



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNSD, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent and utilities, pursuant to section 26;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant submitted a direct request application for an order for the landlord to return the security deposit and for the return of the filing fee, pursuant to sections 38 and 72 of the Act. The Residential Tenancy Branch (RTB) has not rendered a decision on the tenant's application.

I find both matters are related and must be heard together. Pursuant to Rule of Procedure 2.14 I crossed the tenant's and the landlord's applications.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials) for both applications. Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent and utilities?
2. an authorization to retain the deposit?

3. an authorization to recover the filing fee?

Is the tenant entitled to:

1. an order for the return of the deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on October 01, 2022 and ended on January 25, 2023 by mutual agreement. Monthly rent of \$2,000.00 was due on the first day of the month in October, November and December 2022 and \$1,900.00 on January 01, 2023. The landlord collected and holds in trust the \$1,000.00 deposit. The tenancy agreement was submitted into evidence. It states the only tenant is GS and that electricity and internet are not included in the rent payment.

Both parties also agreed the tenant did not authorize the landlord to retain the deposit. The landlord received the forwarding address in writing on January 25, 2023 and submitted her application on May 07, 2023.

The rental property contains a 3-bedroom upper suite, a 1-bedroom lower suite and the tiny suite. The landlord lived in the upper suite and the tenant lived in the tiny suite (hereinafter, the rental unit).

The parties did not submit a move in inspection report. The parties submitted 86 pages of text messages and 72 pages of emails. The tenant's application states: "landlord failed to do a move in inspection."

The landlord is seeking unpaid rent for January 2023 in the amount of \$1,900.00. The tenant affirmed she did not pay this amount because the landlord did not complete the shower and floor repairs (hereinafter, the repairs) until the end of the tenancy.

Both parties agreed the landlord started the repairs on December 17, 2022. The landlord stated that she could not complete repairs until the end of the tenancy because the tenant did not allow the contractors to access the rental unit.

The parties texted about the repairs throughout December 2022 and January 2023.

The landlord offered the tenant free rent on December 21, 2022 because the rental unit was undergoing repairs:

I have agreed to not end the agreement at this time and still offer the property to you to rent, as long as you are compliant and accommodating in allowing the necessary work to be completed. During this period (starting Dec,17th) of the flooring and shower being replaced and the mould being treated, you will not be charged rent, the amount of which will be prorated from your rent of \$1900 due Jan 1, 2023

The parties later agreed on the payment of rent on December 27, 2022:

Landlord: If you are going to argue that the space is liveable then I will be providing no discounts and you will be expected to pay full rent and bills for the entirety of your stay.

Tenant: I will always pay my rent on time. The space is not unliveable. However many things stated in our lease are not being met. We can go to arbitration and they will sort it all out.

Landlord: Ok [tenant]. If you're happy to continue the lease agreement and pay full rent while we wait for the shower to be repaired, then we don't need to end the tenancy, but that is your decision that the space is liveable without a shower for a period of time. I believe a discount should be applied, but there is nothing explicitly written in the tenancy act and so I will need to speak to the tenancy board tomorrow.

Tenant: That's fine, we will leave it to the tenancy board :)

The landlord is seeking the payment of utilities, as stated in the monetary order worksheet:

1. Hydro Bill December (shared between 4). Tenant owes $\frac{1}{4}$ of total \$304.12
2. Hydro Bill January (shared between 4). Tenant owes $\frac{1}{4}$ of total \$404.81
3. Telus Bills December (shared between 4). Tenant owes $\frac{1}{4}$ of total \$27.72
4. Telus Bills January (shared between 4). Tenant owes $\frac{1}{4}$ of total \$27.72

The landlord testified the total amounts in the monetary order worksheet are the amounts owned by the tenant.

The landlord submitted two electricity bills into evidence:

- BC Hydro, \$1,216.48, for consumption from October 20 to December 16, 2022.
Per day cost of \$20.97 (total amount divided by 58 days)

- BC Hydro, \$1,619.24, for consumption from December 17, 2022 to February 15, 2023. Per day cost of \$26.54 (total amount divided by 61 days)

The landlord informed the tenant on September 18, 2022 about the payment of utilities and the number of occupants in the rental unit: "Price \$2,000.00 per month + hydro and wifi (split between all tenants in the house on property, so very affordable)".

The parties texted on November 14, 2022 about the internet payment:

Landlord: Just wanted to run internet by you. I've just used my data when I've stayed out there because the house's wifi doesn't quite reach. I was planning to extend it, but it doesn't give a very strong connection that way. I have the following two options, let me know which works best. **The best solution for consistent wifi out there is to get a Telus Smart Hub (which has unlimited data). I wanted to run it by you before I ordered it though, cause it costs \$90 a month, so wasn't sure if you wanted that much internet or if your own data would suffice?**

Tenant: I'm not sure he [tenant's partner] will want to pay more for wifi since we already talked about making sure it had good signal.

Landlord: Ahh ok! **The wifi was always part of the bills, it wasn't included. [...] I'm happy to pay half if that helps?**

Tenant: I'm confused. Are you saying it's \$90 split with all the other in the house when we split utility bills? Or \$90 or just us to get a separate wifi? I thought we were paying \$2,000.00/month plus wifi/utilities (which were split with the main house and we were doing for 1 person as the [rental unit] is such a small space)

Landlord: **\$90 for your own, unlimited wifi. [...] All utilities are split with the main house and yep, the [rental unit] is just 1 person!** I'm just conscious that wifi is already patchy in general here, so want to have it set up to be optimal. Let me know! As I said, I don't mind paying half. **So it would be \$45 + tax.**

Tenant: Let me talk to [tenant's partner] and see what he says. He may not want to pay extra since we had asked about the signal previously.

Landlord: Sorry, it was previously! I'm not sure if it's the additional people or the extra infrastructure going up around us (Telus technician couldn't tell me either way) but it's really plummeted over the last couple of weeks.

Tenant: Regarding the wifi. We spoke about making sure the connection was strong in the [rental unit] a long time ago. As this was a concern for our remote work. You assured me you had an extender already and the signal was strong. Therefore, I don't feel it's fair to now have to pay extra. However, we still need the signal to be strong like discussed before.

Landlord: I think it's better to proceed with the wifi as is and I'll let you guys assess it. I was working under the assumption that you work at the ski hill and 'sometimes' work from home based on our phone call.

Tenant: **I'm a little concerned. It's imperative I get these projects done within a few weeks. I think it's better you install the wifi hub asap.** Since you said it wan't strong signal anymore. That is not what we agreed upon.

Landlord: You also have access to the shared laundry in the main house, which has a desk space in it and the wifi will be much stronger. Perhaps that will work better for you to work from. The smart hub process takes a few weeks to set up.

Tenant: **Okay let's move forward with the smart hub. And I can use the desk in the main house until it arrives.**

(emphasis added)

The tenant said that she owes 1/8 of the electricity and internet, as there were 8 occupants on the rental property. The tenant agrees to pay a total of \$90.64 for December 2022 and does not know how much she owes for January 2023. The tenant submitted a letter naming the 8 occupants on the property: the tenant, the landlord, the tenant's partner and 5 other occupants.

The landlord affirmed that the utilities are equally split by the four tenants living on the property: two tenants in the upper suite, one tenant in the lower suite and the tenant in the rental unit. The landlord, her partner and the tenant's partner do not count, as they are not tenants. The landlord stated that there are multiple tenants constantly moving in and out of the property and because of this it is not possible to write in the tenancy agreement the exact number of tenants.

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states the applicant has to prove the respondent failed to comply with the Act, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Pursuant to Rule of Procedure 6.6, 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 the case is on the person making the claim.

Move in inspection and deposit

Section 23(4) of the Act requires the landlord to complete a condition inspection report in accordance with the regulations.

Section 24(2)(c) of the Act states the landlord extinguishes the right to claim against a deposit if the landlord does not complete a move in condition inspection report and give a copy to the tenant.

Based on the undisputed tenant's statement, I find the landlord did not conduct a move in inspection.

As the landlord did not complete a condition inspection report when the tenancy started, the landlord extinguished her right to claim against the deposit when the tenancy started, per section 24(2)(c) of the Act.

Section 38(1) of the Act requires the landlord to either return the tenant's deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The forwarding address was provided in writing on January 25, 2023. The landlord retained the deposit and submitted her application on May 07, 2023.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished her right to claim against the deposit and did not return the deposit within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit.

RTB Policy Guideline 17 states the tenant is entitled to double the deposit if the landlords claimed against the deposit when their right to do so has been extinguished under the Act: "Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit: if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act"

According to the deposit interest calculator (available at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>), the

interest accrued on the deposit is \$9.14. Per RTB Policy Guideline 17, interest is calculated only on the original deposit and is not doubled.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to \$2,009.14 (double the \$1,000.00 deposit plus \$9.14 interest).

Unpaid rent

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

I accept the uncontested testimony that monthly rent for January 2023 was \$1,900.00, the parties mutually agreed to end the tenancy on January 25, 2023 and the tenant did not pay rent due on January 01, 2023.

Based on the December 27, 2022 text messages I find the tenant agreed to pay rent in full despite the repairs, as the tenant agreed to this after the December 21, 2022 message.

Per section 26(1) of the Act, I award the landlord January 2023 rent in the amount of \$1,532.25 (\$1,900.00 divided by 31 days x 25 days, as the tenancy ended on January 25, 2023).

Utilities

The tenancy agreement is vague, as it does not indicate how many tenants there are on the property or what percentage the tenant will pay.

Based on the September 18, 2022 text message, I find the landlord informed the tenant that the utilities are split equally between the tenants only. The tenant considered some occupants in her calculation of 8 occupants.

Based on the landlord's convincing testimony, I find there were 4 tenants in the rental unit. Thus, I find the tenant owes $\frac{1}{4}$ of the electricity bills.

The tenant owes the landlord \$83.88 (\$20.97 divided by 4 tenants x 16 days) from December 1 to 16, 2022 and \$265.40 (\$26.54 divided by 4 tenants x 40 days) from December 17, 2022 to January 25, 2023.

Based on the detailed text messages dated November 14, 2022, I find the tenant agreed to pay \$45.00 per month plus taxes to have a better internet connection. As the

parties agreed to this amount after the initial messages and the tenancy agreement, I find this amount prevails over the prior agreements regarding the internet payment.

Thus, I find the tenant owes \$50.40 ($\45.00×1.12, considering the taxes) for internet from December 01 to 31, 2022 and \$40.64 ($\50.40 divided by 31 days \times 25 days) from January 1 to 25, 2023.

I order the tenant to pay \$440.32 for utilities.

Filing fee and summary

As both parties were at least partially successful with their applications, each party will bear their own filing fee.

The tenant is awarded \$2,009.14. The landlord is awarded \$1,972.58.

RTB Policy Guideline 17 sets guidance for a set-off when there are two monetary awards: "Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order."

Thus, I award the tenant \$36.56.

Conclusion

Per section 38 of the Act, I award the tenant \$36.56. The tenant is provided with this order in the above terms and the landlord must be served with this order. 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: June 20, 2023

Residential Tenancy Branch