



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the Tenants: CNR, CNC, MNRT, MNDCT, RP, LRE, OLC, FFT
For the Landlords: MNRL-S, MNDCL-S, FFL

Introduction

1. The tenants' application pursuant to the Act is for:
 - a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67
 - an order requiring the landlord to carry out repairs, pursuant to section 32;
 - cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46;
 - a monetary order for the cost of emergency repairs, under sections 33 and 67;
 - an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
 - an order for the return of the security deposit (the deposit);
 - an order to restrict or suspend the landlord's right of entry, under section 70;
 - cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
 - an authorization to recover the filing fee, under section 72.
2. The landlords' application pursuant to the Act is for:
 - a monetary order for unpaid rent, pursuant to section 26;
 - a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
 - an authorization to retain the deposit, under section 38; and
 - an authorization to recover the filing fee, under section 72.
3. This decision should be read in conjunction with the interim decisions dated July 13, 2022, March 15, 2023 and July 4.

4. Tenants SH and IH (collectively, the Tenants) and counsel NK attended the hearing on July 20, 2023 for the tenants. The Landlords were represented by agent AG and counsel BM on July 20, 2023. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Service of documents

5. Both parties confirmed receipt of the notices of hearing and the evidence (the materials) and that they had time to review the materials, excluding the late evidence addressed in the July 2023 interim decision.
6. Based on the undisputed testimony, I find that both parties served the materials, except the late evidence addressed in the July 2023 interim decision, in accordance with section 89(1) of the Act and the interim decisions.

Preliminary Issue – Named parties

7. The tenant's application lists tenant IH and respondent MH. The landlords' application lists landlords MH and FH and respondents IH and SH.
8. Both parties agreed the Tenants are IH and SH and the Landlords are MH and FH.
9. Pursuant to section 64(3)(a) of the Act, I amended the Tenant's applications to list Tenants IH and SH and respondents Landlords MH and FH.

Preliminary Issue – Vacant Rental Unit

10. Both parties agreed the Tenants vacated the rental unit on May 31, 2022.
11. The Tenants' non-monetary claims are moot since the tenancy has ended.
12. Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the Tenants' non-monetary claims.

Preliminary Issue – Jurisdiction

13. The Tenants' submission and evidence dated September 9, 2022 (the Tenant's evidence) indicates 5 claims in the total amount of \$57,158.47, including \$42,900.00 for compensation for breach of contract.
14. I advised the Tenants that the claim is outside the jurisdiction of the Residential Tenancy Branch (RTB), as it is above \$35,000.00.
15. Counsel NK reduced the claim for compensation for breach of contract to \$20,641.53. Thus, the total amount of the Tenants' claims is \$34,900.00, plus the authorization to recover the \$100.00 filing fee.
16. Pursuant to section 64(2)(b) of the Act, I amend the Tenants' application for a total claim of \$35,000.00.

Issues to be Decided

17. Are the Tenants entitled to:
 1. a monetary order for loss?
 2. an authorization to recover the filing fee?
18. Are the Landlords entitled to:
 1. monetary order for unpaid rent?
 2. a monetary order for loss?
 3. an authorization to retain the deposit?
 4. an authorization to recover the filing fee?

Background and Evidence

19. While I have turned my mind to the accepted 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 Landlords' 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.

20. Both parties agreed the tenancy started on June 1, 2014. Monthly rent when the tenancy ended was \$3,350.00, excluding electricity, gas and water (hereinafter, the utilities), due on the first day of the month. The Landlords collected and currently hold in trust the \$1,500.00 deposit.
21. The Landlords confirmed receipt of the forwarding address in writing on June 7, 2022. The Tenants did not authorize the Landlords to retain the deposit.
22. The Tenants applied for dispute resolution on March 20, 2022 and the Landlords on June 20.
23. The tenancy agreement dated May 4, 2014 lists the rental unit is a house located at the rental unit's address and that rent does not include water. The tenancy agreement dated May 28, 2016 lists the rental unit is only the first floor of the rental unit's address.
24. Both parties agreed the rental unit was the main floor of a single-family house with a basement suite, which was empty until October 14, 2014.
25. Tenant LC moved to the basement suite on October 15, 2015 and moved out on August 31, 2022. Tenant LC had a separate tenancy agreement with the Landlords.
26. The Tenants are seeking the return of the deposit.
27. The parties did not conduct a move in and move out inspection.
28. The Tenants are seeking compensation in the amount of \$2,529.69, as the Landlords did not repair the dishwasher and the oven (hereinafter, the appliances).
29. The Tenants affirmed the Landlords asked them to purchase new appliances, as the old ones broke. The Tenants submitted an invoice in the amount of \$2,129.69 for an oven on October 29, 2019 and an email with a photograph of a dishwasher: "Hi [tenant], this is the dishwasher that you purchased in March 2020 with the value of \$400.00. If you have any questions let me know" (pages 28 and 29 of the Tenants' evidence).

30. The Tenants stated that after they emailed the invoice and the October 29, 2019 email to the Landlords, the Landlords informed them they would not pay for these expenses.
31. AG testified that she is not aware if the Landlords authorized the Tenants to purchase the appliances. Later AG said the Landlords did not authorize the Tenants to purchase the appliances and that there is no invoice for the dishwasher.
32. Counsel NK affirmed that she would like to have asked questions to the Landlords regarding the matters at issue.
33. The Tenants are seeking compensation of \$2,000.00, as the Landlords did not address a pest infestation in the rental unit.
34. The Tenants first noticed mice droppings all over the rental unit in July 2021 and immediately asked the Landlords to address the pest infestation. Tenant LC hired a pest control company for both the rental and basement units on July 14, 2021.
35. Tenant LC stated that the Landlords asked her to buy products to address the pest infestation, the pest control company advised the Landlords to set up traps inside and outside the rental and basement units and to have new visits from the pest control company. The Landlords informed tenant LC that they could not afford to pay for the pest control company.
36. The Tenants emailed the Landlords about the pest infestation on October 4, 2021:

I need to know your plan to finish the project of rodents' extermination and trimming the trees around the house please. I have rodents in the wall again and rats are climbing on the trees around the house.

[...] These issues have been brought up to you for the past few years. I understand from your emails that you have financial issues, but I need you to understand that property has not had any maintenance outside since I have moved in 8 years ago. As per contract my obligation was to cut the grass only.
[...]

Again, I do understand that per your emails you are not financially able to take care of all above issues, but rodent problems need to be dealt with immediately as per report sent by Pest Control technician.

37. The Tenants' application submitted on March 20, 2022 states:

I want repairs made to the unit. I have contacted the landlord in writing to make repairs but they have not been completed. Description: Emergency repairs and Health and hazard maintenance requests constantly declined by landlord for years. I have supporting statement from second tenant and professional estimate recommendations for exterminators.

38. The Tenants testified the situation worsened in April 2022 and the Tenants asked the Landlord to pay for a pest control treatment and deduct this amount from the rent, but the Landlords denied this request.

39. The Tenants believe that a compensation of \$2,000.00 is fair, as they could not enjoy the rental unit due to the pest infestation from July 2021 to May 31, 2022, when the tenancy ended.

40. Tenant LC said that she moved out because the pest infestation issue in both the rental and the basement units was horrible.

41. AG affirmed that the best way to address the pest infestation was with traps and a pest control company would not be able to address the issue. AG is not a pest control specialist. AG also stated that rodents are very common in the rental unit's city.

42. The Tenants are seeking compensation in the amount of \$20,641.53, as the Landlords breached the tenancy agreement. The parties agreed they have a fixed-term tenancy until March 31, 2024. The Tenants moved out because of their frustration with the pest infestation.

43. The Tenants have been renting a similar unit in the same neighbourhood and have been paying \$5,250.00 since June 1, 2022. The Tenants are seeking the extra rent paid monthly of \$1,900.00 (\$5,250.00 subtracted \$3,350.00) from June 1, 2022 to March 31, 2024 (22 months). The Tenants limited this claim to \$20,641.53, as explained in paragraph 15.

44. AG testified the Tenants moved out voluntarily.

45. The Tenants are seeking compensation of \$8,228.78, as they overpaid the utilities bills since November 1, 2015. The Tenants did not know that the utilities bills were a single bill for both the rental and basement units until June 2022 and they paid the bills for both units during the entire tenancy. The Tenants are claiming:

- 3,372.53, as the Tenants paid the electricity bills in the total amount of \$16,862.67 and they should only have paid \$13,490.14 (page 49 of the Tenant's evidence)
- \$3,186.75, as the Tenants paid the gas bills in the total amount of \$15,933.77 and they should only have paid \$12,747.02 (page 54 of the Tenant's evidence)
- \$1,104.34, as the Tenants overpaid this amount for the water bills during the tenancy

46. The Tenants claim they should only have paid 80% of the utilities bills and the basement tenant LC should have paid the remaining 20%, as there were 4 occupants in the rental unit and 1 occupant in the basement unit.

47. The parties submitted into evidence all the utilities bills for the entire tenancy. The electricity and gas bills were addressed to the Tenants and the water bills to the Landlords.

48. AG said the Landlords did not inform the Tenants that the utilities bills were a single bill for the rental unit and the basement.

49. The Landlords are seeking \$3,539.95, as the Tenants did not pay the water bills for the rental and basement units, as shown in the spreadsheet submitted:

Billing Date	Total Amount	Annual Totals	Date of Payments	Payment amount
31-Mar-19	\$ 639.72			
30-Jun-19	\$ 633.30			
30-Sep-19	\$ 644.00			
31-Jan-20	\$ 622.72		25-Jan-20	-\$ 1,750.00
		\$ 2,539.74		
31-Mar-20	\$ 654.80			
30-Jun-20	\$ 695.32		02-Jun-20	-\$ 590.00
30-Sep-20	\$ 729.11			
31-Dec-20	\$ 697.57			
		\$ 2,776.80		
31-Mar-21	\$ 744.80		28-Jan-21	-\$ 500.00
30-Jun-21	\$ 757.46			
30-Sep-21	\$ 730.73		30-May-21	-\$ 2,000.00
31-Dec-21	\$ 798.00		18-Aug-21	-\$ 681.71
		\$ 3,030.99		
31-Mar-22	\$ 714.13			
		\$ 714.13		
TOTAL O/S:		\$ 9,061.66		-\$ 5,521.71 3,539.95

50. The water bills indicate that all of them were paid via auto debit on the due date. The water bills are referenced as “metered utility statement” and are addressed to Landlord FH.

51. The Tenants submitted a cheque payable to the Landlords on August 6, 2019 for \$3,992.00. It states: “RE: meter utility”.

52. Counsel NK, providing testimony on behalf of the Tenants, affirmed that she believes the \$3,992.00 cheque was only for water bills.

53. Counsel BM, providing testimony on behalf of the Landlords, stated the August 2019 cheque was likely for the water bill dated March 31, 2019 or June 30 and the \$3,350.00 rent due on August 1, 2019.

54. Counsel BM testified that the Landlords did not account for the payments received from the Tenants in an organized fashion, but it is not correct to assume the \$3,992.00 cheque was only for water bills.

55. Counsel NK said that it is more likely than not that the Tenants paid all the water bills during the tenancy.

56. The parties emailed on August 18, 2021:

Landlord: Regarding water fees, you told me several times that you will go to city hall to register your payment but in fact you have done nothing. To be frank, I am very disappointed. I have paid the water fees for nearly 2 years for you already while I have not got enough rent.

Tenant: Your email is very surprising, incorrect and disturbing. Please provide with a last water bill, provide me with a copy of the email or text message you have send me your water. Please provide all unpaid rent and specify month's rent has not been paid. My record show all [not legible] has been paid up and you have text message and e-transfer deposit confirmation it has been paid.

57. Tenant IH affirmed that he often made cash payments to the Landlords during the tenancy.

58. The Tenants submitted a 10 Day Notice to End Tenancy dated March 14, 2022 (the March 2022 Notice). It states the Tenants failed to pay rent of \$10,050.00 and utilities of \$8,350.53. The parties did not submit a ledger explaining the unpaid utilities.

59. Tenant SH stated that IH paid the water bills.

60. AG testified the Landlords issued the March 2022 Notice referencing unpaid utilities but had not served a demand letter prior to serving the March 2022 Notice.

61. AG was retained as an agent for the Landlords on March 22, 2022.

62. The Landlords submitted into evidence the demand letter dated April 6, 2022 indicating the Tenants had water arrears in the amount of \$8,347.53.

63. On April 6, 2022 AG had a conversation with the Tenants about the payment of water and AG learned the Tenants paid some water bills referenced in the demand letter.

64. AG said the parties had “lack of discipline on all sides here” and that “neither party was diligent in terms of keeping records”.

65. The Landlords are seeking \$22,420.00 for unpaid rent in 2020 and 2021, as shown in the spreadsheet submitted. The Tenants submitted the same spreadsheet with red letters remarks:

Date Rent is Due	Rent Amount Owed	Annual Totals of Rent Owed	Date of Payment	Payment Amount	Annual Totals of Rent Received	Balance Due
01-Jan-20	\$ 3,280.00		27-Jan-20	-\$ 5,030.00		
01-Feb-20	\$ 3,280.00		27-Feb-20	-\$ 3,280.00		
01-Mar-20	\$ 3,280.00		03-Mar-20	-\$ 3,280.00		
01-Apr-20	\$ 3,280.00			no mention of it being unpaid		
01-May-20	\$ 3,280.00			\$3,280		
01-Jun-20	\$ 3,280.00		03-Jun-20	-\$ 3,920.00		
01-Jul-20	\$ 3,350.00					
01-Aug-20	\$ 3,350.00			\$3,350		
01-Sep-20	\$ 3,350.00		08-Sep-20	-\$ 3,350.00		
01-Oct-20	\$ 3,350.00			\$3,350		
01-Nov-20	\$ 3,350.00		16-Nov-20	-\$ 3,350.00		
01-Dec-20	\$ 3,350.00			\$3,350		
Total 2020		\$ 39,780.00			-\$ 22,210.00	\$ 17,570.00
					\$35,540	\$4,240
01-Jan-21	\$ 3,350.00		28-Jan-21	-\$ 3,350.00		
01-Feb-21	\$ 3,350.00			\$ -		
01-Mar-21	\$ 3,350.00		20-Mar-21	-\$ 2,400.00		
01-Apr-21	\$ 3,350.00		29-Apr-21	-\$ 4,500.00		
01-May-21	\$ 3,350.00		26-May-21	-\$ 3,000.00		
			30-May-22	-\$ 2,000.00		
01-Jun-21	\$ 3,350.00			paid in cash		
01-Jul-21	\$ 3,350.00		06-Jul-21	-\$ 3,350.00		
01-Aug-21	\$ 3,350.00		03-Aug-21	-\$ 3,350.00		
01-Sep-21	\$ 3,350.00		01-Sep-21	-\$ 3,350.00		
01-Oct-21	\$ 3,350.00		02-Oct-21	-\$ 3,350.00		
01-Nov-21	\$ 3,350.00		02-Nov-21	-\$ 3,350.00		
01-Dec-21	\$ 3,350.00		03-Dec-21	-\$ 3,350.00		
Total 2021		\$ 40,200.00			-\$ 35,350.00	\$ 4,850.00
					\$38,700	
01-Jan-22	\$ 3,350.00		07-Jan-22	-\$ 3,350.00		
01-Feb-22	\$ 3,350.00		03-Feb-22	-\$ 3,350.00		
01-Mar-22	\$ 3,350.00		02-Mar-22	-\$ 3,350.00		
01-Apr-22	\$ 3,350.00			-\$ 3,350.00		
01-May-22	\$ 3,350.00			-\$ 3,350.00		
Total 2022		\$ 16,750.00			-\$ 16,750.00	\$ -
TOTAL: Jan 20-May22		\$96,730.00			-\$ 74,310.00	\$ 22,420.00
					\$90,990	\$5,740

66. Counsel NK affirmed the red letter remarks are the months they have documentary evidence to prove the rent payment. The Tenants believe the \$5,740.00 balance was paid and they do not have documentary evidence to prove this payment.
67. Counsel BM stated the Tenants owe the amount claimed, or at least \$5,740.00. Counsel BM further testified that he is not sure if the Tenants paid rent or not in April, May, July, August, October and December 2020, February and June 2021, as the Tenants have documentary evidence indicating the payment of some of these months.
68. Counsel NK said the Landlord's testimony is not credible, as they first claimed \$22,420.00 and now claim the balance may be only \$5,740.00.
69. AG affirmed the balance of unpaid rent in 2020 is \$4,240.00 and in 2021 the balance is \$4,850.00.
70. The Landlords emailed the Tenants on September 5, 2020: "Thank you for the September rent of \$3,335.00 you paid today. But you still owe the rents for June, July and August 2020, as well as the water fee for April-June" and on October 8, 2020: "Thank you for the October rent of \$3,335.00 you paid today. But you still owe the rents for June, July and August 2020 as well as water fee for April-June".
71. Counsel NK stated the Landlord would have mentioned April 2020 rent in the emails on September 5, 2020 and October 8 if the Tenants had not paid April 2020.
72. The Landlords texted the Tenants on August 12, 2020: "Hi [tenant], I confirmed having received your rent for May 2020. Thanks." Counsel BM confirmed the Tenants paid May 2020 rent.
73. The Tenants submitted copies of 3 cashed cheques:
- August 1, 2020 for \$3,350.00
 - October 1, 2020 in the amount of \$1,650.00. It states: "\$1,700.00 in addition paid in cash. Total \$3,370.00"
 - December 1, 2020 for \$3,350.00

74. After Counsel NK presented the cheques, text messages and emails, Counsel BM testified the unpaid rent in 2020 is \$4,240.00.
75. Counsel NK said that it is more likely than not that the Tenants paid rent in July 2020, February and June 2021, based on the pattern the parties had of paying rent sometimes with cash, sometimes with cheques.
76. Counsel BM affirmed the Tenants did not pay February 2021 rent.
77. Tenant SH stated that the Landlords came to the rental unit on June 1, 2021 and received over \$3,000.00 in cash for June 2021 rent. Counsel BM testified the Landlords did not receive this amount.

Analysis

78. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.
79. Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities: Proof that the damage or loss exists:
1. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
 2. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
 3. Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Appliances

80. Section 32(1) of the Act states: "A landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

81. I find AG's testimony (paragraph 31) denying the Landlords asked the Tenants to purchase new appliances contradictory, as AG first said that she is not aware of this and later affirmed the Landlords did not ask the Tenants to purchase new appliances.
82. The Landlords decided not to attend the hearings and were represented by agent AG and counsel BM. Counsel NK expressed her desire to ask questions to the Landlords (paragraph 32), they decided not to attend, and their agents submitted a contradictory testimony on their behalf.
83. Based on the Tenants' convincing testimony (paragraphs 29 and 30), I find the old appliances broke, the Landlords asked the Tenants to purchase new ones and did not pay the Tenants the amount claimed.
84. Based on the invoice and the email dated October 29, 2019 (paragraph 29), I find the Tenants proved they paid \$2,529.69 for the new appliances and that they suffered this loss because the Landlords did not pay them this amount.
85. I award the Tenants \$2,529.69.

Pest infestation

86. Section 28(b) of the Act states the tenant is entitled to freedom from unreasonable disturbance.
87. Policy Guideline 6 states the landlord has to ensure the tenant's right to quiet enjoyment: "A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these."
88. Policy Guideline 6 also states: "Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment."

89. Based on the convincing testimony offered by the Tenants and LC (paragraphs 34, 35 and 40), I find the Tenants noticed the rental unit had a pest infestation issue in July 2021, the Tenants immediately asked the Landlords to address this issue and the pest infestation was a serious problem.
90. Based on the October 4, 2021 email (paragraph 36), I find the Tenants informed the Landlords on October 4 that the pest infestation was serious and asked the Landlords again to address it.
91. The Tenants' application submitted on March 20, 2022 (paragraph 37) asked for repairs related to the pest infestation.
92. I find the Landlords' explanation to not hire a pest control company (paragraph 41) is not convincing, as the Landlords' agent AG is not a pest control specialist.
93. I find the Landlords breached section 28(b) of the Act by not addressing the pest infestation since July 2021 and that the Tenants suffered a loss of their quiet enjoyment because of the Landlords' non-compliance with the Act.
94. Policy Guideline 5 explains the duty of the party claiming compensation to mitigate their loss: "Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred."
95. I find the Tenants only partially mitigated their losses by waiting from July 2021 to March 20, 2022 to submit the application for dispute resolution.
96. Considering the losses suffered and the partial mitigation, I find it reasonable to award the tenants compensation of \$1,500.00 for loss of quiet enjoyment from July 2021 to the end of the tenancy.
97. Pursuant to sections 7 and 67 of the Act and considering Policy Guidelines 5, 6 and 16, I award the Tenants compensation of \$1,500.00.

Breach of contract

98. I accept the testimony that the Tenants voluntarily moved out because of their frustration with the pest infestation (paragraphs 42 and 44).

99. The Tenants could have applied for dispute resolution earlier and continued the tenancy. The rental unit was available for the tenancy to continue until the end of the fixed-term.

100. As the Tenants voluntarily moved out, I find the Tenants failed to prove that they suffered a loss because the Landlords failed to comply with the tenancy agreement or the Act.

101. I dismiss the claim for breach of contract.

Electricity and Gas payments

102. I accept the Landlords' testimony (paragraph 48) that the Landlords did not inform the Tenants that the utilities bills were a single bill for the rental and basement units.

103. Based on the Tenants' undisputed and convincing testimony (paragraph 45), I find the Tenants suffered a loss in the amount of \$3,372.53 for the electricity bills and \$3,186.75 for the gas bills because they paid the bills including consumption for the basement rental unit as the Landlords did not inform them that they were paying electricity and gas for the basement unit.

104. Policy Guideline 1 states: "1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations. 2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills."

105. I find that it is reasonable for the Tenants to receive 20% of the utilities bills paid, as there were 4 occupants in the rental unit and 1 occupant in the

basement unit and the Tenants paid 100% of the electricity and gas bills during the tenancy.

106. As explained in Policy Guideline 1, Landlords can not require Tenants to pay utilities bills for other rental units.

107. I award the Tenants compensation of \$6,559.28 for the electricity and gas bills overpayment since November 1, 2015.

Water payments

108. I am analyzing in this heading the Tenants' claim for water overpayment and the Landlords' claim for unpaid water bills.

109. Based on the water bills, I find the Landlords paid all the water bills during the tenancy.

110. I accept the Landlords' undisputed testimony and spreadsheet (paragraph 49) that the Tenants paid the Landlords the water bills in the total of \$5,521.71 between March 31, 2019 and March 31, 2022.

111. Based on the cheque dated August 6, 2019 and the water bills (paragraphs 50 and 51), I find the Tenants paid the Landlords \$3,992.00 for the water bills, as the cheque states "RE: meter utility" and the water bills are referenced as "metered utility statement".

112. The Landlords did not indicate the \$3,992.00 payment in the spreadsheet (paragraph 49) and are claiming \$3,539.95 for unpaid water bills.

113. Based on the Landlords' spreadsheet referenced in paragraph 65, I find the Tenants proved, on a balance of probabilities, that monthly rent was \$3,280.00 in August 2019, as the spreadsheet indicates that rent was this amount until June 30, 2020.

114. I find the Landlords' testimony (paragraph 53) is not convincing, as rent in August 2019 plus the water bills dated March 31, 2019 or June 30 do not add to the amount of the August 6, 2019 cheque.

115. The Tenants emailed the Landlords on August 18, 2021 stating they paid the Landlords all the water bills (paragraph 56).
116. Based on both parties' testimony (paragraphs 54, 57, 64 and 67), I find the parties often made cash payments and did not maintain organized records of the cash payments. Furthermore, the Landlords issued a demand letter (paragraph 62) and later learned the Tenants did some of the utilities payments mentioned in the demand letter (paragraph 63). The emails referenced in paragraph 70 were sent in September and October 2020, before the date the parties submitted the spreadsheet referenced in paragraph 49.
117. Based on the above, I find the Landlord failed to prove that the Tenants did not pay the amount of \$3,539.95 for the water bills to the Landlords and the Tenants proved they paid \$5,271.71 during the tenancy for water bills.
118. As stated in paragraphs 104 to 106, landlords can not require tenants to pay utility bills for other rental units and I decided that it is fair the Landlords pay the Tenants 20% of the utilities bills paid by the Tenants.
119. I dismiss the Landlords' water payments claim and award the Tenants \$1,104.34 (20% of the \$5,521.71 water payments made by the Tenants to the Landlords).

Rent

120. The Landlords are seeking unpaid rent for April, May, July, August, October and December 2020, February and June 2021.
121. Based on the October 8, 2020 email (paragraph 70), I find the Tenants paid October 2020 rent.
122. I find that if the Tenants had not paid April 2020 rent, it is more likely than not that the Landlords would have mentioned that in the September and October 2020 emails referenced in paragraph 70, as the Landlords explicitly referenced the unpaid rent months. I find the Tenants paid April 2020 rent.
123. Based on the August 12, 2020 text message (paragraph 72), I find the Tenants paid May 2020 rent.

124. Based on the August 1, 2020 and December 1, 2020 cheques (paragraph 73), I find the Tenants paid August and December 2020 rent. Thus, I find the Landlords failed to prove, on a balance of probabilities, that the Tenants did not pay rent in April, May, August, October and December 2020.
125. I find the Landlords' testimony about non-payment of rent was not convincing. Counsel BM first claimed \$22,420.00, then claimed "at least \$5,740.00" (paragraph 67).
126. As explained in paragraph 116, I found the parties had a pattern of cash payments and did not maintain organized records of the cash payments.
127. Considering the above, I find the Landlords failed to prove, on a balance of probabilities, the Tenants did not pay rent in July 2020, February and June 2021.
128. I dismiss the Landlords' claim.

Deposit

129. Section 38(1) of the Act requires the landlord to either return the deposit 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.
130. I accept the uncontested testimony that the tenancy ended on May 31, 2022, the Landlords received the forwarding address in writing on June 7, and submitted the application on June 20 (paragraphs 10, 21 and 22) claiming unpaid rent and utilities only.
131. As the Landlords were not successful in their application, the Landlord must return the deposit to the Tenants, per section 38(1) of the Act.
132. 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 \$18.16.

133. Under these circumstances and in accordance with section 38(1)(c) of the Act, I find the Tenants are entitled to \$1,518.16 (the \$1,500.00 deposit plus the interest accrued).

Filing fee and summary

134. As the Tenants were successful, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.
135. The Landlords must bear the cost of their filing fee, as the Landlords were not successful.
136. In summary:

Item	Amount \$
Appliances	2,529.69
Pest infestation	1,500.00
Electricity and gas payments	6,559.28
Water payments	1,104.34
Deposit	1,518.16
Filing fee	100.00
Total	13,311.47

Conclusion

137. In accordance with sections 38, 67 and 72 of the Act, I grant the Tenants a monetary order of \$13,311.47
138. The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: August 14, 2023

Residential Tenancy Branch