



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Landlord Sv.S. (the landlord) and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the landlord served the tenants with the landlord's application for dispute resolution and evidence. The tenants did not raise any issues with the timing of

service. I find that the above documents were sufficiently served for the purposes of this *Act*, on the landlord, pursuant to section 71 of the *Act* because receipt was acknowledged.

Both parties agree that on January 4, 2022 the tenants personally served landlord Sh.S. with the tenant's evidence. Both parties agree that the evidence consisted of a USB stick and an RTB Digital Evidence Details form.

The landlord testified that the data on the USB stick was unreadable. Tenant C.M. testified that the data was readable. Tenant C.M. testified that she did not contact the landlords to confirm their ability to view the evidence because the landlords blocked her on "everything" and so she could not contact the landlords to ask.

Tenant C.M. testified that on January 5, 2022 the tenants' printout out evidence was left on the landlords' doorstep. The landlord testified that on her security camera she saw that documents were left on top of the recycling, and not on the doorstep, and that someone came and took it away. The landlord testified that she did not receive the tenants' evidence. The tenants did not submit any proof of service documents.

Rule 3.10.4 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

3.10.4 Digital evidence served to other parties

Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43). Parties who serve digital evidence to the Residential Tenancy Branch and paper evidence to other parties must provide the same documents and photographs, identified in the same manner in accordance with Rule 3.7.

Rule 3.10.5 of the Rules states:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain

access to the evidence. Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

I find that the tenants breached Rule 3.10.5 by failing to confirm that the landlord was able to access the evidence. While the landlords may have blocked the tenants from some forms of communication, other methods, such as regular mail, registered mail and posting were still available to the tenants.

I accept the landlord's testimony that she was not able to gain access to the digital evidence. I find that the tenant's USB evidence is excluded from consideration for failure to comply with Rule 3.10.5 of the Rules.

Section 3.15 of the Rules states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Both parties agree that the paper evidence package was left somewhere outside the landlords' residence on January 5, 2023, which is only six clear days before this hearing. I find that the tenants' evidence was not served in accordance with Rule 3.15 of the Rules and is therefore excluded from consideration.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence of the landlord and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2019 and ended on April 21, 2022. Monthly rent in the amount of \$1,776.25 was payable on the first day of each month. A security deposit of \$875.00 and a pet damage deposit of \$875.00 were paid by the tenants to the landlords.

Tenant C.M. testified that landlord Sh.S. was personally served with the tenants' forwarding address in writing on April 21st or April 22nd, 2022. The landlord testified that she believes that is correct.

The landlord testified that in the first month of the tenancy she completed a move in condition inspection report and asked the tenants to sign it but they refused. Tenant C.M. testified that the landlord did not ask the tenants to complete a move in condition inspection report and that one was not completed at the start of the tenancy. Tenant C.M. testified that at the start of the tenancy she asked the landlord to complete a move in condition inspection report but the landlord told her that the landlord made notes of the damages.

Tenant C.M. testified that the landlord asked to complete a "random inspection" on April 16, 2022. Tenant C.M. testified that the tenants moved out on April 15, 2022 but paid up until April 21, 2022.

The landlord testified that she was scared there would be damage at the subject rental property so she had a random inspection completed. The landlord testified that her daughter couldn't remember what was damaged at the start of the tenancy so the landlord did not claim any damages to the subject rental property.

The landlord did not enter into evidence a move in or a move out condition inspection report.

The landlord is seeking the following damages from the tenants:

Item	Amount
Washer repair	\$231.00
Garburator repair	\$340.00
Rent from April 1-21, 2022	\$1,243.38
Late payment of rent fees	\$200.00
Total	\$2,014.38

Washer repair

The landlord testified that during the tenancy the tenants damaged the washing machine by failing to empty their pockets before putting their clothes in the washing machine. The landlord testified that a variety of items that should not have been put in the washing machine caused the washing machine to stop working.

The landlord entered into evidence an invoice from a repair person dated January 9, 2021 for \$231.00. The invoice states:

The customer complained that the washing machine is locked and not functioning. Inspected the appliance. Found the system is stuck and the drain system and the drain pump are clogged with different items - pieces of clothes and hair clips. There is a chance that the drain pump is damaged as a result of overheating of the pump motor. Performed a factory reset. In addition, performed a service to the drain system and the drain pump. Everything is functioning properly after the service. The customer was informed that in case the issue comes back, the drain pump will have to be replaced.

The landlord entered into evidence a photograph of the items the repair person pulled out of the washing machine. The photograph shows a bra insert or shoulder pad, bobby pins, a false nail, a hair elastic, a button, a black strap, hair and dirt.

Tenant C.M. testified that none of the items that were pulled out of the washing machine belonged to her or tenant K.M. Tenant C.M. suggested that the materials that clogged the washing machine were from the previous tenants.

Garburator repair

The landlord testified that when the tenants moved in the garburator was brand new and that shortly thereafter the tenants called to inform her that the garburator was not working. The landlord testified that she called a technician to repair the garburator which was still under warranty. The landlord testified that if there was something wrong with the garburator it would have been fixed for free but the technician found that it was user error and so the landlord was charged.

The landlord entered into evidence an invoice from a repair person dated March 24, 2020 for \$340.20. The invoice states:

Shop vacuumed out standing water and drain cleaner
from kitchen sink.
Took apart p trap and removed water.
Found p trap and entrance plugged with onion peel
and bread crumbs.
Checked drain arm and vacuumed clear.
Tested twice okay clear at this time.
No warranty on drain cleaning as we have no control
over what goes down the drain.
Garborator factory 90 pipe is glued to drain pipe by
previous insulation.

Tenant C.M. testified that she didn't intentionally clog the garburator. Tenant C.M. testified that the technician told her that "these things happen".

Rent from April 1-21, 2022

The landlord testified that she served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on March 28, 2022 via email. The tenant testified that she received the Two Month Notice on March 28, 2022. The Two Month Notice was not entered into evidence. Tenant C.M. testified that the Two Month Notice had an effective date of May 31, 2022. This was not disputed by the landlord. Tenant C.M. testified that she gave the landlord notice on April 8, 2022 that she was vacating on April 16, 2022, pursuant to the Two Month Notice.

Tenant C.M. testified that she paid April 2022's rent late because she was not sure how much of April 2022 she was required to pay. Tenant C.M. testified that she originally thought she had to pay until April 18, 2022 because she was required to give the

landlord 10 days notice to end the tenancy before the effective date of the Two Month Notice. To this end, the tenant testified that she sent the landlord \$1,065.78 via e-transfer on April 10, 2022. Tenant C.M. testified that she later learned that she had to pay an additional three days rent to account for email service so she sent the landlord the balance a few days later.

The landlord testified that the tenant has not paid any rent for April 1-21, 2022. The landlord is seeking \$1,243.38 for rent from April 1-21, 2022. The landlord testified that on April 5, 2022 she e-mailed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The 10 Day Notice was entered into evidence. Tenant C.M. testified she received the 10 Day Notice on April 4, 2022. The 10 Day Notice is dated April 4, 2022 and has an effective date of April 15, 2022. No proof of service documents were entered into evidence. The serving emails were not entered into evidence.

The landlord did not submit bank records showing payments received in April 2022.

Late payment of rent fees

The landlord testified that the tenant as late paying rent on nine occasions during the tenancy and is seeking \$25.00 for each late payment. The landlord did not enter into evidence a tenancy agreement.

Tenant C.M. testified that she didn't know that the landlord could charge late fees just because she wanted to.

Analysis

Damages

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 32(3) of the *Act* states:

A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Washer repair

I find that on the date of the repair as indicated on the invoice, the tenancy had been ongoing for just over one year. I find, on a balance of probabilities, that the materials which clogged the washing machine were those of the tenants. I find it unlikely that the clogging materials would not have caused an issue in the preceding year if they came from the previous tenants.

I find that the damage to the washing machine was caused by the inappropriate materials put in the washing machine by the tenants. I find that while this was

accidental, the tenants are still responsible for the cost to repair the washer as the damage arose out of neglect. I find that the landlord has proved that they suffered a loss as a result of the tenants' breach of the *Act* and have proved the value of that loss by way of the washing machine repair invoice. I find that no valid mitigation issues were raised in the hearing. Pursuant to section 32 and 67 of the *Act*, I award the landlord \$231.00.

Garburator repair

Based on the repair invoice and the testimony of both parties, I find that the tenants clogged the garburator with the items they put down it. I find that while this was accidental, the tenants are still responsible for the cost to repair the garburator as the damage arose from the tenants' actions. Pursuant to section 32 of the *Act*, I find that the tenants are responsible for the cost of the repair. I find that the landlord has proved that they suffered a loss as a result of the tenants' breach of the *Act* and have proved the value of that loss by way of the garburator repair invoice. I find that no valid mitigation issues were raised in the hearing. Pursuant to section 32 and 67 of the *Act*, I award the landlord \$340.00.

Rent from April 1-21, 2022

I find that the tenant was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the Two Month Notice on March 28, 2022 as receipt was acknowledged on that date. I accept tenant C.M.'s testimony that the effective date of the Two Month Notice was May 31, 2022.

I find that the tenants were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the 10 Day Notice on April 4, 2022 as receipt was acknowledged on that date.

Based on the testimony of the tenants, I find that the tenants did not pay the overdue rent for April 2022 within five days of receiving the 10 Day Notice and did not file to dispute the Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice, that being April 15, 2022. I find that this tenancy ended by way of the 10 Day Notice and not the Two Month Notice because the effective date of the 10 Day

Notice occurred before the effective date of the notice to end tenancy provided by the tenants to the landlord.

The landlord testified that the tenants did not pay any rent for April 2022. The landlord did not submit any documentary evidence such as bank records to show what deposits were, or were not made, into the landlord's account. Tenant C.M. testified that rent was paid in two installments, the first on April 10, 2022 and the remainder a few days later.

As stated earlier in this decision, when one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has not proved, on a balance of probabilities, that the tenants did not pay rent as the parties do not agree and the landlord did not supply any documentary evidence pertaining to the payment of April 2022's rent, such as a bank statement for the month of April 2022. I therefore dismiss the landlord's claim for unpaid rent without leave to reapply.

Late payment of rent fees

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

The landlord did not submit the tenancy agreement for consideration. I find that the landlord has not proved, on a balance of probabilities, that the tenancy agreement provides authorization for the landlord to charge a \$25.00 late fee. The landlord's claim for same is therefore dismissed without leave to reapply.

Security Deposit

Based on the testimony of both parties, I find that the landlord received the tenants' forwarding address in person on April 21st or April 22nd, 2022. The landlord filed this

application for dispute resolution on May 3, 2022, within 15 days of the landlord's receipt of the forwarding address in writing.

Section 38(1) of the *Act* states that 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.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

Over the period of this tenancy, as of January 12, 2022, the date of this hearing, \$1.12 is payable on the landlord's retention of the security and pet damage deposits.

Filing fee

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$671.00 from the tenants' security deposit. I Order the landlord to return the remaining \$204.00 of the security deposit to the tenants. I Order the landlord to return the pet damage deposit in the amount of \$875.00 to the tenants.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Security deposit	\$875.00
Pet damage deposit	\$875.00
Interest on deposits	\$1.12
Less filing fee	-\$100.00
Less washer repair fee	-\$231.00
Less garburator repair fee	-\$340.00
TOTAL	\$1,080.12

The tenants are provided with this Order in the above terms and 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 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 *Residential Tenancy Act*.

Dated: January 17, 2023

Residential Tenancy Branch