



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: MNDL, FFL

Tenant: MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- compensation of \$250.00 to repair the damage that the Tenant, their pets or their guests caused during the tenancy pursuant to section 67 of the Act; and
- authorization to recover the Landlord's filing fee from the Tenant pursuant to section 72 of the Act.

The Tenant applied for:

- compensation of \$375.45 for monetary loss or money owed by the Landlord pursuant to section 67 of the Act;
- return of the security deposit and pet damage deposit in the amount of \$1,550.00 pursuant to section 38 of the Act; and
- authorization to recover the Tenant's filing fee from the Landlord pursuant to section 72 of the Act.

The Tenant attended this hearing and gave affirmed testimony.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 2:06 pm in order to enable the Landlord to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

Preliminary Matter – Service of Dispute Resolution Proceeding and Evidence

The Tenant testified that a package with the Tenant's notice of dispute resolution proceeding and evidence (collectively, the "Tenant's Proceeding Package") was delivered to the Landlord's residence by the Tenant's courier CJS on July 24, 2023. The Tenant submitted that the Landlord's spouse opened the door, called the Landlord on the phone, then refused to accept the package for the Landlord, so CJS left the package in the Landlord's mailbox. The Tenant testified that he had also emailed the notice of dispute resolution proceeding to the Landlord on July 21, 2023.

Based on the foregoing, I find the Tenant's Proceeding Package was served on the Landlord's spouse as an agent of the Landlord in accordance with sections 89(1)(b) and 88(b) of the Act. I find July 24, 2023 was one day after the three-day window for the Tenant to serve the Landlord. Nevertheless, I find the Landlord was sufficiently served with the Tenant's Proceeding Package by July 24, 2023 pursuant to section 71(2)(b) of the Act. I find the Landlord would have still had sufficient time under the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") to respond to the claims in the Tenant's application.

The Tenant confirmed receipt of the Landlord's application and evidence.

Preliminary Matter – Dismissal of Landlord's Application

Rules 7.3 and 7.4 of the Rules of Procedure state:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Landlord did not attend this hearing to present evidence regarding the merits of their application, while the Tenant duly attended. Accordingly, in the absence of any evidence or submissions from the Landlord, I dismiss the Landlord's application without leave to re-apply.

Having found the Landlord to be sufficiently served with notice of the Tenant's application, I directed this hearing to proceed in the Landlord's absence.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to return of the security and pet damage deposits?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

This tenancy commenced on May 1, 2022 and ended on October 22, 2022. Rent was \$1,550.00 due on the first day of each month. The Tenant paid a security deposit and pet damage deposit of \$775.00 each.

According to the Tenant, the Landlord did not ask the Tenant to attend any move-in or move-out inspections of the rental unit. The parties did not complete any condition inspection reports.

The Tenant had a courier deliver the Tenant's forwarding address to the Landlord's residence on October 25, 2022. The Tenant submitted a courier receipt indicating that the delivery was signed for by the Landlord's spouse.

The Tenant confirmed that the Landlord has not returned any of the security or pet damage deposit.

In addition, the Tenant seeks compensation of \$375.45 in utility charges paid from May to September 2022, which the Tenant characterized as an illegal rent increase collected by the Landlord.

Section 3 of the parties' tenancy agreement indicates that utilities such as electricity and natural gas were not included in the monthly rent. According to the Tenant, the parties had a "handshake" agreement that the Tenant's share of the utilities (FortisBC and BC Hydro) was to be 40%. This split is not referenced in the written tenancy agreement itself.

The Tenant explained that the rental unit was a basement suite in the Landlord's house, which had a total of four suites. The Landlord's family lived in the largest suite. The

rental unit was the second smallest suite. The other suites were occupied by tenants. None of the suites were individually sub-metered for utilities.

The Tenant submitted a spreadsheet showing the amounts charged and paid for rent and utilities during the tenancy. This spreadsheet shows that the cost of BC Hydro spiked in July and September 2022. The Tenant paid \$375.45 of \$619.67 charged by the Landlord for utilities from May to September 2022.

Analysis

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

Section 67 of the Act states that 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.

I find the parties' tenancy agreement indicates that electricity and natural gas were not included in the rent.

I find the Tenant paid 40% of the FortisBC and BC Hydro invoices from May to August 2022, including the first BC Hydro invoice spike in July 2022. I find the Tenant stopped paying the utility charges in September 2022 when the BC Hydro invoice spiked to an even higher level.

Under these circumstances, I find the parties had agreed, partially in writing and partially verbally, that:

- the cost of electricity and natural gas, that is FortisBC and BC Hydro charges, would not be included in the monthly rent
- the Tenant would pay the Landlord 40% of the total invoice charged by FortisBC and BC Hydro for the Tenant's portion of the utilities

I note the Act distinguishes between "rent" and "utility charges" for utilities not included in the rent. For example, under section 46(6) of the Act, if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment, the landlord may then treat the unpaid utility charges as unpaid rent and may give notice to end the tenancy.

Furthermore, the definition of "rent" under section 1 of the Act excludes prescribed fees under the regulations, which include a fee charged by a landlord for services or facilities that are not required to be provided under the tenancy agreement (see section 7(1)(g))

of the regulations). Section 1 of the Act defines a “service or facility” to include the cost of utilities.

I further note that utility charges based on actual usage, whether independently metered or determined according to a split percentage, will inevitably fluctuate. I do not find that upward fluctuations of such utility charges can be characterized as a rent increase.

I conclude that the Landlord has not increased the rent contrary to the Act. Since I do not find the Landlord to have breached the Act, the regulations, or tenancy agreement, I dismiss the Tenant’s claim for compensation under this part without leave to re-apply.

2. Is the Tenant entitled to return of the security and pet damage deposits?

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security or pet damage deposit if they do not comply with the Act and the regulations. Section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

I find the Tenant’s right to the security deposit and pet damage deposit was not extinguished under any of sections 24, 36, or 39 of the Act. I find the Tenant was not given two opportunities for move-in and move-out inspections in accordance with the Act and the regulations, which the Tenant then failed to attend. I find the Tenant provided her forwarding address in writing to the Landlord within one year of the tenancy end date.

In contrast, I find the Landlord’s rights to claim against the security deposit for damage to the rental unit was extinguished under section 24(2) of the Act, since the Landlord did not complete a condition inspection report with the Tenant or provide a copy to the Tenant at the start of the tenancy.

Pursuant to section 38 of the Act, a landlord must (a) repay a security or pet damage deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
- the date the landlord receives the tenant’s forwarding address in writing,

unless the landlord has the tenant’s written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

I find this tenancy ended on October 22, 2022. I find a letter with the Tenant’s forwarding address was left with the Landlord’s spouse on October 25, 2022. Therefore,

I find the Landlord was served with the Tenant's forwarding address in writing on October 25, 2022 in accordance with section 88(e) of the Act.

I find the Tenant did not agree in writing for the Landlord to keep any portion of the deposits. I find there is no evidence of any previous orders made by the Residential Tenancy Branch regarding compensation owed or authorization for the Landlord to keep the deposit.

I find that under section 38(1) of the Act, the Landlord had 15 days from October 25, 2022, or until November 9, 2022, to repay the deposits to the Tenant in full or make an application to claim against the deposits for a claim other than damage to the rental unit.

Records indicate the Landlord's application was submitted on November 8, 2022. According to the Landlord's paper application, the Landlord sought compensation for unpaid utilities and cleaning. I find the Landlord has in essence complied with the requirement of section 38(1) of the Act by making an application within 15 days of receiving the Tenant's forwarding address. Therefore, I do not find the doubling provision in section 38(6) of the Act to apply.

However, the Landlord has not attended this hearing to prove the Landlord's reasons for retaining the deposits. As such, I find there is no basis for the Landlord to continue to do so. I conclude that the Tenant is entitled to a return of the security deposit and pet damage deposit in full.

In addition, section 38 of the Act requires that interest on deposits be paid to a tenant. The interest rate on deposits was 0% in 2022 and is 1.95% in 2023. According to Residential Tenancy Policy Guideline 17, interest is calculated on the original deposit amount, before any deductions are made, and is not doubled. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$21.27 of interest from when the deposits were paid (April 8, 2022) to the date of this decision, calculated as follows:

2022 \$1550.00: \$0.00 interest owing (0% rate for 73.41% of year)
2023 \$1550.00: \$21.27 interest owing (1.95% rate for 70.12% of year)

Under section 62(3) of the Act, an arbitrator may make an order necessary to give effect to the rights, obligations, and prohibitions under the Act.

Pursuant to sections 62(3) and 38 of the Act, I order the Landlord to pay the Tenant \$1,571.27 (or \$775.00 + \$775.00 + \$21.27) for the return of the security and pet damage deposits with interest.

3. Is the Tenant entitled to recover the filing fee?

The Tenant has been generally successful in this application. I grant the Tenant's claim for reimbursement of the filing fee under section 72(1) of the Act.

Conclusion

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

The Tenant's claim for return of the security and pet damage deposits is granted with interest. The Tenant's claim for recovery of the filing fee is granted. The Tenant's claim for compensation of \$375.45 is dismissed without leave to re-apply.

Pursuant to sections 62(3), 38, and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,671.27**, calculated as follows:

Monetary Issue	Amount
Return of Security Deposit and Pet Damage Deposit	\$1,550.00
Interest on Deposits	\$21.27
Filing Fee	\$100.00
Total Monetary Order for Tenant	\$1,671.27

This Order may be served on the Landlord, filed in the Small Claims Division of 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: September 13, 2023

Residential Tenancy Branch