Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNDCT, MNSD
Landlord: MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- a monetary order for money owed or compensation for damage or loss pursuant to section 67.

The tenant attended the hearing with a legal advocate, AM. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Although the hearing was originally scheduled for only one hour, the hearing was extended an additional 17 minutes to allow both parties the opportunity to present their cases, and be heard.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence packages. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with each other's the Applications and evidentiary materials. The tenant's legal advocate submitted further evidence on November 21, 2022, which was written submissions of behalf of the tenant for this hearing. After discussing the issue of late evidence with the landlord, the landlord confirmed that they did not take issue with the admittance of the late evidence.

Preliminary Issue – Tenant's Amendment

The tenant filed an amendment to their application on November 6, 2022. The landlord was opposed to the consideration of the amendment as they felt that they did not have sufficient time to review the amendment and respond.

The landlord testified that they had received the amendment on November 7, 2022, but due to the volume of documents submitted for this hearing, the landlord did not feel that they had sufficient time to review the amended claims, and prepare a proper response.

Rule 4.6 and 4.7 state the following:

***As soon as possible**, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.*

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

***In any event, a copy of the amended application and supporting evidence must be received by the* by the respondent(s) not less than 14 days before the hearing.**

4.7 Objecting to a proposed amendment

A respondent may raise an objection at the hearing to an Amendment to an Application for Dispute Resolution on the ground that the respondent has not had sufficient time to respond to the amended application or to submit evidence in reply.

The arbitrator will consider such objections and determine if the amendment would prejudice the other party or result in a breach of the principles of natural justice. The arbitrator may hear the application as amended, dismiss the application with or without leave to reapply, or adjourn the hearing to allow the respondent an opportunity to respond.

As it was disputed by the tenant that they had received the landlords' amendment package, and as they did not have the opportunity to review or respond to the amendment, the package will be excluded and not considered as part of the landlords' application.

I have considered the submissions of both parties in the hearing. Although the landlord did receive the amendment at least 14 days before the hearing as required, I note that a respondent, given the importance, as a matter of natural justice and fairness, must know the case against them. In this case, the tenant applicant amended their claim to add a substantial amount of claims and evidence.

The definition section of the Rules contains the following definition:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

Even though the application was originally filed by in March 2022, the amendment was filed not served on the landlord until November 7, 2022, exactly 14 days before the hearing. In review of the claims myself, I find that the landlord's concerns are reasonable. Given the limited time before the hearing date, and the substantial increase in the tenant's monetary claims, I find it would be highly prejudicial to the landlord to proceed with the amended claims.

Additionally, RTB Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the time allotted is not sufficient to allow the additional claims to be heard, and as the dispute resolution process is intended to be a fair, efficient, and effective process where a decision can be delivered in a timely manner, I exercise my discretion to dismiss the additional claims contained in the amendment with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

After discussing the issue with both parties, I informed them that an exception will be made to consider the claim for the security deposit under section 38 of the *Act*. The hearing proceeded to deal with the original cross applications before me, plus the additional claim in relation to the security deposit.

Issue(s) to be Decided

Are both parties entitled to a monetary order for compensation and losses that they have applied for?

Is the tenant entitled to return of his security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

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.

This tenancy began on September 1, 2019. Monthly rent was originally set at $1,800.00, payable on the first of the month, and was increased to $1,827.00 effective January 1, 2022. The landlord had collected a security deposit in the amount of $900.00. $233.77 was returned to the tenant on March 16, 2022, and the landlord still holds the rest. The tenant testified that they had provided a forwarding address to the landlord on February 29, 2022 by email, and by placing a letter in the mailbox, and again on March 29, 2022 by way of registered mail. The tenant testified that the tenancy had ended on February 25, 2022 as the landlord had changed the locks, and did not provide the tenant with a new key. The landlord testified that the tenancy ended on March 8, 2022.

The tenant filed their application for dispute resolution on March 24, 2022 requesting the following monetary orders, and an amendment on November 6, 2022 for further claims, including the return of their security deposit. As noted earlier, in the decision this hearing is to deal with the original claim plus the claim for the security deposit. During the hearing, the tenant confirmed that since filing this application, they did receive reimbursement from the other tenant in the amount of $267.52 on March 28, 2022, reducing their original claim of $1,072.24 by that amount for the hydro bill.

Item	**Amount**
Reimbursement for utilities paid by the tenant	$804.72
Return of security deposit plus compensation under section 38 of the Act	1,800.00
Total Monetary Order Requested by Tenant	**$2,604.72**

The landlord filed their application for dispute resolution on April 11, 2022 requesting the following monetary orders:

Item	**Amount**
Utility Bill -December 16, 2021-March 31, 2022 (estimate from last)	$231.69
Security Deposit -exhibit 3	425.00
Extra paid by JS – exhibit 5	267.52
Garbage Disposal/Cleanup – exhibit 6	430.00
Extra paid to tenant – exhibit 7	233.77
Extra Money collected in rent for DT (850x 7 months)	5,950.00
Extra Money collected in rent for NR ($750 x7)	5,250.00
Extra Money collected in rent for CH (750 x 7)	5,250.00
Unpaid March 2022 rent	1,827.00
Unpaid Utility Bill – Exhibit 10 August 16, 2021-December 15, 2021	231.69
Filing fee	100.00
Total Monetary Order Requested by Landlord	**$20,196.59**

The tenant testified that they were the sole tenant for their suite, and was responsible for the monthly rent as well as 50% of the hydro bill. The neighbouring tenants in the suite next door were responsible for the other 50%. On March 25, 2020, the tenant requested that the landlord consider applying for a customer crisis fund available to tenants facing financial hardship due to Covid-19. This financial support was only available if the account was in the tenant's name, and therefore both parties agreed to transfer the account under the landlord's name to the tenant's, effective April 1, 2020. The tenant was therefore required to email the landlord the bills. The tenants in both suites then paid their portions to the landlord, who paid the bills.

The tenant submits that between October 1, 2021 and February 7, 2022, the tenant sent four emails requesting that the landlord restore the billing in the landlord's name. The tenant submits that the landlord did not respond. The tenant testified that despite paying the landlord her portion of the bill in the amount of $402.34, which was due on February

14, 2022, the tenant received notification from the utility company that the payment was not received. The tenant informed the landlord by email on February 26, 2022. The tenant was concerned about the impact on their credit, and had no choice but to pay the $402.36 again. On March 22, 2022, the tenant also paid the other suite's portion of $402.36 as it was also still outstanding. A third and final payment was made on March 22, 2022 in the amount of $267.52, which was also outstanding on the final bill due March 28, 2022. The tenant had to obtain assistance through an emergency grant to cover the outstanding amount. As confirmed earlier in this decision, the tenant did receive reimbursement of the $267.52 on March 28, 2022 from the other tenant. The tenant is applying to recover the $804.72 from the landlord.

The tenant is also requesting for double the security deposit as the landlord only returned $233.77 of the $900.00 deposit on March 6, 2022, despite providing the landlord with their forwarding address on February 29, 2022, and again on March 29, 2022 by registered mail. The tenant submitted copies of the communications between the parties related to the return of the tenant's deposit.

The landlord testified that the tenant had allowed three other parties to reside in the home, from whom the tenant had collected rent from. The landlord is requesting monetary orders for these amounts collected from the tenant. Additionally, the landlord believes that the tenant should reimburse one of these tenants, DT, their portion of their deposit which was $425.00. DT remained in the rental unit after the tenant moved out, and became the landlord's tenant.

The landlord testified that the tenant moved out on March 8, 2022, and failed to pay any rent for March 2022. The landlord is seeking a monetary order for the March 2022 rent, plus reimbursement for the utility bill up to March 2022. The landlord testified that they want reimbursement of the $233.77 sent to the tenant on March 16, 2022. The landlord testified that the tenant should also reimburse the landlord for $267.52 for the amount JS remitted to the tenant.

The landlord testified that the tenant failed to pay an outstanding utility bill in the amount of $231.69 for the period of August 16, 2021 to December 15, 2021.

Lastly, the landlord testified that the tenant failed to leave the home in reasonably clean and undamaged condition. The landlord submitted photos of the home and property. The landlord confirmed that no move in or move-out inspection reports were completed. The landlord testified that no move-out inspection could be done as the home was still occupied.

The tenant responded that they did not receive any hydro bills for payment in 2021, and that all bills have been paid. The tenant also noted that they had deducted the hydro payment remitted by JS from their claim.

The landlord argued that the tenant was the one who had requested that the hydro bill be changed in their name. The landlord testified that they did pay the utility bill, but paid the wrong account because the wrong account number was provided to the landlord.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, both parties bear the burden of establishing their claims on the balance of probabilities. They must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the applicants must then provide evidence

that can verify the actual monetary amount of the loss. Finally, the applicants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I note that although the landlord did provide an explanation for why a move-out inspection report was not completed, I find that the landlord failed to fill out a move-in inspection report as required by sections of the *Act*. The consequence of not abiding by this section is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) of the *Act*.

I do note that RTB Policy Guideline #17 states the following:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

• to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
• to file a claim against the deposit for any monies owing for other than damage to the rental unit;
• to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
• to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

I will therefore consider the landlord's claims.

The landlord applied to recover rent that was paid by the three other occupants to the tenant during this tenancy. I note that the contractual relationship was between the tenant CJ and the landlord, and that no tenant/landlord relationship exists between the landlord and the other parties during this tenancy. I am not satisfied these claims of rent remitted to the tenant CJ amount to any losses suffered by the landlord due to the tenant's contravention of the Act. Furthermore, the Act does not allow the landlord to recover compensation or losses on behalf of these three parties on their behalf. Accordingly, I dismiss the landlord's claims for the rent paid to the tenant by the three other occupants, without leave to reapply.

Similarly, the Act does not allow the landlord to recover any security deposits on DT's behalf. Accordingly, I dismiss the landlord's claim to recover the $425.00 without leave to reapply.

As the tenant removed $267.52 from their claim for recovery of JS's share of the hydro, I dismiss this portion of the landlord's application without leave to reapply.

The $233.69 that was sent to the tenant on March 16, 2022 was for the return of a portion of the tenant's security deposit. The landlord does not have the right under the *Act* to request the return of a deposit that has been returned to the tenant. Accordingly, I dismiss this portion of the landlord's application without leave to reapply.

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 *[tenant's notice]*;

(i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;

(ii) section 46 *[landlord's notice: non-payment of rent]*;

(iii) section 47 *[landlord's notice: cause]*;

(iv) section 48 *[landlord's notice: end of employment]*;

(v) section 49 *[landlord's notice: landlord's use of property]*;

(vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;

(vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms..

Section 31 of the *Act* states as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

I find that the tenant provided sufficient evidence to show that the landlord prevented the tenant's access back to the suite after February 25, 2022. By preventing the tenants' access to the rental unit, I find the landlord failed to comply with section 31 of the *Act*. I also find that the landlord had ended this tenancy in contravention of section 44 of the *Act*. I find that the landlord entered into a new tenancy with DT after that time. Accordingly, I do not find that the tenant owes any rent for March 2022, and this portion of the landlord's application is dismissed without leave to reapply.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. In light of the disputed testimony, the onus is on the landlord to prove their claim. In this case I find that that the evidence clearly shows that a large number of items were on the property when the tenant moved in. On October 4, 2019,

the tenant had sent an email to the landlord with attached photos of the yard and the items “left behind over the years”. The landlord argued that the “piles of garbage” were left behind at the end of the tenancy by the tenant and her roommates or guests. I find that the landlord’s application falls short for several reasons. The landlord failed to take perform a proper move-in inspection at the beginning of the tenancy, and fill out an inspection report documenting the condition of the suite and property. Secondly, although the landlord argues that the pile of garbage is much larger than the one in October 2019, that is just a visual observation that is not supported in evidence. As noted earlier, the landlord did not properly document the condition of the property at the beginning of the tenancy. Secondly, the landlord has a duty to mitigate the losses claimed.

Residential Tenancy Policy Guideline #5 addresses the duty of the claimant to mitigate loss:

“Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss[1]. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation[2]. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.”

In this case, by locking the tenant out, the landlord denied the tenant the opportunity to remove all of their belongings, including any garbage left behind. I find that the landlord has not only failed to support that the tenant left the home in unclean condition, I find the landlord failed to give the tenant the opportunity to remove the items that did belong to the tenant. Accordingly, I dismiss the landlord's claim for garbage disposal and cleanup without leave to reapply.

Lastly, the landlord is requesting a monetary order for two utility bills in the amount of $233.77 each bill. The first claim is for a utility bill for the period of August 16, 2021 to December 15, 2021. The landlord submitted a copy of the bill, plus an email to the tenant dated January 14, 2022 requesting the tenant's portion. The tenant responded that they could not locate any proof of payment, but they believe that the amount has been paid. I note that almost a year has passed since the landlord had sent the tenant this bill. No follow up emails to the tenant, or subsequent requests were submitted, nor did the landlord provide documentation to show that this amount remains unpaid. In light of the evidence before me, I cannot ascertain whether the bill was paid or not. Accordingly, I dismiss this portion of the landlord's application with leave to reapply. Liberty to reapply is not an extension is not an extension of any applicable timelines.

Lastly, the landlord applied to recover a city utility bill in the same amount for December 16, 2021 to March 31, 2022. No bill was submitted for this hearing. I find that this portion of the application also falls short, and therefore I dismiss this part of the claim with leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was unsuccessful with their application, I find that the landlord is not entitled to recover the $100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

The tenant filed an application for the return of their security deposit plus any applicable compensation under section 38 of the Act. Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlord receive the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security

deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, although the tenant submits that a forwarding address was provided to the landlord on February 28, 2022, the landlord denies receiving it until the tenant provided the address by way of registered mail. In light of the disputed testimony and evidence, I find that the landlord was clearly served with the tenant's forwarding address by way of registered mail which was sent on March 29, 2022. The landlord filed their application on April 11, 2022, which is within the 15 days required by the *Act.* Accordingly, the tenant's application for compensation under section 38 of the Act is dismissed without leave to reapply. I order that the landlord return the $666.23 held by the landlord to the tenant.

The tenant also applied to recover the $804.72 paid for the hydro bill, which was in the tenant's name. I am satisfied that the evidence shows that the tenant paid her portion of the hydro bill in the amount of $402.35 on February 14, 2022 by way of e-transfer to the landlord. I am satisfied that despite this payment, the landlord did not remit this payment to the hydro company, nor the other tenant's portion in the same amount. As the tenant feared the effect on the tenant's credit, the tenant paid both portions to the hydro company on March 22, 2022 upon finding out that the landlord never remitted both payments. I find that although the hydro bill remained in the tenant's name at this time, the parties would pay the landlord their portions, who was then was responsible for paying the outstanding amounts.

Section 1 of the **Residential Policy Guidelines** states the following about shared utilities:

SHARED UTILITY SERVICE

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[5] as defined in the Regulations.

Section 3 of the Residential Tenancy Regulation gives the following definition of "unconscionable":

> **3** For the purposes of section 6 (3) (b) of the Act *[unenforceable term]*, a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

In *Murray v. Affordable Homes Inc.*, 2007 BCSC 1428, the Honourable Madam Justice Brown set out the necessary elements to prove that a bargain is unconscionable. She said at p. 15:

> **Unconscionability**
>
> [28] An unconscionable bargain is one where a stronger party takes an unfair advantage of a weaker party and enters into a contract that is unfair to the weaker party. In such a situation, the stronger party has used their power over the weaker party in an unconscionable manner. (***Fountain v. Katona***, 2007 BCSC 441, at para. 9). To prove that the bargain was unconscionable, the complaining party must show:
> (a) an inequality in the position of the parties arising out of the ignorance, need or distress of the weaker, which leaves that party in the power of the stronger; and
> (b) proof of substantial unfairness of the bargain obtained by the stronger.
> ***Morrison v. Coast Finance Ltd***. (1965), 55 D.L.R. (2d) 710 at 713, 54 W.W.R. 257 (B.C.C.A.).
>
> [29] The first part of the test requires the plaintiff to show that there was inequality in bargaining power. If this inequality exists, the court must determine whether the power of the stronger party was used in an unconscionable manner. The most important factor in answering the second inquiry is whether the bargain reached between the parties was fair (***Warman v. Adams***, 2004 BCSC 1305, [2004] 17 C.C.L.I. (4th) 123 at para. 7).
>
> [30] If both parts of the test are met, a presumption of fraud is created and the onus shifts to the party seeking to uphold the transaction to rebut the presumption by providing evidence that the bargain was fair, just and reasonable. (***Morrison***, at713).
>
> [31] The court will look to a number of factors in determining whether there was inequality of bargaining power: the relative intelligence and sophistication of the plaintiff; whether the defendant was aggressive in the negotiation; whether the plaintiff sought or was advised to seek legal advice; and whether the plaintiff was in necessitous circumstances which compelled the plaintiff to enter the bargain

> (***Warman*** at para. 8). The determination of whether the agreement is in fact fair, just and reasonable depends partly on what was known, or ought to have been known at the time the agreement was entered. The test in ***Morrison*** has also been stated as a single question: was the transaction as a whole, sufficiently divergent from community standards of commercial morality? (***Harry v. Kreutziger*** (1978), 95 D.L.R. (3d) 231 at 241, 9 B.C.L.R. 166.)

I find that the requirement of the tenant to pay 100% of the utilities for the two suites to be unconscionable within the meaning of the Regulation. Although I recognize the landlord's testimony that the tenant did request the billing change during this tenancy, I find that the landlord ignored the tenant's requests to change the billing back despite repeated request to do so.

I am satisfied that the tenant repaid her portion of the bill, as well as the portion for the other tenant as the landlord failed to make the payment to the hydro company for both tenants. I find that although the tenant was not responsible for the other tenant's share, the tenant repaid this portion anyway as the bill was in the tenant's name, and the tenant would be negatively affected if the tenant did not do so. Accordingly, I find the tenant is entitled to a monetary claim for these two payments. I note that the February 14, 2022 etransfer shows that the payment was in the amount of $402.35. As both tenants were responsible for 50% of the bill, I find that the amount owed to the tenant is $402.35 multiplied by two, which is $804.70. I order the landlord to reimburse the tenant for the hydro payments in this amount.

Conclusion

The landlord's claims for the utility bills are dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines. I dismiss the remainder of the landlord's claims without leave to reapply.

I find that the tenant is entitled to the return of their security deposit plus reimbursement of the hydro bill paid by the tenant.

I issue a Monetary Order in the amount of $1,470.93 in the tenant's favour under the following terms which allows for the following monetary awards:

Item	Amount
Reimbursement for utilities paid by the tenant	$804.70

Return of security deposit still held by landlord	666.23
Total Monetary Order to Tenant	**$1,470.93**

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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 and enforced as an Order of that Court.

I dismiss the remaining claims in the tenant's amendment package with leave to reapply.

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: December 22, 2022

Residential Tenancy Branch