



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants March 22, 2022 (the “Application”). The Tenants applied as follows:

- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Tenant appeared at the hearing and appeared for Tenant B.S. The Landlords appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

At the hearing, the Tenant advised they are seeking return of the security and pet damage deposits.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to return of the security and pet damage deposits?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought the following:

Item	Description	Amount
1	Security and pet damage deposits	\$1,242.00
2	Fortis Bill (40% Landlords' portion)	\$59.00
3	BC Hydro Bill (40% Landlords' portion)	\$339.78
4	BC Hydro Bill (40% Landlords' portion)	\$300.31
5	Filing fee	\$100.00
	TOTAL	\$2,041.09

The parties agreed on the following. There was a written tenancy agreement between them. The tenancy started June 15, 2020. Rent was \$1,927.00 due on the 15th day of each month. The Tenants paid a \$942.00 security deposit and \$300.00 pet damage deposit.

The parties agreed the Tenants moved out of the rental unit March 15, 2022.

The parties agreed the Landlords received the Tenants' forwarding address in writing March 15, 2022.

The Landlords testified that they returned the security and pet damage deposits to the Tenants by cheque sent by registered mail March 29, 2022. The Tenant agreed with this.

The Tenants received a note from the Landlords which is in evidence and states:

Check #041
Includes security deposit \$942.00
Pet damage deposit \$300.00
\$300.00 for washer
\$59.00 deduction for your Fortis bill

The Tenant testified that the cheque amount received was \$1,483.00.

In relation to the remainder of the compensation sought, the Tenant testified that this is for the Landlords' portion of utility bills. The Tenant relied on term one of the tenancy agreement which states:

Tenants are responsible for 60% of all utilities payments/gas, electricity, TV cable, Wi-Fi, which will be shared with tenants living downstairs.

The Tenant testified that they paid the full amount of the bills noted and are seeking 40% back from the Landlords.

The Landlords testified that the downstairs tenants moved out December 15th and closed their utilities account and therefore the Tenants opened their own utilities account. The Landlords testified that the Tenants were the sole users of utilities in the house from December 15th until they moved out and therefore the Landlords should not have to reimburse the Tenants 40% of the bills.

The Landlords disputed the request for \$59.00 for the Fortis bill. The Landlords testified that they originally paid the Tenants the \$59.00 based on the total bill amount which included a \$100.00 deposit the Tenants had to pay Fortis for opening the account. The Landlords testified that the Tenants would get the \$100.00 back and therefore the Landlords should not have had to pay a portion of this. I note that the Landlords deducted this \$59.00 from other monies owing to the Tenants as stated in the Landlords' note to the Tenants outlined above.

In relation to the BC Hydro bill for \$1,435.80 received by the Landlords from the Tenants, the Landlords pointed out that this included a \$672.00 deposit which the Tenants would receive back from BC Hydro. The Landlords disputed that they should have to pay for a portion of the deposit.

In relation to #4 of the compensation sought, the Landlords said they do not know where this amount is coming from.

The Landlords also took issue with the lack of evidence that the Tenants have actually paid Fortis and BC Hydro for the bills in relation to the compensation sought.

The Tenant agreed the Tenants opened their own utilities accounts when the downstairs tenants moved out and closed their account. The Tenant testified that the downstairs heat still had to be on otherwise the pipes would have frozen. The Tenant

did not dispute that the Fortis bill included a deposit. The Tenant could not say what amount the Landlords should have actually paid for the Fortis bill. The Tenant could not explain the basis for #4 of the compensation sought. The Tenant acknowledged the Landlords should not have to pay any portion of the deposits paid by the Tenants for opening accounts with Fortis and BC Hydro.

Both parties submitted documentary evidence which I have reviewed and will refer to below as necessary.

Analysis

Section 38(1) of the *Act* relates to security and pet damage deposits and states:

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.

Section 7 of the *Act* relates to compensation and states:

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.

Pursuant to rule 6.6 of the Rules, it is the Tenants 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 occurred as claimed.

In relation to the security and pet damage deposits, the Landlords had 15 days from March 15, 2022, to comply with section 38(1) of the *Act*. I accept that the Landlords returned the security and pet damage deposits March 29, 2022, in compliance with section 38(1) of the *Act*. I do not accept that the \$59.00 was deducted from the security or pet damage deposits because the note from the Landlords to the Tenants does not state this and the cheque amount exceeded the deposit amounts. I dismiss the Tenants' request for return of the security and pet damage deposits without leave to re-apply.

In relation to the request for 40% of the utility bills, I accept that the Tenants were only required to pay 60% of the utilities used in the house pursuant to the written tenancy agreement and term one outlined above. If the Landlords wanted the arrangement to change if the downstairs tenants moved out, the Landlords needed to have put this in the written tenancy agreement.

In relation to the \$59.00 sought, this relates to the Fortis bill for a total of \$147.58, which included a \$100.00 deposit. I agree the Landlords are not responsible for paying for part of the deposit and the Tenants would have received the deposit back. Therefore, the Landlords were responsible for \$19.03 of the bill. The evidence shows the Landlords paid the \$59.00 but then deducted \$59.00 from other monies owing to the Tenants. Given this, the Landlords now owe the Tenants \$19.03 and I award the Tenants this amount.

The Tenants have sought two amounts, \$339.78 and \$300.31, for two BC Hydro bills. The Tenants submitted two BC Hydro bills. The first bill is very difficult to read due to the quality of the file uploaded. It appears to me that the first bill was for \$1,435.80 and was issued March 01, 2022. It appears that the first bill for \$1,435.80 was not paid because the same amount, \$1,435.80, was carried forward to the bill dated March 16, 2022. It appears BC Hydro deducted the deposit amount of \$672.00 from the second bill. The Landlords were not responsible to pay part of the deposit. The amount of the second bill minus the \$672.00 deposit was \$763.80. There were then new charges of \$85.66 for a total of \$849.46. The \$849.46 included both bills because the entire first bill amount was carried over to the second bill. Therefore, the Landlords only owe 40% of the \$849.46, being \$339.78. I award the Tenants this amount.

It is not relevant whether the Tenants have paid BC Hydro and Fortis, this is an issue between those companies and the Tenants, it does not relieve the Landlords of their obligation to pay the Tenants 40% of the utility bills.

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

In summary, the Tenants are entitled to the following:

Item	Description	Amount
1	Security and pet damage deposits	-
2	Fortis Bill (40% of Landlords' portion)	\$19.03
3	BC Hydro Bill (40% of Landlords' portion)	\$339.78
4	BC Hydro Bill (40% of Landlords' portion)	-
5	Filing fee	\$100.00
	TOTAL	\$458.81

I issue the Tenants a Monetary Order in the amount of \$458.81 pursuant to section 67 of the *Act*.

Conclusion

I issue the Tenants a Monetary Order in the amount of \$458.81. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: December 13, 2022

Residential Tenancy Branch