to their users if they are paid before the due dates. The Landlord stated he would cover the loss. The discounted amounts for the services follow:

Metered Utility Bills	Water	Sewer	Maintenance
April 1, 2021-June 30, 2021 (totals calculated for 2 of 3 months-tenancy began May 1, 2021)	$147.51	$133.28	$7.20
July 1, 2021-September 30, 2021	$394.38	$166.60	$10.80
October 1, 2021-December 31, 2021	$289.41	$278.26	$10.80
TOTAL:	$831.30	$578.15	$28.80

The Landlord seeks compensation for BC Hydro and Fortis gas bills. The Landlord included in his documentary evidence a Fortis gas total for the residential property for the 2021 year:

The Landlord testified that BC Hydro informed him that for 2021, hydro was approximately $100.00 per month.

The Landlord seeks a summons directed to BC Hydro and Fortis so they can receive a fulsome recovery of the total costs of these utility bills during the period the Tenants lived in the rental property.

The Tenants maintained that they would pay their share of the utilities bills, but the Landlord never provided them with copies of bills for the times when they lived in the rental unit. The Tenants maintained that the Landlord never asked them to call BC Hydro or Fortis Gas with him. The Tenants stated that the Landlord instructed them to keep the sprinkler system on automatic. The sprinkler would turn on about twice per week according to the schedule that is programed in it.

The Tenant agrees that he owes the Landlord compensation for utilities and half the amount for the water bills, and he seeks the remainder of his security deposit. The Tenants said the garage door was broken before they moved in, and they deny they owe the Landlord compensation for its repair. The Tenants said the Landlord came to their home with his cleaning company on the day they were moving out. They do not agree that they are responsible for the cleaning bill he presented as they would have completed the cleaning on their own if given the opportunity.

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.

The Landlord requested a summons to produce records be made to BC Hydro and Fortis Gas. Rules of Procedure state:

> ***5.3 Application for a summons***
>
> *On the written request of a party or on an arbitrator's own initiative, the arbitrator may issue a summons requiring a person to attend a dispute resolution proceeding or produce evidence. A summons is only issued in cases where the evidence is necessary, appropriate and relevant. A summons will not be issued if a witness agrees to attend or agrees to provide the requested evidence.*
>
> *A request to issue a summons must be submitted, in writing, to the Residential Tenancy Branch directly or through a Service BC Office, and must:*
>
> - *state the name and address of the witness;*
> - *provide the reason the witness is required to attend and give evidence;*
> - *describe efforts made to have the witness attend the hearing;*
> - *describe the documents or other things, if any, which are required for the hearing; and*
> - *provide the reason why such documents or other things are relevant.*
>
> ***5.4 When a request for a summons may be made***
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> *A written request for a summons should be made as soon as possible before the time and date scheduled for a dispute resolution hearing.*
>
> *In circumstances where a party could not reasonably make their application before a hearing, the arbitrator will consider a request for a summons made at the hearing.* (emphasis mine)

The Landlord applied for dispute resolution on January 10, 2022. A request for a summons should be made as soon as possible before the time and date of the hearing.

The Landlord's evidence was that he asked the Tenants to go to BC Hydro and Fortis Gas with him, but he said the Tenants refused to go. The Tenants said the Landlord never asked them to call BC Hydro or Fortis Gas with him.

RTB Policy Guideline #15-Summons to Attend or Produce Evidence provides a statement of the policy intent of legislation dealing with the issuance of a summons and the payment of compensation. I must consider if:

1. *The information sought from the summons must be relevant to the proceedings. A summons cannot be used to go on a fishing expedition for information without any clear relevance to the issue at hand or to seek information that is suspected to exist.*
2. *The summons must not be an abuse of process and cannot be used to harass or annoy a party.*

   …

I find the request for the summons has not been made as soon as possible, and anyways, I find the Landlord's evidence given at the hearing is sufficient for making a determination of the amount of compensation relating to utilities' services to the rental property.

For the city utilities, the Tenants assert that they are responsible for half of the water bill. The amount of watering on the lawn was specified by the Landlord. The Tenants said the watering schedule was two times per week which is less than the city's water restriction guidelines for residential properties. I do agree with the Tenants that their share should be less that the full amount, but more than half. I find the Tenants owe 75% of the stated amount from the city's utilities department. I order that the Tenants owe **$623.48** for water provision during the period of their tenancy.

I order that the Tenants owe **$578.15** for sewer, and **$28.80** for maintenance from the city's utilities department which accrued during the period of their tenancy.

The Landlord provided a printout from Fortis Gas for 2021 gas usage for the residential property. I find the Tenants owe **$1,123.69** for the period from May 1, 2021 to December 31, 2021.

The Landlord gave testimony that he was informed from BC Hydro that hydro for the residential property was approximately $100.00 per month. I find this approximation

reasonable, and therefore, the Tenants owe **$800.00** for hydro for the period from May 1, 2021 to December 31, 2021.

The Tenants testified that the Landlord asked them to move out on December 27, 2021. The Tenants returned all the keys and fobs to the residential property to the Landlord on that day at around 2:50 p.m. I find the Tenants are entitled to **$658.06** for the four days the Landlord took the rental unit back early from the Tenants.

Security and pet damage deposits

Under Sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and the Regulation. Further, Section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony of the parties, I accept that the tenancy ended on December 27, 2021 and that the Tenants provided their forwarding address on January 6, 2022.

The Landlord stated he completed a move-in condition inspection of the rental unit prior to the Tenants moving into the unit pursuant to Section 23 of the Act; however, neither the Landlord nor the Tenants produced a copy of the move-in condition inspection report. Additional time was allowed for each party to upload their copies of the move-in condition inspection report, and only this document, but neither party uploaded one. Each party uploaded other materials, but I instructed the parties to only upload the condition inspection report as nothing else would be considered.

The Landlord said the Tenants refused to participate in the move-out condition inspection, and the Tenants said they were never asked to do a move-out condition inspection of the rental unit at the end of the tenancy. The Landlord did not produce a Notice of Final Opportunity to Schedule a Condition Inspection #RTB-22 form demonstrating that he had made a second attempt to schedule the move-out condition inspection with the Tenants.

Based on the testimony of the parties about move-in and move-out inspections, I find the Tenants did not extinguish their rights in relation to the security deposit pursuant to Sections 24 or 36 of the Act. In contrast, I find the Landlord did extinguish his right to claim against the security deposit for damage to the residential property as the Landlord did not comply with Section 35(2) *[2 opportunities for inspection]* of the Act. Pursuant to

Section 38(1), the Landlord had until January 21, 2022 (15 days after receiving the Tenants' forwarding address in writing) to return the Tenants' security deposit.

The Landlord had not returned the security damage deposit by January 21, 2022, and therefore did not comply with Section 38(1) of the Act in relation to the security deposit. Given this, and pursuant to Section 38(6) of the Act, the Landlord cannot claim against the security deposit as his right to claim for damage was extinguished and he must return double the security deposit to the Tenants. The Landlord therefore must return **$10,200.00** to the Tenants. No interest is owed on the security deposit because the amount of interest owed has been 0% since 2009.

Damage or Loss Compensation

The Landlord is still entitled to claim for compensation for damage or loss and I consider that now.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Landlord seeks compensation for repair to the garage door, cleaning, and wall repair and painting.

Garage door

The Landlord stated that the damage to the garage door was done by a car. The Landlord provided no evidence that it was the Tenants' car(s) or a guest's car that caused this damage. The Landlord did not produce the move-in condition inspection report which may have showed that the garage door was operational at move-in. The Tenants stated the garage door was never operational while they resided in the residential property. I find, based on the testimonies of the parties, that the Landlord has not proven on a balance of probabilities that the Tenants are responsible for the damage to the garage door. I decline to award compensation for this claim.

Cleaning, wall repair and painting

Pursuant to Section 37(2)(a) of the Act, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The Landlord has not demonstrated that the Tenants did not leave the rental unit reasonably clean, and undamaged beyond reasonable wear and tear. The Landlord did not upload any picture evidence which supports his claim that the rental unit was unclean and damaged. The Landlord did not invite any witnesses to attest to the state of the rental unit after the Tenants vacated.

The Tenants testified that the Landlord wanted the Tenants out earlier than the end of the month, and that he brought his own people in to clean the rental unit. The Tenants wanted their own opportunity to clean the unit, but this did not happen. I cannot find that the Tenants did not leave the rental unit reasonably clean and undamaged without some visual evidence or testimony from witnesses with firsthand knowledge of the state of the rental unit after the Tenants vacated. I decline to award compensation to the Landlord for this part of his claim.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants monetary award is calculated as follows:

Monetary Award

Item	Amount
Tenants owe for water utility	-$623.48
Tenants owe for sewer utility	-$578.15
Tenants owe for maintenance utility	-$28.80
Tenants owe for Fortis Gas	-$1,123.69
Tenants owe for BC Hydro	-$800.00
Landlord owes for 4 days rent	$658.06
Landlord owes double security deposit	$10,200.00
Landlord owes application filing fee	$100.00
TOTAL:	$7,803.94

Conclusion

I grant a Monetary Order to the Tenants in the amount of $7,803.94. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: September 10, 2022

Residential Tenancy Branch