Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL / MNSDS-DR, FFT

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Landlord seeks the following:

- A Monetary Order for unpaid rent or utilities under sections 26 and 67 of the Act;
- A Monetary Order for damage to the rental unit under sections 32 and 67 of the Act;
- Authorization to retain all, or a portion, of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act; and
- Authorization to recover the filing fee for their Application from the Tenants under section 72 of the Act.

The Tenants seek the following:

- A Monetary Order for the return their security deposit under sections 38 and 67 of the Act; and
- Authorization to recover the filing fee for their Application from the Landlord under section 72 of the Act.

The Landlord and one of the Tenants attended the hearing. As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) for both Applications and evidence of the other party. Based on their testimonies, I find that each party was served with the Materials and evidence as required under sections 88 and 89 of the Act.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?
Is the Landlord entitled to a Monetary Order for damage to the rental unit?
Is the Landlord entitled to retain some, or all, of the Tenants' security deposit in partial satisfaction of a Monetary Order?
Are the Tenants entitled to the return of some, or all, of their security deposit?
Are either party entitled to recover the filing fees for their Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on October 1, 2022 for a fixed term ending May 31, 2023.
- The Tenants vacated the rental unit on May 31, 2023.
- Rent was $2,200.00 per month due on the first day of the month.
- A security deposit of $1,100.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.

The Landlord's claims are summarized as follows:

Item	**Amount**
Unpaid utilities	$105.99
Cleaning costs	$490.00
Garbage removal	$288.75
Carpet and upholstery cleaning	$367.50
Total	**$1,252.24**

Unpaid Utilities

The Landlord testified as follows. The Tenants did not pay for gas and electricity for the month of May 2023, the final month of the tenancy. The Landlord submitted into evidence a copy of a natural gas bill for $56.12 for the billing period May 6, 2023 to

June 8, 2023 and an electricity bill for $49.87 for the billing period May 1, 2023 to May 31, 2023.

The Landlord acknowledged the billing period for the gas bill overran the tenancy by eight days but argued that since the Tenants did not pay for gas for the first eight days of the tenancy, owing to the dates of the billing cycle, the costs balanced out. The Landlord testified they had a verbal agreement with the Tenant regarding this overlap of billing cycles and that things would “work out at the end of the tenancy”.

The Tenant testified they did not recall any agreements whereby they would be responsible for the whole of the final gas bill. They did not dispute the bills were unpaid, but argued they should only be responsible for a total of $89.43 based on their occupancy of the rental unit.

Cleaning Costs

The Landlord testified that when their wife and daughter and a friend arrived at the rental unit on May 31, 2023 when the Tenants had vacated, there was no damage, but all areas of the rental unit needed cleaning. It appeared to them that nothing had been cleaned.

The Tenants had let the Landlord know that the cleaners they had booked to clean the rental unit had cancelled. The Landlord also found it difficult to find a cleaner at short notice and, as they had family staying soon, they opted to clean the rental unit themselves. The Landlord’s wife and friend spent five and a half hours each cleaning, while their daughter spend three hours. The Landlord seeks to recover $490.00 based on a total of fourteen hours at a rate of $35.00 per hour.

The rental unit is a 950 square foot suite with two bedrooms, one bathroom, a kitchen and a family room. The Landlord submitted into evidence photographs of areas of the floor of the rental unit, inside cabinets and the stove and microwave which were taken at the end of the tenancy.

The Tenant argued the Landlords’ photographs do not show a condition which would require fourteen hours worth of cleaning, and two hours would be more realistic. They acknowledged they were planning on getting cleaners to attend to the rental unit who cancelled, but said they found the price claimed by the Landlord to be high. They stated they did the best they could to clean the rental unit themselves.

Garbage Removal

The Landlord submitted into evidence a copy of a receipt for garbage removal for $332.06 which included a $43.31 tip. The Landlord stated they seek to recover $288.75 which does not include the tip.

The Landlord stated the Tenants left behind bags of garbage and debris at the side of the rental unit. As the Landlords did not have a vehicle to take the garbage to the dump, they had to contact a garbage removal company. A still from security camera footage showing carboard boxes, bins and bags at the side of the rental unit was entered into evidence by the Landlord.

The Tenant testified the only items shown in the security camera still which were left behind by the Tenants were the blue and white bins. They stated the remainder of the items were left by tenants in the downstairs suite who had not been emptying their recycling.

The Tenant stated the downstairs tenants had recently arrived in Canada, did not know how to deal with the recycling and had asked the Tenants on how to handle the different types of recycling. As a result, garbage had piled up.

The Tenant argued the empty bins they left could have been collected by residential garbage and recycling collection, and that an itemised list of garbage taken to the dump was not provided, so could have included other items besides the bins.

Carpet and Upholstery Cleaning

The Landlord entered into evidence a receipt totalling $367.50 which comprised of $300.00 for upholstery cleaning and $50.00 carpet cleaning, plus tax. Photographs of a carpet with two dark stains and a cushion with a small, brown stain were also entered into evidence.

The Landlord testified the carpet and upholstery was not stained at the start of the tenancy. I asked the Landlord if they wished to provide further details of the upholstery that required cleaning and they declined to do so.

The Tenant acknowledged the carpet was stained during the tenancy and coffee had been spilled on it. They stated they tried to clean it three times without success.

Return of Security Deposit

The Tenant testified they advised the Landlord that as they would not be able to attend a move out inspection personally, a friend would be conduction the inspection on their behalf. Their friend's details were provided to the Landlord, but the Landlord did not contact them to arranged for the move out inspection.

The Tenant stated they provided their forwarding address in writing to the Landlord on June 14, 2023 via email. As the parties did not have an agreement to serve documents via email, they provided their forwarding address again on July 28, 2023 via registered mail. The forwarding address provided on June 14, 2023 was for a the Tenants' Kelowna address, while the one provided on July 28, 2023 was for their updated address in Nanaimo.

The Tenants requested the return of double the security deposit in their Application and the Tenant confirmed they did not waive their right to double the security deposit.

The Landlord initially testified they did not recall receiving the Tenants' forwarding address via email, though did acknowledge receipt of the document via registered mail some time after July 28, 2023.

The Landlord stated they attempted to telephone the Tenants' friend but was not able to reach them to arrange for the move out inspection and there was no voicemail facility. The Landlord confirmed no Notice of Final Opportunity to Schedule a Condition Inspection form was issued to the Tenants or their agent.

The Tenant drew my attention to the Kelowna address being listed as the Tenants' address in the Landlord's Application. The Landlord submitted into evidence a copy of email correspondence between the parties dating from June 9, 2023 to June 27, 2023. The Tenants' Kelowna address appears in the email sent at 12:00 AM on June 15, 2023 and the Landlord appears to respond at 10:49 AM on June 15, 2023.

After the above was discussed, the Landlord acknowledged they received the Tenants' forwarding address via email.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The Landlord seeks $105.99 in unpaid gas and electricity bills in respect of the rental unit for the month of May 2023. It was undisputed by the parties that the Tenants had not paid the utilities, though the amount owed was in dispute. The Tenants' argued they were not responsible for the eight days of the gas billing cycle after they vacated, while the Landlord argued that as the Tenants did not pay the gas for first eight days of the tenancy, they were entitled to the full amount on the gas bill.

Having considered the testimony and evidence of both parties, I find on a balance of probabilities that there was no agreement whereby the Tenants would be responsible for the entirety of the final month's gas bill. I found the Landlord's testimony in this regarding to be quite vague and unconvincing and find they have failed to prove on a balance of probabilities that such an agreement was in place.

Given the above, I find the Tenants' obligation to pay utilities ended with the tenancy on May 31, 2023 and therefore the Tenants are required to pay the gas bill on a prorated basis, rather than the full amount.

Per the copy of the gas bill entered into evidence, the billing cycle had 34 days. The *per diem* rate is therefore $1.65 ($56.12 ÷ 34). The Tenants occupied the rental unit for 26 of the 34 days, therefore I find the Tenants are obligated to pay the Landlord $42.91 ($1.65 x 26) in respect of the gas bill, and $49.87 in respect of the electricity bill for a total of $92.78.

Is the Landlord entitled to a Monetary Order for damage to the rental unit?

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 Landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Cleaning Costs

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find on a balance of probabilities that there were issues with the cleanliness of the rental unit at the end of the tenancy. I find the photographs entered into evidence by the Landlord show certain areas of the rental unit to be dusty, with debris and hair left, but in quite fine detail. The photographs appear to show close up images of inside cabinets, in corners and on the hinges of the microwave.

Nevertheless, based on the levels of dust and hair shown in the photos, the level of residue in the oven and the testimony of both parties, I find the Tenants failed to leave the rental unit reasonably clean at the end of the tenancy.

The parties did not dispute there were difficulties in finding a locally-based cleaner to attend the rental unit, so I accept the Landlord's family cleaning the rental unit themselves was reasonable in the circumstances, though find the hourly rate and time spent to be slightly excessive and determine an appropriate amount of compensation in this case to be $400.00. I grant the Landlord's request in part and issue a monetary award accordingly.

Garbage Removal

The parties did not dispute the Tenants left behind some garbage, though the amount was in dispute. The Tenant stated they left behind two plastic bins and the remainder of the garbage seen in the photographic evidence of the Landlord was left by the tenants of the lower suite. The Landlord asserted the Tenants left behind the entirety of the garbage seen in their photographs, which then had to be removed.

I found the Tenant's testimony on this subject to be clearer and more detailed than that of the Landlord's and as a result I afford it more weight. Though the Landlord argued the debris came from inside the rental unit, it was not made clear to me how this conclusion was reached. I note the Tenant's testimony is also consistent with their statements in the email correspondence dated June 19, 2023 which was entered into evidence by the Landlord. Given this, I find on a balance of probabilities that a significant amount of the garbage seen in the photographic evidence was left by tenants in the lower suite.

Given the above, I find that whilst the Tenants breached section 37 of the Act by failing to remove a small amount of garbage from the rental unit, the entirety of the garbage removed was not left by the Tenants. Therefore, I find that the Landlord is not entitled to the full amount of compensation requested, though grant their request in part, and award the Landlord nominal damages of $50.00.

Carpet and Upholstery Cleaning

Per the Tenant's testimony, the carpet was stained during the tenancy when coffee was spilled, and attempts to remove the stain were unsuccessful. Given this, I find the Tenants breached section 37 of the Act by failing to remove the stain and find the cleaning charges in respect of the stain remove to be reasonable. Given this, I award the Landlord a Monetary Order of $52.50, which includes sales tax, per the invoice.

Though upholstery cleaning fees of $300.00, plus tax, are seen on the invoice, I found the Landlord's testimony on precisely what upholstery required cleaning to be vague and unconvincing. Beyond the photographic evidence showing a small stain on a cushion entered into evidence by the Landlord, nothing before me indicated the upholstery in the rental unit required cleaning. Given this, I shall not award the Landlord a monetary award for this claim.

Summary of the Landlord's Claim

The Landlord's monetary award under section 67 of the Act is summarized as follows:

Item	**Amount**
Unpaid Utilities	$92.78
Cleaning costs	$400.00
Garbage removal	$50.00
Carpet and upholstery cleaning	$52.50
Total	**$595.28**

Is the Landlord entitled to retain some, or all, of the Tenants' security deposit in partial satisfaction of a Monetary Order?

It was undisputed that the Landlord did not offer the Tenants at least two opportunities to inspect the rental unit at the end of the tenancy, therefore, the Landlord did not comply with section 35 of the Act. I find that the Landlord's right to claim against the security deposit for damage to the rental unit was therefore extinguished under section 36 of the Act.

However, Per Policy Guideline 17 – Security Deposit and Set Off, a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the right to file against the deposit for monies owing other than for damages to the rental unit, and to file a monetary claim for damages arising out of the tenancy, including damages to the rental unit. The Guideline is clear that though a landlord may have lost the right to claim against the security deposit under section 38 of the Act, they may still make a claim against the tenant under section 67 of the Act for compensation due to damage to the rental unit.

Though the Landlord has extinguished their right to claim against the security deposit under section 36 of the Act so can not make a claim under section 38 of the Act to retain the security deposit, as I have made a payment order in favour of the Landlord under section 67 of the Act, as stated earlier in this Decision, I authorize the Landlord to retain $595.28 of the Tenant's security deposit in satisfaction of the payment order under section 72(2)(b) of the Act.

Are the Tenants entitled to the return of some, or all, of their security deposit?

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, which ever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Section 36 of the Act also states that a tenant may also extinguish their right to the return of a security deposit if they fail to attend an inspection of the rental unit at either

the start or end of the tenancy after being given two opportunities to do so, unless the tenant has abandoned the rental unit.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the evidence before me and the testimony of both parties, I find that the tenancy ended on May 31, 2023 when the fixed term ended, per section 44(1)(b) of the Act.

The Tenant testified they served their forwarding address for their Kelowna residence to the Landlord by email on June 14, 2023, and then their Nanaimo address via registered mail on July 28, 2023. I found the Landlord's Agent's testimony regarding the receipt of the Tenant's forwarding address to be inconsistent and vague. They initially stated they did not recall receiving the Tenant's forwarding address via email, though when the email correspondence entered into evidence by the Landlord was discussed, they acknowledged receipt via email.

It was undisputed by the parties that there was no agreement for documents to be served to one another by email. Therefore, I find the Landlord did not provide an email address for service whereby section 43(1) of the Regulation is satisfied, and therefore the service provisions of section 88(j) of the Act and the deeming provisions of section 44 of the Regulation do not apply in this case.

Given the above, the Tenants were not able to automatically rely on email as a method of serving the Landlord under section 88 of the Act, as there was no agreement to do so. However, per section 71(2) of the Act an arbitrator may order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

I find the Landlord submitted their Application on July 20, 2023, before the Tenants' Nanaimo address was provided to the Landlord via registered mail, and they list the Kelowna address as the mailing address for the Tenants. Given this, I find the Landlord received Tenants' Kelowna forwarding address and nothing before me indicated this was provided to the Landlord via any means other than email.

I find the Tenants' Kelowna address is clear i.e. not hidden in a mass of text or otherwise difficult to discern, and the Landlord is seen respond to the Tenants' email

promptly on the same day the Tenants provided it, and continue the correspondence until June 27, 2023. Given this I find that whilst email was not an agreed upon method of service, there was no prejudice or inconvenience to the Landlord by using this method and based on their quick response to the Tenants' message, they receive emails without issue and were able to use the Tenants' forwarding address for their Application.

Based on the above, under the authority provided under section 71(2) of the Act, I find the Landlord received the Tenants' forwarding address in writing on June 15, 2023, as seen in the email exchange between the parties.

This means the Landlord would have had to either return the security deposit to the Tenants or make an application for dispute resolution claiming against the security deposit by June 30, 2023.

It was undisputed by the parties that the Landlord retains the security deposit and, as previously stated, the Landlord submitted their Application on July 20, 2023.

I find no evidence that indicates to me the Landlord was entitled to retain the security deposit under either section 38(3) or 38(4) of the Act as the Landlord did not have an outstanding Monetary Order against the Tenants, or have written permission from the Tenants to retain the security deposit. Additionally, I find there is no evidence that the Tenants had extinguished their right to the return of the security deposit per section 38(2) of the Act as I find the Tenants attended the only inspection of the rental unit that took place.

Given the above, I find the Landlord has failed to comply with section 38(1) of the Act and grant the Tenants' Application for the return of the security deposit, plus interest, less the amount the Landlord is authorized to retain section 72(2)(b) of the Act and I order the Landlord to return double the security deposit to the Tenants per section 38(6) of the Act.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as $23.09 using the Residential Tenancy Branch interest calculator using today's date. The interest applies only to the original deposit and is not doubled.

Are either party entitled to recover the filing fees for their Applications?

As both parties were at least partially successful in their Applications, I find both parties are entitled to recover the cost of the filing fee. However. given these amounts offset each other, I make no orders for recovery of the filing fees under section 72 of the Act.

Conclusion

The Landlord's Application is granted in part.

The Tenants' Application is granted.

The Tenants are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenants' obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	**Amount**
Return of security deposit, plus interest	$1,123.09
Double security deposit	$1,100.00
Less: Landlord's award under section 67 of the Act	($595.28)
Total	**$1,627.81**

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 19, 2024

Residential Tenancy Branch