



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT (Tenant)
 MNR-DR, FFL (Landlord)

Introduction

This dispute dealt with two applications pursuant to the Residential Tenancy Act (the “Act”). The tenant filed an application on July 15, 2022 for a monetary order for damage or loss under the Act, regulation or tenancy agreement in the amount of \$2020.44 pursuant to s. 67.

The Landlord filed an application on July 21, 2022 for a monetary order for unpaid rent in the amount of \$3552.00 pursuant to section 67; and authorization to recover the filing fee for this application from the Tenants pursuant to section 72.

Procedural History

The parties attended a hearing on August 30, 2022 following which I issued an interim decision making a number of procedural orders, dismissed portions of the Tenants’ and Landlord’s application without leave to reapply (the “Interim Decision”). This decision should be read in conjunction with the Interim Decision.

The original hearing was adjourned because the Tenants were unable to succinctly provide a breakdown of how much they incurred in utility charges during the tenancy and how much was reimbursed by the Property Management Company to cover the lower Tenants’ share of the utilities.

The Tenants uploaded an incomplete Monetary Order Worksheet that provided no significant details about how the \$2020.44 monetary claim was arrived at.

In the Interim Decision, I ordered the landlord and Tenants to provide specific information to the RTB for my review.

Pursuant to Rule 3.7 of the Rules of Procedure (the “Rules”), I ordered the Tenants to provide the landlord and the RTB with the following documents by September 23, 2022:

1. A copy of the moving company invoice showing date the Tenants moved their belongings out of the rental unit.

2. A monetary order worksheet showing a monthly breakdown of the BC Hydro and Fortis claimed charges in the following format [example included].
3. Copies of any documents including bills, invoices, and/or bank records corroborating these amounts.
4. Copies of any documents relating to the payment of rent for July 1, 2022.
5. Written submissions (in the form of a letter or statement) explaining the basis for the monetary claim and in response to the Landlord's claim for non-payment of rent.

I ordered the landlord to provide the Tenants and the RTB with the following documents by September 23, 2022:

1. Copies of all documents in their possession relating to the reimbursement of utilities costs to the Tenants for the duration of the tenancy.
2. Copies of all documents relating to the payment of rent for July 1, 2022, as per the 10 Day Notice issued on July 7, 2022.
3. An updated monetary worksheet detailing any rent payments, if any, made after the 10 Day Notice.
4. Written submissions relating to the monetary claim and in response to the Tenants' monetary claim.

The parties provided their documents by the required deadline.

Tenants Issues to be Decided

Are the Landlords entitled to:

- 1) a monetary order for \$11,106.00
- 2) retain the security deposit in partial satisfaction of the monetary orders made; and
- 3) recover the filing fee?

Are the Tenants entitled to:

- 1) a monetary order of \$4339.00?

Background and Evidence Provided for Final Decision

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenancy agreement was uploaded into evidence. The rental unit is the upper unit of a single-detached home. The lower unit is occupied by other renters who are not parties to this application.

The parties entered into a written fixed term tenancy agreement on June 11, 2021 that ended June 30, 2022, thereafter, converting to a month-to-month tenancy. Rent between June 11-30, 2021 was prorated. Monthly rent was set at \$3500.00. The Tenants paid the Landlord a security deposit of \$1750.00, which the Landlord continues to hold in trust for the Tenants. This security deposit of \$1750 remains with the Landlord. The tenancy agreement stipulated the Tenants will pay 70% of electricity, gas, and city utility bills. The remaining 30% is paid by the lower unit Tenants.

Tenants

In the written submission delivered to Service BC on September 23, 2022, the Tenants argue that they withheld the July 1, 2022 rent of \$3552.00 because of a number of safety concerns and requests for repair that the Landlord had ignored.

In an email to the Landlord dated July 15, 2022 at 11:18 the Tenants outline a number of problems with the rental unit. The Tenants acknowledge that they have made the Landlords aware of some but not all of the problems. The Tenants state,

Since we moved in there have been many problems, some which have been voiced in previous correspondence and many which we have not voiced, as we felt the privileges of living on the beach outweighed them. This is no longer the case, and we must have these issues addressed moving forward.

The Tenants cite a number of health and safety concerns and submitted photos of the problems. They allege the electrical in the house was not up to code as the breaker kept shorting, lightbulbs exploded, and sockets sparked. The Tenants allege there was no furnace or source of heat other than the fireplace and the fireplace made them feel sick and delirious and there was black mold present in the rental unit.

In an undated submission sent in with the bulk evidence requested in the Interim Decision, the Tenants write, "Due to these health and safety related concerns and fear of losing everything or having a detrimental event in the house we decided to start the process of vacating the premises anyways while waiting for the hearing."

Additionally, the Tenants state there is an unpaid balance owed for utilities, specifically the 30% charge to the downstairs Tenants, reimbursed through the property management company, that remains outstanding.

The Tenants stated they did not have another rental in place and moved in temporarily with family/friends after vacating the rental property. The move was primarily managed by the Tenants; however, a small moving company was used for the larger items. This was a cash deal and so no receipt was issued confirming the date and time the final items were moved. The

Tenants write, "...we have included our storage receipt which shows all furniture moved there as of August 26th, 2022."

The Tenants submitted into evidence an email dated August 31, 2022 at 1:44 p.m. The email reads in part:

I have closed both accounts as of today as we no longer reside at the property and cannot continue paying these outrageous bills.

You will need to have the utilities set up in the Landlords name or in your property management company name moving forward.

We can make arrangements for a walk through and to hand keys over to you tomorrow or after the long weekend as we will be away until the 6th.
[reproduced as written]

The Landlord responds:

We can arrange for the move out inspection on September 6th between 2pm to 4pm. Please let me know if this works for you.

On September 6, 2022, the Tenants and the Property Management Company did an end of tenancy condition walk through. The Tenants concur with the following deficiencies: some lightbulbs were burned out; outside of microwave was greasy; some lint left in dryer trap. The Tenants state, "The home was thoroughly cleaned, carpets were shampooed etc."

The Tenants have provided a forwarding address to the Property Management Company and have made 2 attempts to inquire about return of their security deposit but have had no response.

The Tenants are seeking a monetary order in the amount of \$4339.00. The Tenants' monetary order worksheet is reproduced below:

Document #	Receipt/Estimate From	For	Amount
1	BC Hydro	30% owing	\$1681.66
2	Fortis BC	30% owing	\$ 859.70
3	Bank Statement Showing NSF Fee	Attempted pmt for September rent	\$ 48.00
4	Photos and Walkthrough Report	Damage Deposit	\$1750.00
		Total Claimed	<u>\$4339.00</u>

Landlord

The Landlord provided no written submission to accompany their monetary order worksheet, information about reimbursements made for utilities, and the end of tenancy condition report.

The Landlord states the Tenants did not provide one month notice to end tenancy. The Landlords state that the Tenants vacated the rental unit on September 6, 2022, when the final inspection took place. The Landlord submits that the Tenants owe rent for July, August, and September 2022.

The Landlord is seeking a monetary order in the amount of \$11,106.00. The Landlord's monetary order worksheet is reproduced below:

Document #	Receipt/Estimate From	For	Amount
1	Rent	July	\$3552
2	Rent	August	\$3552
3	Rent	September	\$3552
4	Estimated	Carpet cleaning	\$ 450
		Total claimed	<u>\$11,106.00</u>

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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 most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the Landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Rule 3.7 states in part:

Rule 3.7 Evidence must be organized, clear and legible

All documents to be relied on must be clear and legible.

.....

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear, and legible.

The Tenants were given specific instructions about the evidence to submit for consideration. The uploaded documents were incomplete and disorganized. The Tenants were given instructions and examples of how the utilities costs were to be set out on a work sheet and broken down. The Tenants simply uploaded bulk evidence and submitted an overall calculation.

Although I had discretion to not consider the evidence, I chose to organize and review the evidence submitted by the Tenants.

Landlord

1. Unpaid Rent and End of Tenancy Effective Date

In this dispute, the Landlord seeks compensation for unpaid rent.

Section 45(1) of the Act sets out the conditions or requirements for a tenant ending a tenancy. For a month-to-month, or periodic tenancy agreement, a tenant must serve written notice to end the tenancy and make sure that it's received:

- At least one month before the effective date of the notice, and
- Before the day that rent is due.

Section 52, "Form and Content of Notice to End Tenancy", stipulates

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the Landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,

On August 31, 2022 the tenant sent an email to the Landlord advising that both accounts were closed as of August 31, 2022 and they no longer resided at the property. Although the notice to end tenancy did not meet the requirements of s. 45(1) or s. 52 as detailed above, I find that the email was the Tenants' notice of end of tenancy and amend the notice to include the missing information, viz., the address of the rental unit and signed and dated by the tenant.

Section 53, "Incorrect effective dates automatically changed", reads, in part, as follows:

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

.....

As per s. 53 of the Act, the end of tenancy effective date is automatically corrected to September 30, 2022.

Section 26(1) of the Act states:

- 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.

The Tenants argue that the Landlord failed to maintain and repair the rental unit to comply with health, safety, and housing standards and so they withheld rent payments. Section 26 clearly states that a tenant must pay rent when it is due whether or not the Landlord complies with this Act.

The Tenants failed to comply with the legislation. The Tenants did not pay rent in July, August, or September.

Residential Tenancy Policy Guideline 3, "Claims for Rent and Damages for Loss of Rent" states in part:

C. Tenancies ending early and compensation

A tenant is liable to pay rent until a tenancy agreement ends. Section 45 and 45.1 of the RTA (section 38 of the MHPTA) set out how a tenant may unilaterally end a tenancy agreement.

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the Landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the Landlord would have been entitled to for the remainder of the term of the tenancy agreement.

.....

Compensation is to put the Landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the Landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of tenancy.

The Landlord has submitted a monetary order for unpaid rent as follows:

July 1, 2022.....	\$ 3,552.00
August 1, 2022.....	\$ 3,552.00
September 1, 2022.....	<u>\$ 3,552.00</u>
TOTAL RENTAL ARREARS	<u>\$10, 656.00</u>

As the Tenants did not pay any of these amounts, and as they were required to under the Act, I grant the Landlord's monetary order for unpaid rent in the amount of **\$10,656.00.**

2. Claim for Compensation for Rug Cleaning

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results from the other's non-compliance and must do whatever is reasonable to minimize the damage or loss.

In this dispute the Landlord seeks compensation for carpet cleaning in the rental unit.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear, when they vacate.

Both the Tenants and the Landlord submitted the end of tenancy Condition Inspection Report from September 6, 2022. Page 3 of the Condition Inspection Report, "End of

Tenancy” section does not identify damage to the rental unit. Some minor issues are noted in the comment section. The document is signed by both the Landlord and Tenants.

The Tenants, in their written submission, stated that ‘the home was thoroughly cleaned, carpets were shampooed etc.” The Landlord provided no information about the state of the carpets neither was damage to the carpets noted on the Condition Report.

Taking into consideration the written submission, photos taken by the Tenants at the time of inspection, and the documentary evidence presented by both the Tenants and Landlord and applying the law to the facts, I find on a balance of probabilities the Landlord has failed to discharge its evidentiary burden to show that the carpets in the rental unit were damaged or dirty.

I dismiss the portion of the Landlord’s application for \$450.00 for carpet cleaning, without leave to reapply.

Tenants

Reimbursement of 30% of the cost of BC Hydro and Fortis

Residential Policy Guideline 1 “Landlord & Tenant – Responsibility for Residential Premises” page 1-9 “Shared Utility Service” reads as follows:

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 unconscionable as defined in the regulations.
2. If the tenant agreement requires one of the tenant to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other Tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the Landlord for the other Tenants’ share of the unpaid utility bills.

In this dispute the Tenants are requesting 30% reimbursement for utilities to be paid by the lower unit Tenants. The Tenants were required to submit the Hydro and Fortis invoices to the Landlord to receive the 30% reimbursement.

BC Hydro

The BC Hydro invoice amounts included monthly hydro charges, balance forward charges from the previous billing period, and late payment charges. The balance forward and late payment fees have been excluded from my calculations as the Landlord is responsible for reimbursing 30% of the monthly hydro charges only.

Utility	From Date	To Date	Monthly Hydro Charges	30%	Balance
BC Hydro	2021-06-11	2021-06-29	\$90.62 ²	\$27.20	\$27.20
BC Hydro	2021-06-30	2021-08-30	\$284.39 ³	\$85.32	\$112.52
BC Hydro	2021-08-31	2021-09-29	\$133.60 ⁴	\$40.08	\$152.60
BC Hydro	2021-09-30	2021-10-29	\$141.58 ⁵	\$42.47	\$195.07
BC Hydro	2021-10-30	2021-11-30	\$181.84 ⁶	\$54.55	\$249.62
BC Hydro	2021-12-01	2021-12-30	\$312.78 ⁷	\$93.83	\$343.45
BC Hydro	2021-12-31	2022-01-28	\$328.27 ⁸	\$98.48	\$441.93
BC Hydro	2022-01-29	2022-03-01	\$317.85 ⁹	\$95.36	\$537.29
BC Hydro	2022-03-02	2022-03-30	\$256.07 ¹⁰	\$76.82	\$614.11
BC Hydro	2022-03-31	2022-04-29	\$234.19 ¹¹	\$70.26	\$684.37
BC Hydro	2022-04-30	2022-05-30	\$170.55 ¹²	\$51.17	\$735.54
BC Hydro	2022-05-31	2022-06-28	Incomplete invoices , pages missing		
BC Hydro	2022-06-29	2022-07-28	Incomplete invoices, pages missing		
BC Hydro	2022-07-29	2022-08-31	182.74 ¹³	\$55.42	\$790.96
			Total	<u>\$790.96</u>	

30% of the total BC Hydro costs for the term of the tenancy equals **\$790.36**.

Fortis

The total Fortis monthly invoice amounts included the monthly charges, balance forward charges, late payment charges, and a reactivation fee. The balance forward, late payment fee, and the reactivation fee have been excluded.

The Tenants opted for an equal payment plan with a reconciliation date of November 2022. The calculations below are based on the actual monthly charges not the equal payment plan monthly installment.

² Includes account set up charge.

³ Total due \$829.64 included a balance forward of \$454.63 from a prior address.

⁴ Total due \$286.16 included \$184.75 balance forward ("catch up pmt")

⁵ Total Due \$572.68 included \$470.48 balance forward ("catch up pmt")

⁶ Total Due \$314.59 included \$212.59 balance forward and late payment charges.

⁷ Total Due \$594.86 included \$492.86 balance forward and late payment charge.

⁸ Total Due \$384.86 included \$282.86 balance forward and late payment charge.

⁹ Total Due \$251.92 included \$107.92 balance forward and late payment charge.

¹⁰ Total Due \$176.04 included \$32.04 balance forward.

¹¹ Total Due \$291.79 included \$147.79 balance forward and late payment charge.

¹² Total Due \$437.95 includes \$293.95 balance forward and late payment charge.

¹³ Total charges \$1538.97 includes balance forward of \$470.05 + \$.053 (late fee) + \$885.65 (cancellation of equal payment plan)

Utility	From Date	To Date	Monthly \$	30%	Balance
Fortis	2021-02-11	2021-06-25	\$63.84	\$19.15	\$19.15
Fortis	2021-06-25	2021-07-27	\$64.19	\$19.26	\$38.41
Fortis	2021-07-28	2021-08-26	\$75.47	\$22.64	\$61.05
Fortis	2021-08-26	2021-09-27	\$153.14	\$45.94	\$106.99
Fortis	2021-09-27	2021-10-27	\$328.08	\$98.42	\$205.41
Fortis	2021-10-27	2021-11-26	\$192.06	\$57.62	\$263.03
Fortis	2021-11-26	2021-12-28	\$725.20	\$217.56	\$480.59
Fortis	2021-12-28	2022-01-28	\$466.55	\$139.97	\$620.56
Fortis	2022-01-28	2022-02-28	\$439.03	\$131.71	\$752.27
Fortis	2022-02-28	2022-03-28	\$342.55	\$102.77	\$855.04
Fortis	2022-03-28	2022-04-28	\$371.51	\$111.45	\$966.49
Fortis	2022-04-28	2022-05-27	\$281.56	\$84.47	\$1050.96
Fortis	2022-05-27	2022-06-27	\$119.48	\$35.84	\$1086.80
Fortis	2022-06-27	2022-07-27	\$67.09	\$20.37	\$1107.17
Fortis	2022-07-27	2022-08-24	\$54.45	\$16.34	\$1123.51
			Total		<u>\$1123.51</u>

30% of the total Fortis BC costs for the term of the tenancy equal **\$1123.51**.

Landlord Reimbursement of Utilities 2021-2022 to date

According to the Tenants the following reimbursements were received from the Landlord for utilities in 2021/2022:

November 19, 2021.....\$258.98 (Fortis) + \$171.80 (Hydro) = \$430.78
 February 23, 2022.....\$64.00 (Fortis) + \$115.46 (Hydro) = \$179.46
Total Reimbursement **\$610.24**

According to the Landlord the tenants were reimbursed following amounts for utilities in 2021/2022 based on invoices submitted.

August 6, 2021_____ \$ 27.18 (Hydro)
 November 19, 2021_____ \$430.75 (Combined Hydro & Fortis)
 February 20, 2022_____ \$179.46 (Combined Hydro and Fortis)
Total Reimbursement **\$637.39**

There is a discrepancy between the reimbursement information provided by the Landlord and the reimbursement information provided by the Tenants. The Landlord supplied evidence of the utility bills submitted by the tenant, the calculations, and payments. The Tenants provided a reimbursement dollar amount in their spreadsheet without corroborating documentation such as receipts, cancelled cheques etc. I prefer the Landlord's evidence and accept their evidence as fact. I find the Tenants received \$637.39 total reimbursement for utilities from the landlord in 2021/2022.

Calculations:

\$790.96 (30% of total hydro bills) + \$1,123.51 (30% of total Fortis bills) = \$1914.47
\$1914.47 (30% of combined utilities) - \$637.39 (reimbursements to date)= **\$1277.08**

Outstanding utilities owed to the Tenants equal **\$1277.08.**

NSF FEE

The Tenants included a claim to recover an NSF fee in their monetary worksheet. The Tenants told the Landlord on August 31, 2022 at 1:44 that they had vacated the rental unit. The Tenants were required, pursuant to s. 45(1) to provide the Landlord with one month written notice before rent is due. The Tenants did not do so. The Landlord on September 1, 2022 debited the account for rent. There were insufficient funds in the account, hence the NSF charge incurred by the Tenants.

The Tenants failed to provide notice as required by s. 45(1) and s. 52 of the Act. The request for reimbursement of the NSF fee is dismissed without leave to reapply.

Return of the Security Deposit

The Tenants paid the Landlord a security deposit of \$1750.00, which the Landlord continues to hold in trust for the Tenants. This security deposit of \$1750 remains with the Landlord.

Section 38(1) of the Act sets out that a Landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the RTB.

Based on the evidence submitted in response to the Interim Decision, I find the Tenants provided their forwarding address to the Landlord on September 13, 2022 at 9:42 a.m. by email.

In this case the Landlord issued a 10-Day Notice for Unpaid Rent and filed for dispute resolution with the RTB on July 21, 2022. This is significant because the landlord had a claim pending against the security deposit prior to the end of the tenancy. As such, it is unreasonable for the landlords to claim against the security deposit after the tenancy ended on September 30, 2022.

Since the Landlord has a pending claim against the security deposit, I dismiss the portion of the Tenant's application for return of the security deposit, without leave to reapply.

In summary, I grant the Landlord a Monetary Order for unpaid rent in the amount of \$10,656.00.

The Tenants are owed \$1277.08 in utilities reimbursement. This amount may be offset against the amount I have ordered the Tenants to pay the Landlord. .

Pursuant to section 72(2) of the Act, the Landlords may retain the security deposit in partial satisfaction of the monetary orders made above.

Pursuant to section 72(1) of the Act, as the Landlord has been partially successful in the application, they may recover \$50.00 of the filing fee from the Tenants.

Conclusion

Pursuant to sections 67, and 72 of the Act, I order that the Tenant pay the Landlord \$7680.92, representing the following:

Rental Arrears	\$10,656.00
Security Deposit Credit	\$ -1,750.00
Utilities Credit	\$ -1,277.08
Filing Fee	\$ 50.00
TOTAL	\$ 7,678.92

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: October 14, 2022

Residential Tenancy Branch