



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNDL-S, MNDCL-S, FFL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The landlord SA attended for both landlords and was accompanied by counsel JG ("the landlord"). The tenant attended.

Both parties were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The parties are referenced in the singular.

The parties stated they were not recording the hearing.

The parties provided their email address for delivery of the Decision.

### *Service*

The tenant acknowledged service of the landlord's Notice of Hearing and Application for Dispute Resolution.

The tenant acknowledged they did not service the landlord with their documentary evidence. Accordingly, I will not consider the tenant's submitted evidence.

### *Settlement Discussions*

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The Arbitrator assisted the parties in efforts to settle the matter. Settlement discussions were unsuccessful, and the hearing continued.

### Issue(s) to be Decided

Is the landlord entitled to the relief requested?

### Background and Evidence

The parties submitted a copy of the tenancy agreement and agreed on the background of the tenancy:

INFORMATION	DETAILS
Type of Tenancy	Fixed term then month-to-month
Beginning Date	October 1, 2017

Fixed Term End Date	September 30, 2018
Vacancy Date	June 1, 2022
Rent payable on first of month	\$3,624.40
Security deposit	\$1,700.00
Pet deposit	\$1,700.00
Arrears of Rent	no

An incomplete condition inspection report on move in and move out was completed.

The landlord claimed:

1. Compensation for lawn damage
2. Compensation for utility bills

Each claim is addressed.

*1. Compensation for lawn damage*

The landlord stated the tenant had an above-ground pool at the unit without the landlord's consent which damaged the lawn. The landlord submitted pictures of the pool, a tarp covering the ground when the pool was removed, and the bare ground with sparse grass.

The landlord submitted copies of the following invoices and testified the costs related to repairing the damage to the lawn from the swimming pool.

ITEM	AMOUNT
June 4, 2022, Lawn services	\$975.00
June 13, 2022 Yard work	\$1,139.25
June 26, 2022 yard work	\$882.00
October 16, 2022 yard work	\$367.50
<b>TOTAL</b>	<b>\$3,363.75</b>

The June 4, 2022 Invoice lists 25 hours of labour at \$35.00 an hour plus the following (\$130.00) for a total of \$975.00:

ITEM – JUNE 4, 2022, INVOICE	AMOUNT
Seeding and cultivating soil – 2 hours	\$70.00
1 bag seed + mulch	\$30.00
Material for seeding	\$30.00
<b>TOTAL</b>	<b>\$130.00</b>

The remaining three invoices refer only to “yard work”.

The tenant testified that they had a pool on the lawn each year. When it was removed, they scattered some grass seed and the lawn naturally recovered without further expense. Expenses were routinely around \$100.00.

The tenant asserted that a small amount of the total of the invoices submitted by the landlord related to lawn repair after the removal of the swimming pool. She agreed the above table reflected the probable cost to the landlord. The remainder of the cost related to other garden and yard work.

The landlord claimed the tenant is responsible for half the yard work. However, the tenant stated the landlord was responsible.

The landlord submitted a copy of an undated text from the landlord to the tenant as follows:

This is to inform you that I will come to [unit] on Thursday March 10/22 at 11:30 am to check the lawn condition. This is for starting the lawn care services for this year.

## *2. Compensation for utility bills*

The landlord submitted copies of all disputed utility bills from 2019 to 2022 and provided a handwritten summary of the utilities claimed owing:

ITEM	AMOUNT
2019	\$663.29
2020	\$1,459.91
2021	\$1,118.37
2022	\$972.78
2022	\$2,870.20
<b>TOTAL</b>	<b>\$7,084.55</b>

The landlord stated the outstanding invoices were transferred annually to the property tax account by the municipality. The landlord explained she was unaware of the tenant's failure to pay the utilities because the amounts were rolled into taxes which she did not notice. The landlord stated she never saw the utility bills because they went to the unit. The tenant was supposed to pay the bills.

The tenant denied the landlord is entitled to any compensation for utilities. They acknowledged the tenancy agreement required the tenant to pay utilities.

However, after the fixed term expired, the tenant testified the parties verbally agreed the landlord would pay the utilities and the rent would be increased by \$200.00. Nothing was written down.

After the verbal agreement, the utilities were transferred to the landlord's name and came to the unit by mail addressed to the landlord. The tenant paid the rent increase and stopped paying utilities.

The tenant testified they periodically informed the landlord they had mail. The landlord would come by and get their mail out of the mailbox. The tenant said she never saw a single utility bill from 2019 until the end of the tenancy in 2022. The tenant said they were unaware the landlord wanted reimbursement of the utilities until the Application for Dispute Resolution was filed.

#### *Security deposit*

The parties agreed the landlord is holding the pet and security deposit in the total amount of \$3,400.00 ("the security deposit").

The parties agreed the tenant provided her forwarding address in writing to the landlord and the landlord brought this Application for Dispute Resolution within 15 days.

The landlord continues to hold the security deposit. The tenant has not provided authorization to the landlord to retain the security deposit.

### *Filing fee*

The landlord requested \$100.00 for the reimbursement of the filing fee.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. Only relevant, admissible evidence is considered. The principal aspects of the claim and my findings around each are set out below.

### *Standard of Proof*

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

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the tenant) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (landlord) proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

. . .

67 Without limiting the general authority in section 62 (3) [ . . . ] 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.

Each of the above four tests are considered in my findings.

### *Credibility*

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth.

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I have carefully reviewed the evidence. I find the tenant provided the most credible testimony and I base my findings on her version of events.

I find the landlord's testimony to be overstated, untrustworthy and untrue.

For example, the landlord claimed she did not know the tenant had stopped paying utility bills from 2019 to 2022. Yet the invoices were addressed to the landlord (as apparent from the copies submitted by the landlord). I accept the tenant's testimony and find the landlord picked up her mail from time to time at the unit. The landlord had access to the unit's account with the municipality and knew, or should have known, the utilities were unpaid and rolled into the annual property taxes. The landlord claimed that when the tenant moved out, she suddenly discovered the tenant was reneging on the obligation to pay the utility bills. I find her explanation to strain credulity and common sense. The landlord has not provided a credible explanation for failing to demand payment beginning in 2019.

The tenant testified to a verbal agreement in 2019 between the parties raising the rent in return for the landlord paying the utilities. I find the tenant's version of events to be in keeping with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I believe the landlord is seeking at this late date to claim repayment for utilities which she agreed to pay in 2019 and were her obligation from then to the end of the tenancy.

For these reasons, I prefer the tenant's evidence to the landlord's account of events. Therefore, I do not give the landlord's testimony much weight. Where the parties' evidence differs, I give greater weight to the tenant's version of events.

#### *1. Compensation for lawn damage*

The tenant acknowledged the annual above ground swimming pool damaged the grass underneath. She testified she scattered grass seed and the grass quickly completely recovered. When she left the unit, the lawn had not fully recovered although she expected it would in time as it had every year in the past.

I accept the tenant's explanation for the annual effort to grow grass when the pool was removed. I accept that there was a small expenditure of seed and effort.

I find the landlord's claims of lawn costs for the damaged lawn to be unlikely given my assessment of the landlord's credibility and the photographs showing a small damaged area.



In consideration of the evidence, I find it is likely the landlord incurred the following costs excerpted from the June 4, 2022 invoice:

<b>ITEM – JUNE 4, 2022 INVOICE</b>	<b>AMOUNT</b>
Seeding and cultivating soil – 2 hours	\$70.00
1 bag seed + mulch	\$30.00
Material for seeding	\$30.00
<b>TOTAL</b>	<b>\$130.00</b>

In summary, I find the landlord has established the first two parts of the 4-part test. That is, the tenant caused damage to the lawn with the above ground swimming pool for which she did not have consent.

However, I find the landlord's claim for damages of \$3,363.75 to repair the lawn is questionable. I find the invoices likely include yard work unrelated to any grass damaged by the swimming pool. I find the landlord is attempting to recover from the tenant other yard maintenance costs for which the tenant has no responsibility. I find the landlord was responsible for yard work including lawn maintenance and I reject her contention that the tenant was responsible for half the work or bears any responsibility for anything other than \$130.00 of the amount claimed under this heading.

I find the landlord has not met the burden of proof with respect to the amount claimed. I also find the landlord has failed to show they have done whatever is necessary to minimize the damage.

For these reasons, I find the landlord incurred an expense of \$130.00. I grant the landlord an award in this amount and dismiss the remainder of the claim under this heading without leave to reapply.

## *2. Compensation for utility bills*

For the reasons stated, I find the landlord has not met the burden of proof with respect to this claim. I accept the tenant's credible testimony that, after the fixed term expired, the parties verbally agreed the landlord would pay the utilities and the rent would be increased by \$200.00. Although nothing was written, I find the landlord's actions lend support to the tenant's assertions. For example, the bills were addressed only to the landlord. Although delivered to the unit, I accept the tenant's testimony she did not open the landlord's mail. Instead, she called the landlord who collected the mail. I find the

parties had an agreement relied upon by the tenant. They paid the rent increase and stopped paying utilities for the last 3 years of the tenancy.

I accept the tenant's testimony that she never saw a utility bill from 2019 until the end of the tenancy in 2022. Before 2019, she paid the utilities as agreed.

I find the landlord has failed to meet the first of the 4-part tests. That is, the landlord has not met the burden of proof that the tenant failed to comply with the Act, regulations, or the tenancy agreement. I find that from 2019 until the end of the tenancy, the landlord had the obligation to pay the utilities in return for increased rent. I find the parties altered the terms of the written tenancy agreement by a verbal agreement upon which the tenant relied. The circumstances support the tenant's version of events. The landlord cannot now claim there was no such agreement.

I therefore dismiss this aspect of the tenant's application without leave to reapply.

#### *Filing fee*

As the tenant has been largely unsuccessful in their application, I do not award reimbursement of the filing fee.

#### *Security Deposit and Award*

I grant the landlord an award of \$130.00 which may be satisfied by the security deposit in trust. The balance of the security deposit is to be returned to the tenant and I grant the tenant a Monetary Order in this amount:

ITEM	AMOUNT
Security deposit	\$3,400.00
(Less Award)	(\$130.00)
<b>TOTAL</b>	<b>\$3,270.00</b>

I grant the tenant a Monetary Order in the amount of **\$3,270.00**.

Conclusion

I grant the tenant a Monetary Order in the amount of **\$3,270.00**.

This Monetary Order must be served on the landlord. The Order may be filed and enforced in the Courts of the Province of BC.

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 23, 2023

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Residential Tenancy Branch