



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, MNDCT

Landlord: MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 17, 2022 (the "10 Day Notice") pursuant to section 46 of the Act; and
- a Monetary Order of \$8,777.91 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67 of the Act.

The Landlord applied for:

- a Monetary Order of \$1,775.00 for unpaid rent and/or utilities pursuant to sections 26 and 67 of the Act;
- a Monetary Order of \$1,748.57 for monetary loss or other money owed pursuant to section 67 of the Act;
- to keep the Tenant's security and/or pet damage deposit pursuant to section 72(2)(b) of the Act; and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72 of the Act.

The Landlord and the Tenant attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Materials

The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package, amendment application, and evidence in a USB stick (collectively, the "Tenant's Documents"). I find the Landlord was served with the Tenant's Documents in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package and documentary evidence (collectively, the "Landlord's Documents"). I find the Tenant was served with the Landlord's Documents in accordance with sections 88 and 89 of the Act.

Preliminary Matter – Tenancy Has Ended

The parties agreed that the Tenant moved out of the rental unit on August 31, 2022. Since the tenancy has already ended, I find the Tenant's claim to dispute the 10 Day Notice to be no longer applicable. Therefore, I dismiss this claim without leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to \$8,777.91 for monetary loss or other money owed?
2. Is the Landlord entitled to \$1,775.00 for unpaid rent or utilities?
3. Is the Landlord entitled to \$1,748.57 for monetary loss or other money owed?
4. Is the Landlord entitled to recover the filing fee and to keep the security deposit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on October 1, 2020 and was month-to-month at the time the tenancy ended on August 31, 2022. Rent was \$3,550.00 due on the first day of each month. The Tenant paid a security deposit of \$1,775.00.

The Landlord seeks compensation for the following:

Item	Amount
Loss of Rental Income (Half of September 2022)	\$1,775.00
Unpaid Water Bill (October 2021)	\$1,382.97
Estimated Water Bill (July and August 2022)	\$365.60
Filing Fee	\$100.00
Total	\$3,623.57

The Landlord testified that on August 15, 2022, he received an email from the Tenant requesting to vacate the rental unit in September 2022 and asking to use the security deposit to cover the remaining rent. The Landlord stated he informed the Tenant that the security deposit cannot be used for rent and that the Tenant did not give sufficient notice for vacating. The Landlord submitted copies of the parties' email correspondence into evidence.

The Landlord testified that the Tenant did not let him know she was leaving on August 31, 2022 until August 29, 2022, so he was unable to re-rent the rental unit until September 15, 2022. The Landlord testified that the new tenant pays \$3,850.00 per month.

The Landlord stated that when the Tenant moved out, the Tenant had left an unpaid balance of \$1,382.97 for water. The Landlord served the Tenant with the 10 Day Notice on August 17, 2022 for unpaid utilities. The Landlord stated that the Tenant did not pay for the July and August 2022 portion of the final water bill that was issued after the tenancy ended. The Landlord submitted calculations to explain the estimated cost of water for this period, which was \$365.60. The Landlord testified that the final bill for this period was a bit less at \$318.60, and he had sent a copy of the final bill to the Tenant.

The Landlord explained the background to the parties' dispute about the water bills. The Landlord confirmed that water is not included in the rent under the parties' tenancy agreement.

The Landlord testified that on June 5, 2021, the Tenant had texted him about a bathtub leak. The Landlord testified that he called a plumber who had the leak fixed by June 8, 2021. The Landlord testified that on August 20, 2021, there was a second leak, but this time with the cold water tap. The Landlord stated that the Tenant went away, and due to miscommunication, a key was not left for the plumber when he visited the rental unit on

August 27, 2021. The Landlord explained the plumber came back and fixed the leak on or around September 17, 2021. The Landlord referred to screenshots of his text message correspondence with the Tenant and the plumber.

The Landlord testified that later he noticed the water usage was higher than normal and that the Tenant had an unpaid water bill.

The Landlord testified that on March 23, 2022, he hired a plumbing company to check from the city line to the meter counter and inside the rental unit, and they did not find any leak, any issues underground, or any problems with the meter. The Landlord submitted a letter from the plumbing company dated September 8, 2022, which confirms that they had inspected the rental unit on March 23, 2022 and did not find any leaks underground or inside the rental unit. The Landlord stated that the city also checked the city line and did not find any issues. In addition, the Landlord testified that he sent a picture of the meter to the company who supplies meters to the municipality and was told the meter looks fine. The Landlord argued that if there was an underground leak, it would not have been resolved by itself.

The Landlord submitted that on May 4, 2022, he sent the Tenant an email about the overdue water bill and left a letter in the Tenant's mailbox, but did not receive a response. Copies of the email and letter have been submitted into evidence.

The Landlord submitted that the leaks in June and August 2021 did not have anything to do with the high consumption in October 2021. The Landlord submitted a screenshot of the meter readings into evidence, which showed that between September 27, 2021 and October 26, 2021, the water consumption was 155 cubic meters and was significantly higher than any other month in 2021 or 2022.

The Tenant claims compensation for the following:

Item	Amount
Security Deposit	\$1,725.00
New Floors	\$3,075.00
Security System	\$309.00
New Ticket Return	\$3,120.00
U-Haul	\$446.91
Gas	\$102.00
Total	\$8,777.91

The Tenant stated that there was a big underground leak which caused the large water usage in October 2021. The Tenant testified that she had been traveling when the leak in the rental unit occurred, and when she received the quarterly water bill, it was about three times the normal amount.

The Tenant testified that there was no sign of the leak when she came back, and water usage would have been minimal while she and her child were away. The Tenant stated that someone would come in to help the Tenant water her plants and feed her fish.

The Tenant stated that she called the city to ask about the large water usage and was told that it was most likely an underground leak, but the city could only take responsibility if it was a city pipeline. The Tenant stated that she asked the city to amend the bill.

The Tenant testified that one of the hot water gauges on the kitchen sink was loose and would drip constantly, but this was not a significant source of water consumption. The Tenant stated there were other leaks in the tenancy which were remedied very quickly.

The Tenant submitted that she asked the Landlord to split the water bill, as it is up to the owner to maintain the infrastructure of the property, but the Landlord refused. The Tenant stated she had paid \$600.00 towards the bill and had it amended. The Tenant stated that she put off paying the whole amount because it didn't seem fair. The Tenant stated that the property is old and things are falling apart.

The Tenant argued that she gave 30 days' notice even though it was on the wrong day. Tenant also argued that the 10 Day Notice "nullifies" the Tenant's notice. The Tenant stated that the 10 Day Notice was given in response to her notice and that it was a shock. The Tenant stated that she believed she had to comply with the 10 Day Notice and move out by August 31, 2022. The Tenant stated that she was coming back from out of country and had to have her belongings stored at a U-Haul facility while she looked for a new place. The Tenant stated that she did her best to be out by 1:00 pm on August 31, 2022 as the Landlord had requested. The Tenant submitted copies of U-Haul receipts and a screenshot of payment for an emergency flight to return home early.

The Tenant stated that she expected to get her security deposit back as she had only made improvements to the rental unit. The Tenant submitted a document dated September 2, 2022 which contains a request for the return of the security deposit.

The Tenant stated that previously she had thought she would be staying at the rental unit longer, so she had offered to have the floor replaced. The Tenant stated that the old shag carpets was affecting her child. The Tenant stated that since the tenancy ended aggressively and quickly, she would like to be compensated for the money that she put into the property. The Tenant submitted a flooring invoice dated October 15, 2020 into evidence.

The Tenant testified that in April 2022, there had been a traumatic break-in at the rental unit and the police were involved. The Tenant testified that she returned home to find the house completely upset and all precious belongings gone. The Tenant testified that she didn't feel secure and asked for the Landlord's help with security, but the Landlord didn't want to pay. The Tenant testified that she ended get purchasing a security system for which she is claiming the cost.

In response to the Tenant's claims, the Landlord stated that it was the Tenant's choice to change the flooring due to her child's allergies. The Landlord testified that it was the Tenant's choice, but the Landlord had also given the Tenant \$1,000.00 towards the expenses at the beginning of the tenancy out of good will.

The Landlord disagreed with the moving expenses claimed by the Tenant and argued that she would have to incur such expenses whenever she moved.

The Landlord disagreed with the security expenses. The Landlord stated that the neighbourhood is safe, but the Tenant was away for long periods and left the house unattended.

The Landlord denied that he was aggressive. The Landlord argued that the Tenant had wanted to move out due to changes in her circumstances.

Analysis

1. Is the Tenant entitled to \$8,777.91 for monetary loss or other money owed?

The Tenant claims (a) the return of the security deposit, and compensation for (b) flooring and the security system, as well as (c) costs for an earlier flight, U-Haul, and gas. I will discuss each of these items in turn.

a. Return of Security Deposit

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

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 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find it is unclear when the Tenant provided her forwarding address to the Landlord in writing, though I note the Landlord had sent documents for these proceedings to the Tenant's new address via registered mail. Nevertheless, records of the Residential Tenancy Branch indicate that the Landlord had submitted his application (which includes a claim to retain the security deposit) on September 8, 2022, less than 15 days after the tenancy ended on August 31, 2022.

Therefore, I conclude the Landlord did comply with section 38(1) of the Act, and the Tenant is not entitled to an automatic return of double the security deposit under section 38(6) of the Act.

I find the Landlord does not seek compensation for any damage to the rental unit but has applied to keep the security deposit for loss of rental income and unpaid utilities. As such, I do not find it necessary to discuss the extinguishment rules under sections 24(2) and 36(2) of the Act. I note a landlord who has lost the right to claim against the security deposit for damage to the rental unit still retains the rights to file a claim against the

deposit for any monies owing other than for damage to the rental unit (see Residential Tenancy Policy Guideline 17. Security Deposit and Set Off).

I also find there is no evidence to suggest that the Landlord had issued a final opportunity for inspection in the approved form such that the Tenant's right to the security deposit would have been extinguished under sections 24(1) or 36(1) of the Act, as well as section 17 of the regulations.

Therefore, to determine which party is entitled to keep all or a portion of the security deposit, I find it is necessary adjudicate the Landlord's claims first, which will be addressed further below.

b. Flooring and Security System

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 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.

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the evidence presented, I find the Landlord gave the Tenant permission to replace flooring in the rental unit and to install a security system, but the Landlord did not agree to pay for the costs of these alterations. I find the Tenant was aware the Landlord did not agree to pay but decided to go ahead with these improvements anyway. Furthermore, I find there is insufficient evidence that these improvements would have been required under Act, such as under the Landlord's obligation to maintain and repair the rental unit, or under any term of the parties' tenancy agreement.

I conclude the flooring and security system costs incurred by the Tenant did not result from any failure by the Landlord to comply with the Act, the regulation, or any agreement between the parties. Therefore, the Tenant is not entitled to compensation under section 67 of the Act, regardless of whether such improvements would have added value to the Landlord's property. The Tenant's claims for flooring and security system expenses are dismissed without leave to re-apply.

c. Flight, U-Haul, and Gas

I find the Tenant incurred expenses relating to a new flight and moving expenses after receiving the 10 Day Notice and accepting that she had to move out by August 31, 2022. However, a landlord is entitled to issue notices to end the tenancy under the Act, provided that such actions do not become unreasonable or vexatious. I do not find the Landlord to have failed to comply with the Act, the regulation, or tenancy agreement by issuing the 10 Day Notice. I note that since the Tenant had applied to dispute the 10 Day Notice, the Tenant was not required to vacate the rental unit on August 31, 2022. Based on the foregoing, I do not find the Tenant's flight and moving expenses to have resulted from any failure by the Landlord to comply with the Act, the regulation, or tenancy agreement, such that the Tenant would be entitled to compensation under section 67 of the Act. The Tenant's claims under this part are dismissed without leave to re-apply.

2. Is the Landlord entitled to \$1,775.00 for unpaid rent or utilities?

I find the Landlord is claiming \$1,775.00 in lost rental income for September 2022, rather than for unpaid rent, as it is not disputed that the tenancy ended on August 31, 2022. Under Rule 4.2 of the Rules of Procedure, an application may be amended at the

hearing in circumstances that can reasonably be anticipated. I find this amendment can reasonably be anticipated, and I allow the Landlord to amend his claim for unpaid rent to a claim for lost rental income.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent ("Policy Guideline 3") states:

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 the tenancy.

[...]

If instead of a fixed term tenancy, the example involved a month-to-month tenancy, the landlord who issued the notice to end tenancy for non-payment of rent could recover any loss of rent suffered for the next month. That is because a notice given by the tenant midmonth would not end the tenancy until the end of the subsequent month.

Under section 45(1) of the Act, a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, without the landlord's consent, a tenant cannot end a periodic tenancy on a date that is not the day before rent is due, without a minimum of a clear month's notice (not 30 days). I have found that this tenancy was month-to-month and rent was due on the first day of each month. Therefore, if the Tenant was giving notice to end the tenancy any time between August 1, 2022 and August 31, 2022 inclusive, the earliest date that the Tenant could have ended the tenancy under section 45(1) of the Act was September 30, 2022.

Furthermore, as noted Policy Guideline 3 above, a landlord who issues a notice to end tenancy for non-payment of rent could recover any loss of rent suffered for the next month, because a notice given by the tenant midmonth would not end the tenancy until the end of the subsequent month.

Therefore, I find that regardless of whether this tenancy was ended by the Tenant's notice in August 2022 or under the 10 Day Notice, the Tenant is liable to the Landlord for the loss of rent suffered in September 2022.

I find the Landlord reasonably mitigated his damages and found a new tenant to start September 15, 2022. I find the Landlord received partial rent of \$1,925.00 ($\$3,850 / 2$) for the month of September 2022. I find the loss suffered by the Landlord to be \$1,625.00, which is what he would have received from the Tenant for September 2022 rent (\$3,550.00) less what the Landlord actually received for that month (\$1,925.00), or $\$3,550.00 - \$1,925.00 = \$1,625.00$. As noted above in Policy Guideline 3, compensation is to put the landlord in the same position as if the tenant had complied with the legislation and the tenancy agreement. I further note that according to Policy Guideline 3, the fact that the Landlord is receiving more rent for October 2022 and onwards does not relieve the Tenant's liability for September 2022.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$1,625.00 for loss of rental income in September 2022.

3. Is the Landlord entitled to \$1,748.57 for monetary loss or other money owed?

I have reviewed the tenancy agreement and find that while water is not included in the monthly rent, the tenancy agreement does not contain any express terms about how utilities would be paid. I find the Tenant did pay most of the water bills during the tenancy. Based on the parties' conduct, I find it was an implied term of the tenancy agreement that the Tenant would pay the city for the water consumed by the Tenant during the tenancy. However, I find the evidence is unclear as to whether the high water usage recorded in October 2021 was due to the Tenant's consumption or a leak in the rental unit.

I note the Landlord's testimony is that the leak which started on August 20, 2021 was fixed by September 17, 2021. However, I have reviewed text message screenshots submitted by the Landlord and find that the text messages stop at September 16, 2021. I find the Landlord did not provide evidence to show that his plumber had completed the

repairs by September 17, 2021. I find the state of the leak to be unclear between September 17, 2021 and October 26, 2021, the reading end date for October 2021. I find that even by the Landlord's own account, the leak would have been ongoing for around 28 days. Furthermore, I have reviewed the meter readings submitted by the Landlord and find that October 2021 had the highest reading from 2021 to 2022 at 155 cubic meters of water consumed, and September 2021 had the second highest reading at 63 cubic meters. I find the October 2021 consumption to be around ten times the consumption of many other months during these two years.

I accept that by the time the Landlord hired a plumbing company to do an inspection in March 2022, there were no leaks in the rental unit or underground.

Under these circumstances, I find it is equally possible that the additional usage recorded in the October 2021 reading was mostly caused by or related to the bathtub leak reported on August 20, 2021, rather than by the Tenant's consumption. I accept the Tenant's evidence that she had contacted the city to amend the water bill for this period and had already paid \$600.00 towards it.

Based on the foregoing, I find the Landlord has not proven that he is entitled to recover \$1,382.97 from the Tenant, as I am unable to conclude that such damages resulted from a failure by the Tenant to comply with this Act, the regulations or the tenancy agreement as required under section 67 of the Act.

I find the Tenant does not argue that the unpaid water charges for July and August 2022 were not due to her consumption. I find the Tenant would be required to pay for such charges under an implied term of the parties' tenancy agreement. I accept the Landlord's evidence that the unpaid amount for this period was \$318.60, which is a bit lower than the estimate he had previously submitted. Therefore, pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$318.60 for unpaid July and August 2022 water bills.

4. Is the Landlord entitled to recover the filing fee and to keep the security deposit?

The Landlord has been partially successful in his application. I award the Landlord reimbursement of his filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the security deposit in partial satisfaction of the total amount awarded to the Landlord.

Pursuant to sections 67 and 72 of the Act, I grant a Monetary Order to the Landlord for the balance calculated as follows:

Item	Amount
Loss of Rental Income in September 2022	\$1,625.00
Unpaid Water Bill (July and August 2022)	\$318.60
Filing Fee	\$100.00
Subtotal	\$2,043.60
Less Security Deposit	- \$1,775.00
Total Monetary Order for Landlord	\$268.60

Conclusion

The Tenant's application is dismissed its in entirety without leave to re-apply.

The Landlord is entitled to compensation of \$2,043.60 from the Tenant. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the **\$1,775.00** security deposit in partial satisfaction of the total amount awarded to the Landlord in this decision.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of **\$268.60** for the balance. This Order may be served on the Tenant, filed in the Provincial Court of British Columbia, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 09, 2023

Residential Tenancy Branch