



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR, FFT**
 MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

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

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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 hearing process was explained, and an opportunity was given to ask questions. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence.

No issues were raised regarding service. I find each party served the other in compliance with the Act.

Neither party made any adjournment or accommodation requests.

The tenants are referenced in the singular.

1. Preliminary Issue: Conduct of the Landlord during the Hearing

Rule 6.10 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* states:

6.10 Interruptions and inappropriate behavior at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

At the outset, I explained to the parties that the hearing was scheduled for one hour. I explained the procedure and requested cooperation so the hearing could be completed in this time.

Throughout the hearing, the landlord interrupted and argued with me. I warned the landlord not to behave in this manner. When my warning had no effect, I read Rule 6.10 (above) to the landlord. I informed her that I would mute her connection unless she allowed me to conduct the hearing without interruption.

The landlord repeated some of the same information several times, although I asked her not to.

The landlord refused to acknowledge she sent correspondence which was submitted as evidence by the tenants.

The hearing took longer at 75 minutes because of the landlord's behavior.

2. Preliminary Issue: Settlement Discussions

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.

I explained the hearing and settlement processes more than once, and the potential outcomes and consequences, to both parties. Both parties asked questions, which I answered.

I informed the parties that I make my Decision after the hearing and not during the hearing.

I assisted the parties in efforts to settle the matter.

Settlement discussions were unsuccessful, and the hearing continued to conclusion.

Issue(s) to be Decided.

Is the landlord entitled to a monetary award?

Is the tenant entitled to return of the deposits?

Is either party entitled to reimbursement of the filing fee?

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 this application and my findings are set out below.

Tenancy

A copy of the tenancy agreement was submitted. The parties agreed on the following background of the tenancy:

INFORMATION	DETAILS
Type of Tenancy	Fixed term
Beginning Date	September 1, 2021
Fixed Term End Date	August 31, 2022
Vacancy Date	June 30, 2022
Rent payable on first of month	\$5,000.00 + utilities
Security deposit	\$2,500.00
Pet deposit	\$2,500.00
Arrears of Rent	none

The parties agreed a condition inspection report was not conducted on moving in.

The parties agreed an inspection on moving out was conducted. However, the condition inspection report submitted by the tenant is completed in the first column (for moving in) and not in the second column (for moving out. The tenant's signature does not appear on the document. Also, only the landlord signed the condition inspection report on moving out as indicated as follows:

1. (tenant's name)				
<input checked="" type="checkbox"/> Agree that this report fairly represents the condition of the rental unit <input type="checkbox"/> Do not agree that this report fairly represents the condition of the rental unit for the following reasons:				
2. I, (tenant's name) agree to the following deductions from my security and/or pet damage deposit:				
Security Deposit:		Pet Damage Deposit:		
Date: DD/MM/YYYY		Signature of Tenant:		
3. Landlord's signature (on move-in)		Landlord's signature (on move-out)		
4. Tenant's signature (on move-in)		Tenant's signature (on move-out)		
5. Tenant's forwarding address:				
site/unit #	street # and name	city	province	postal code
Email address for service:				
6. Landlord's name and address at the end of the tenancy:				
first and middle name		last name		
JAN M. NESBITT		NESBITT		
site/unit #	street # and name	city	province	postal code
	3552 KELSEY PLACE	VICTORIA	BC	V8P 4X9 JUN

The parties agreed that there was no final written agreement between the parties about the landlord keeping some or all of the security or pet damage deposits.

The parties agreed the landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The tenant testified they provided their forwarding address in the communication of June 6, 2022, a copy of which was submitted. The

landlord argued the name of the municipality was omitted. The tenant stated they were moving within the same municipality as the location of the unit and the information provided, which contained a street address and postal code, impliedly named the city.

Landlord's Claims

The landlord clarified her claims at the hearing:

	ITEM	AMOUNT
1.	Outstanding rent – July and August 2022 – breach of fixed term	\$10,000.00
2.	Outstanding Utilities	\$151.92
3.	Fee for resetting a system password at the unit	\$89.69
4.	Administration expenses: Ferry receipts, mileage, time	\$1018.20
5.	Filing fee	100.00
	TOTAL CLAIMED BY LANDLORD	\$11,359.81

Each of the landlord's claims are addressed.

1. Landlord's Claim - Outstanding Rent

The parties agreed the tenant moved out two months before the end of the 1-year fixed term agreement.

The landlord denied receiving notice from the tenant they planned to move out. The landlord denied she agreed to the tenant's request that they move out early, on June 30, 2022.

The landlord stated she learned the day of the scheduled condition inspection on moving out, June 30, 2022, that the tenant was moving that day. She repeatedly claimed she had not received "legal notice" the tenant was leaving.

The landlord stated she made no effort to find another occupant while the tenant was in the unit and that she listed the unit for sale shortly after the tenant vacated.

The parties agreed that no condition inspection was conducted on moving in and one was conducted on moving out although the form was not signed by the tenant. They agreed there was no damage to the unit.

The landlord acknowledged receipt of the tenant's forwarding address on the last day of the tenancy.

Tenant's Response

The tenant testified as follows.

The parties communicated in person and in writing by text or email.

The tenant acknowledged they moved out two months before the end of the fixed term. They reported the beginning of concern about the landlord when they discovered she advertised the unit under an assumed name.

Disagreements arose between the parties. On April 6, 2022, the tenant wrote the landlord suggesting they move out on June 30, 2022. A copy was submitted as evidence.

The landlord accepted the move out date. The tenant submitted as evidence a copy of a text from the landlord dated April 6, 2022, stating:

Thanks, [name of tenant]

I appreciate the opportunity to discuss this with you.

As you indicated yesterday that your living arrangements plans had changed, I am happy to terminate the lease in the spirit of cooperation. I have enjoyed having you as tenants and wish you both all the best.

Warm regards

[landlord's first name]

The tenant sent the landlord an email dated April 26, 2022 confirming they were moving out on June 30, 2022 and scheduling the condition inspection for that day. The tenant submitted a copy of a text from the landlord dated April 26, 2022 which stated:

Hi [name of tenant]

I would like to work on the yard on Thursday this week.

Also, if you are still wanting to change the dates for your tenancy can you please complete the required form and send me a copy to sign. **You can also leave it for me in the mailbox this week if that is easier.**

(Emphasis added)

The tenant completed the Notice and put it in the mailbox.

The landlord denied ever receiving the notice or instructing delivery in that manner.

Another notice was sent by the tenant to the landlord by text and also by registered mail on June 6, 2022. The tenant submitted receipts for the registered mail, one for each tenant, which contain the tracking numbers. The document sets the inspection for noon on June 30, 2022 and the tenant provide a forwarding address which is missing a municipality name.

The landlord denied receipt of either.

The tenant stated they first learned the landlord wanted rent for July and August 2022 when they were moving out.

Landlord's Reply

The landlord denied she ever agreed the tenant could move out early. She denied sending the above text dated April 6, 2022 agreeing they could move out on June 30, 2022, two months before the end of the fixed term.

The landlord stated she never intended to give up the right to receive rent for the two final months of the fixed term, that is, July and August 2022 and she always made this clear to the tenant. She asserted the tenant must pay her rent for these two months.

I now turn to the remainder of the landlord's claims.

2. Landlord's Claim – Utilities

The landlord claimed the tenant left the unit owing \$151.92 for city utilities.

The tenant submitted as evidence of payment, a signed and dated invoice with acknowledgment of receipt in full from the city.

The tenant requested dismissal of the claim.

3. Landlord's Claim – Resetting Password

The landlord testified there was a password on one of the unit's services which the tenant reset and refused to provide to the landlord. She incurred an expense of \$89.69 to have the password reset.

The tenant testified that had no knowledge of any such password and they did not change it. They requested the landlord's claim be dismissed.

4. *Administrative Expenses*

The landlord claimed that because of the tenant's actions, she incurred travel and time expenses of \$1018.20.

The tenant denied the landlord is entitled to compensation in this amount and requested the claim be dismissed.

Analysis

I have turned my mind to all the documentary evidence and the testimony of the parties. Not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Credibility

Given the conflicting testimony, I have considered the issue 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. The tenant has provided credible testimony. Their evidence was straightforward and matter of fact and supported in all aspects by documentary evidence.

I find their testimony to be most in 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.

In short, I find the tenant's version of events is believable and their testimony is in harmony with the submitted evidence.

I find the landlord's submissions not to be persuasive or credible. I find disputed events to which the tenant testified clearly occurred although the landlord expressed no recollection. I found the landlord evasive and argumentative.

For these reasons, I prefer the tenant's testimony. Where the parties' testimony conflicts, I give greater weight to the tenant's evidence and version of events.

Burden 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.

Four-Part Test

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 other party 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 claiming party proven the amount or value of their damage or loss?

4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The above-noted criteria are based on sections 7 and 67 of the Act. Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

These sections state as following:

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.

The claims are discussed in turn:

1. *Landlord's Claim - Outstanding Rent*
2. *Landlord's Claim – Utilities*
3. *Landlord's Claim – Resetting Password*
4. *Administrative Expenses*
5. *Tenant's claims – refund of deposits*

1. *Landlord's Claim - Outstanding Rent*

In this dispute, the tenancy was a fixed term tenancy. The tenant ended the tenancy on a date that was earlier than the date specified in the tenancy agreement.

I accept the tenant's credible evidence and find the landlord consented to a change in the end of the fixed term by text dated April 6, 2022. I find this was a change to the tenancy agreement to which both parties freely consented.

I therefore find the tenant did not breach the tenancy agreement which was modified by consent of the parties.

I do not believe the landlord that she did not send the April 6, 2022 text agreeing the tenant could move out early on June 30, 2022. I do not accept the landlord's evidence that she did not receive the subsequent written notices as she testified.

Accordingly, I find the landlord has not met the burden of proof with respect to the first part of the 4-part test. I find the tenant has not breached the agreement or the Act.

I dismiss this claim without leave to reapply.

2. *Landlord's Claim – Utilities*

I accept the tenant's testimony as supported by documentary evidence, that is, the acknowledgment of receipt of payment by the City. I find the tenant paid the

utility bill owing to the end of the tenancy and the amount claimed by the landlord is not owing by the tenant.

Accordingly, I find the landlord has not met the burden of proof with respect to the first part of the 4-part test, that is, that the tenant failed to comply with the Act, regulations, or the tenancy agreement.

I dismiss this claim without leave to reapply.

3. Landlord's Claim – Resetting Password

I accept the tenant's testimony that they are not responsible for changing the password as claimed by the landlord. I do not accept the landlord's evidence and find she has not met the burden of proof that the tenant changed the password.

Accordingly, I find the landlord has not met the burden of proof with respect to the first part of the 4-part test, that is, that the tenant failed to comply with the Act, regulations, or the tenancy agreement.

I dismiss this claim without leave to reapply.

4. Administrative Expenses

The tenant did not breach the tenancy agreement.

I find the landlord has not met the burden of proof with respect to the first step of the 4-part test. I find the landlord is not entitled to the claimed expenses under this heading.

The landlord's claim is dismissed without leave to reapply.

5. Tenant's Claim: Deposits

The parties agreed the landlord holds the tenant's security deposit and pet deposit each in the amount of \$2,500.00.

Based on the tenant's credible evidence, I find the tenant provided their forwarding address in the submitted letter to the landlord dated June 6, 2022.

The parties agreed there was no damage to the unit on moving out.

Section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Pursuant to section 38(1) of the *Act*, the landlord had 15 days from the later of the end of the tenancy or the date the landlord received the tenant's forwarding address in writing to repay the security and pet damage deposits or file a claim against them. The landlord's application was filed on July 4, 2022. I find the landlord complied with section 38(1) of the *Act* in relation to timing.

Policy Guideline 31 addresses pet damage deposits and states:

The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet**. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing.
(Emphasis added)

The landlord did not seek compensation for pet related damage in the Application.

As the landlord was not entitled to keep or claim against the pet damage deposit, the landlord was required to return the pet damage deposit within 15 days of the later of the end of the tenancy or the date the landlord received the tenant's forwarding address in writing pursuant to section 38(1) of the *Act*.

The landlord had not returned the pet damage deposit by the date of the hearing, and therefore did not comply with section 38(1) of the *Act* in relation to the pet damage deposit. Given this, and pursuant to section 38(6) of the *Act*, the landlord cannot claim against the pet damage deposit and must return double the pet damage deposit to the tenant. The landlord therefore must return \$5,000.00 to the tenant.

As the landlord's claim has been dismissed, the landlord must return the security deposit to the tenant. I award the tenant reimbursement of the security deposit in the amount of \$2,500.00.

Filing fee

As the tenant has been successful in this matter, I award the tenant reimbursement of the filing fee of \$100.00.

Summary of Award

Further to the above, I award the tenant a Monetary Order of **\$7,600.00** **calculated** as follows:

ITEM	AMOUNT
Security deposit	\$2,500.00
Pet deposit	\$5,000.00
Filing fee	\$100.00
TOTAL Monetary Order	\$7,600.00

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant is granted a Monetary Order in the amount of **\$7,600.00**. This Order must be served on the landlord. The Monetary 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: March 28, 2023

Residential Tenancy Branch