



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlords: MNRL-S, FFL
 Tenants: MNDCT, MNSD, MNETC, FFT

Introduction

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

The Landlords applied for:

- compensation of \$1,694.55 for unpaid utilities under section 67 of the Act;
- authorization to retain the security deposit under section 38 of the Act; and
- authorization to recover the Landlords' filing fee from the Tenants pursuant to section 72 of the Act.

The Tenants applied for:

- compensation of \$11,661.50 for monetary loss or other money owed under section 67 of the Act;
- return of the security deposit of \$2,918.55 under section 38 of the Act;
- compensation of \$1,027.29 due the Landlords not complying with a notice to end tenancy under section 51 of the Act; and
- authorization to recover the Tenants' filing fee from the Landlords pursuant to section 72 of the Act.

Landlord AP, AP's daughter MP, and the Tenants attended this hearing and gave affirmed testimony. The parties confirmed receipt of each other's documents for dispute resolution.

Preliminary Matter – Parties

The parties' application initially named different landlords. MP confirmed that the owners of the rental unit, which has since been sold, were the corporate landlords. MP confirmed that the corporate landlords are AP and JM's respective companies. I find AP and JM had signed the tenancy agreement as landlords. Under section 1 of the Act, a "landlord" includes an agent or another person who permits occupation of the rental unit

under a tenancy agreement on behalf of the owner. Therefore, I find that AP and JM may also be named as landlords. I have amended the parties' applications pursuant to section 64(3)(c) of the Act to unify the style of cause.

Issues to be Decided

1. Are the Landlords entitled to compensation for unpaid utilities?
2. Are the Tenants entitled to compensation under section 67 of the Act?
3. Are the Tenants entitled to compensation under section 51 of the Act?
4. Are the Landlords entitled to retain the security deposit?
5. Are the parties entitled to recover their filing fees?

Background and Evidence

While I have turned my mind to all the 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 the parties' applications and my findings are set out below.

The rental unit was the upper suite of a half-duplex. This tenancy commenced on October 1, 2020 and ended in July 2023. The Tenants paid a security deposit of \$1,400.00 which is held by the Landlords.

In May 2023, the property was sold to a buyer who wanted to move into the rental unit. The Tenants were given a two month notice to end tenancy for landlord's use of property dated May 23, 2023, with an effective date of July 31, 2023 - August 1, 2023 (the "Two Month Notice").

On July 5, 2023, the Tenants emailed AP advising that they would like to end the tenancy earlier on July 21, 2023. AP replied the same day stating that while the Tenants were welcome to move out early, the Landlords would not be able to compensate for the earlier move out date.

The Tenants vacated the rental unit on July 21, 2023. The sale of the property completed on August 8, 2023. At the time that the tenancy ended, rent was \$2,895.00.

The parties attended move-in and move-out inspections of the rental unit and completed the condition inspection report on both occasions.

The Tenants emailed their forwarding address to the Landlords on September 7, 2023. The Landlords made their application on September 12, 2023.

According to the Landlords, they found out a week before the Tenants moved out that the Tenants did not pay their FortisBC bills. The Tenants agreed that they were responsible for a portion of the FortisBC bills. During the hearing, the parties agreed that the Tenants would pay the Landlords \$1,700.05 for the Tenants' portion of the FortisBC bills during the tenancy.

In the Tenants' application, the Tenants seek the return of double their security deposit with interest, \$1,027.29 for pro-rated reimbursement of the last month's rent, and compensation of \$11,661.50 for damage or loss under the Act.

The Tenants submit as follows:

- The parties had agreed for the Landlords to keep the security deposit until the outstanding FortisBC bill arrived, which came on August 22, 2023. The security deposit should have been returned by September 6, 2023, but was not, so it should be doubled. The Tenants request interest on the security deposit of \$18.55 from the start of the tenancy to September 5, 2023.
- The Tenants withheld their July 2023 rent for their one month's compensation. The Tenants gave 16 days' notice to the Landlords to vacate the rental unit early. However, the Landlords refused to compensate the Tenants for leaving early, which they were required to as stated on the Two Month Notice.
- On November 24, 2020, an unrelated third-party vehicle drove into the property, destroying the front yard and patio. There was no safety bannister at the front stairs, the retaining wall was crumbling, and the yard was covered in debris. The Landlords came to the property a few times without notice. The Landlords offered to not increase the Tenants' rent for the year, in exchange for the trouble with the accident, but the Landlords could not have increased the rent for another 10 months.
- On January 5, 2021, the Tenants sent an email to request compensation for loss of quiet enjoyment and restriction of services. AP replied to offer a 7% rent reduction. The Tenants countered with 13%, which was eventually accepted by the Landlords. The Tenants received rent reductions from December 2020 to February 2021 totaling \$1,092.00.
- The rental unit was approximately 1,600 square feet, and the patio and yard were 27% of this space. The Tenants seek a 27% rent reduction from November 24, 2020 to February 2021 for termination or restriction of service due to the loss of the yard and patio. The Tenants seek a 35% rent reduction over the same period

for loss of quiet enjoyment of the yard and patio and “consistent problems” with the Landlords.

- On March 19, 2021, the Landlords planted a small tree to replace the adult tree. The removal of the adult tree had permanently altered the property. The adult tree had acted as a privacy barrier between the sidewalk and the windows. It had also buffered the busy road noise. The Tenants seek a 5% rent reduction from December 2020 to July 2023 for increased road noise and decreased privacy due to the loss of the adult tree.
- The Tenants seek a 25% rent reduction from April 2023 to July 2023 for loss of quiet enjoyment and damage to personal property. The Landlords made repeated attempts to manipulate or defraud the Tenants. In April 2023, MP suggested the Tenants to vacate the property in exchange for two months’ rent and no open houses. The Tenants declined as they did not want to waive their rights surrounding landlord use following eviction. The Landlords tried request the Tenants to pay a deposit for FortisBC, even though it is refundable. The Landlords tried to have the Tenants rectify the FortisBC bill from May 2020, before the tenancy had started.
- In May 2023, the AP came by to do yard work and power washed the front of the house. The Tenants asked AP to stop because the dirty water was flooding the Tenants’ possessions sheltered under the porch, but AP continued. A confrontation occurred and AP stopped washing the porch. The Tenants had a tray with creative projects undergoing curing (planter pots and dried bird and wasp nests), firewood, and plant-related materials.

The Landlords submit as follows:

- The Landlords agreed to a 13% rent reduction to try to compensate the Tenants for the trouble due to the accident. Despite having agreed to the 13%, the Tenants now claim that the Landlords still owe them. The Tenants mentioned that they would go to the Residential Tenancy Branch if the Landlords did not agree to the 13%. The Landlords agreed but the Tenants are still not happy. The Tenants should have gone to the Residential Tenancy Branch before they received compensation from the Landlords.
- The car had hit the patio. Due to insurance issues and needing a structural engineer to attend at the property, it took a couple of weeks before the Landlords could start the repairs. The Landlords communicated these with the Tenants to keep them updated.
- The Landlords made a mistake when calculating the Tenants’ share of the FortisBC bills. The Landlords agreed when the Tenants pointed it out.

- The Tenants did not give proper written notice when they emailed the Landlords to say that they wanted to move out early.

Analysis

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.

1. Are the Landlords entitled to compensation for unpaid utilities?

The parties agree that the Tenants owe the Landlords \$1,700.05 for the Tenants' portion of the FortisBC bills. By consent of the parties, I order the Tenants to pay the Landlords \$1,700.05 under this part.

2. Are the Tenants entitled to compensation under section 67 of the Act?

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.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

To determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I will address the Tenants' claims as follows: (a) compensation relating to car accident and loss of yard and patio, (b) loss of adult tree, and (c) manipulation/defrauding and property damage.

a. Car Accident and Loss of Yard and Patio

I find the Tenants requested a “rent decrease” for termination/restriction of service and loss of quiet enjoyment on January 5, 2021. I find that in an email to the Landlords dated January 9, 2021, the Tenants stated that they have lost the outdoor space and patio which they used regularly, the noise levels have changed due to the loss of foliage, and the Tenants were no longer able to have their front blinds open because of the eyesore. I find that in a further email to the Landlords dated January 30, 2021, the Tenants confirmed that they will take \$600.00 off rent for December to February (\$200.00 per month or 7%), but also wrote that:

- We would like to discuss is the repair situation (*sic*). At this point in time, we are prepared to ask the RTB to step in. That being said, we would like to avoid the entire situation and repair our relationship if possible. If you would like to hear the legal and logical reasoning behind our asks and are willing to further negotiate, please let us know. We will send a comprehensive email to fill you in on our thoughts as we are still willing to sort it out privately. If you are still firm on your offer of \$200, please let us know and we will go ahead with filing to save us all time.

I find the parties eventually agreed on a 13% rent reduction (\$364.00 per month) from December 2020 to February 2021, which the Tenants have already taken off the rent.

I find that in doing so, the parties had reached a final and binding settlement that resolved the Tenants’ claims for termination/restriction of service and lost of quiet enjoyment arising from the car accident up to February 2021. I find this settlement bars the Tenants’ claims in this application for rent reductions for the same issues during the same period, notwithstanding the Tenants’ deduction of the \$1,092.00 discount already received.

The Tenants also claim compensation for “consistent problems” with the Landlords. The Tenants’ evidence indicates that the Landlords had attended the property a few times following the car accident, for which they did not give notice. I note that while section 29 of the Act restricts a landlord’s entry into the rental unit, which includes the requirement for a 24-hour notice, the Act does not require notice to be given for entry onto the residential property. I accept that the Landlords attended a few times to assess the exterior damage. While I find that advance notice would have been courteous and appropriate, I do not find the Tenants to have suffered unreasonable disturbance that is sufficiently serious to warrant compensation or a rent reduction.

According, I dismiss the Tenants' claims for rent reductions due to termination/restriction of service and loss of quiet enjoyment up to February 2021 without leave to re-apply.

b. Loss of Tree

The Tenants request a 5% rent reduction over 30 months due to increased road noise and decreased privacy from the loss of the adult tree, totaling \$4,244.00.

Based on the evidence presented, I find the adult tree was damaged due to the car accident and had to be removed. I find the Landlords planted a smaller tree in March 2021.

While I accept that the Tenants preferred the original tree, I do not find the loss of this tree to constitute a breach of the Act, regulations, or tenancy agreement by the Landlords. I do not find the Landlords were required to provide such a tree as a term of the tenancy agreement. Additionally, while I accept that the larger tree provided greater privacy, I do not find that the replacement of this tree with a smaller one resulted in a breach of the Tenants' right to quiet enjoyment, including reasonable privacy, under section 28 of the Act.

I dismiss the Tenants' claim under this part without leave to re-apply.

c. Manipulation/Defrauding and Property Damage

I have reviewed the communication records included in the Tenants' evidence. I do not find Landlords or MP to have intentionally manipulated or defrauded the Tenants in their communications. In any event, I do not find the Tenants to allege that they have suffered any loss due to representations made by the Landlords or MP. Therefore, I do not find the Tenants to be entitled to any compensation in this regard.

I find the Tenants refer to an incident in which AP is alleged to have damaged their belongings while power washing. I find the Tenants messaged MP to complain that their possessions were being drenched in filthy water. However, I find the Tenants did not provide compelling evidence to show which specific items had been damaged or prove the value of any item lost.

For the reasons given above, I dismiss the Tenants' claim for a 25% rent reduction from April to July 2023 without leave to re-apply.

3. Are the Tenants entitled to compensation under section 51 of the Act?

Under section 51(1) of the Act, a tenant who receives a notice to end a tenancy under section 49 of the Act is entitled to receive from the landlord an amount equal to one month's rent payable under the tenancy agreement.

Section 50(1) of the Act states that a tenant who receives a notice to end a periodic tenancy under section 39 of the Act may end the tenancy by:

- a. giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- b. paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice.

Pursuant to section 51(1.1) of the Act, the tenant may withhold the last month's rent, and that amount is deemed to have been paid to the landlord. Under section 50(2) of the Act, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

I find the Tenants were given the Two Month Notice, which was a notice to end tenancy issued under section 49(5) of the Act. I find the Tenants emailed the Landlords on July 5, 2023 to end the tenancy by July 21, 2023. I note that under section 88(j) of the Act and section 43 of the regulations, a record or document may be given to or served on a person by emailing to an address provided as an address for service by that person. Based on the evidence presented, I do not find the Landlords to have agreed to accept service via email.

However, I find the Landlords received the Tenants' email and replied to it on the same day. Therefore, pursuant to section 71(2)(b) of the Act, I find the Landlords to be sufficiently served with the Tenants' notice to end the tenancy early by July 5, 2023.

I note that generally speaking, a notice to end tenancy must comply with certain form and content requirements in order to be valid. Section 52 of the Act states that in order to be effective, a notice to end a tenancy must be in writing, signed and dated by the landlord or tenant giving the notice, give the address of the rental unit, and state the effective date of the notice. When given by the landlord, the notice must also state the grounds for ending the tenancy and be in the approved form. However, I do not find

section 50 of the Act to require a tenant's notice under section 50(1) to comply with these requirements. I note that the tenant's notice under section 50(1) is in essence a notification to end the tenancy earlier, but the tenancy is being ended by the landlord's notice to end the tenancy under section 49 of the Act.

Based on the foregoing, I find the Tenants to have given the Landlords more than 10 days' written notice to end the tenancy by July 21, 2023.

I find that pursuant to sections 51(1.1) and 50(2) of the Act, the Landlords must refund the Tenants rent for the period after the effective date of the notice (from July 22 to 31, 2023), or $\$2,895.00 \times 10/31 \text{ days} = \933.87 . I find the Landlords did not refund this amount to the Tenants as required.

Pursuant to section 67 of the Act, I order the Landlords to pay the Tenants \$933.87 under this part.

4. Are the Landlords entitled to retain the security deposit?

Pursuant to sections 24, 36, and 39 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations.

I find the parties attended move-in and move-out inspections and completed the condition inspection report. I find the Tenants gave the Landlords a forwarding address within one year of the tenancy end date. Therefore, I find neither the Landlords nor the Tenants to have extinguished their rights to the security deposit.

Under section 38(1) of the Act, a landlord must (a) repay a security 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 the Landlords received the Tenants' forwarding address on September 7, 2023 and made their application on September 12, 2023. I find the Landlords complied with the 15-day deadline under section 38(1) of the Act. As such, I find the doubling provision of section 38(6) of the Act does not apply. I find the Landlords are deemed to

be holding the deposit, not doubled, in trust for the Tenants, pending the resolution of the claims in this dispute.

I find the Tenants provided a screenshot of the Residential Tenancy Branch website showing the interest on their security deposit. I find the Tenants are entitled to interest on the security deposit as claimed. For the parties' reference, interest on deposits has been 0% from 2020 to 2022 and 1.95% in 2023.

5. Are the parties entitled to recover their filing fees?

The Landlords have been successful in their application, while the Tenants have been partially successful. I find both parties are entitled to recover their filing fees under section 72(1) of the Act.

Conclusion

The Landlord's claims for unpaid utilities and recovery of their filing fee are granted in the amount of **\$1,800.05**.

The Tenants are entitled to credit for their security deposit, interest on the security deposit, a partial refund of July 2023 rent, and recovery of their filing fee totaling **\$2,452.42**. The remaining amounts claimed by the Tenants are dismissed without leave to re-apply.

Pursuant to section 62(3) of the Act, I grant the Tenants a Monetary Order for the difference of **\$652.37**, calculated as follows:

Item	Amount
Amount Payable by Landlords to Tenants	
Security Deposit Held	\$1,400.00
Refund of Rent from July 22 to 31, 2023 (\$2,895.00 × 10/31 days)	\$933.87
Interest on the Security Deposit	\$18.55
Tenants' Filing Fee	\$100.00
Subtotal	\$2,452.42
Less Amounts Payable by Tenants to Landlords	
Tenants' Portion of FortisBC Bills	- \$1,700.05
Landlords' Filing Fee	- \$100.00

Subtotal	- \$1,800.05
Balance to be Returned by Landlord to Tenants	\$652.37

The Tenants must serve this Order on the Landlords as soon as possible. This Order may be 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 Act.

Dated: March 5, 2024

Residential Tenancy Branch