



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes MNDCL, MNRL-S, MNDL-S, LRSD, FFL

Introduction

The Landlord made two related applications which were joined under Rule of Procedure 2.10. This hearing dealt with the Landlord's Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act).

The first application, made on October 26, 2024 is for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The second application, made on November 12, 2024, is for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Landlord C.G., Landlord's Agent/ Interpreter F.Y. attended the hearing for the Landlord

Tenant L.F. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant acknowledged service of the Proceeding Package for the first application and is duly served in accordance with the Act.

I find that Tenant is deemed served with the Proceeding Package for the second application by registered mail on November 19, 2024, the fifth day after the registered mailing, in accordance with sections 89 and 90 of the Act. The Landlord provided the receipt from Canada Post .The tracking numbers for both Proceeding Packages are recorded on the cover page of this decision.

Service of Evidence

The Tenant acknowledged service of the Landlord's evidence and I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

The Landlord testified that they received the Tenant's evidence except for the files named:

- 5. Tenant Statement of facts and arguments
- 8. BC Company Summary
- 11. Gmail - between landlord and tenant's legal counsel(3)

The Tenant could not prove service of these files.

I find that the Tenant's evidence, except those files recorded above, were served to the Landlord in accordance with section 88 of the Act. I have not relied on the three document files noted above in making my decision.

Preliminary Matters

At the outset of the hearing the Landlord sought to increase the monetary claim for compensation for loss under section 67 of the Act from \$314.53 to \$1,592.34 to reflect the Tenant's failure to pay utilities for October and November, 2024, which accrued while waiting for this hearing.

Residential Tenancy Branch Rules of Procedure, Rule 7.12, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as these were clearly utilities charges that the Tenant would have known about and resulted since the Landlord submitted the application.

Issues to be Decided

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

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

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement?

Is the Landlord entitled to Authorization to retain all, or a portion, of the Tenant's security deposit?

Is the landlord entitled to recover the filing fee, for either or both of their two applications, from the tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 1, 2024 and was for a fixed term with an expiry date of July 1, 2025. The monthly rent, of \$4,600.00, was due on first day of the month. The Tenant provided the Landlord with a security deposit in the amount of \$2,300.00 and a pet damage deposit in the amount of \$1,250.00. The rental unit is a house.

The Landlord's claims on their Monetary Order Worksheets are as follows:

Item	claim
Additional rent from subletting September 2024	\$1,000.00
Additional rent from subletting October 2024	\$1,000.00
Rent remaining on the fixed term tenancy	\$18,400.00
Unpaid utility bills (\$314.53 claimed and amended to \$1,911.68)	\$1,911.68
Repairs of damage to the bathroom	\$8,000.00
Subletting without Consent	\$3,000.00
Total	\$33,311.68

Subletting

The Landlord testified that the tenancy agreement and addendum stipulate that four persons live in the rental unit, subletting is not allowed, and guests cannot stay longer

than two weeks. The Landlord provided a copy of the tenancy agreement and addendum.

The Landlord testified that they were informed that there were additional people living in the rental unit. The Landlord provided a document titled "Statutory Declaration" that was signed by L.W. but is not witnessed. L.W.'s declaration states they observed a mother and daughter living in the rental unit from early August 2024 to late November 2024.

The Landlord testified that they did not agree to allow the Tenant to sublet any portion of the rental unit to these additional occupants. The Landlord states the rent was \$4,600.00 for 4 people which is more than \$1,000.00 per person per month. The Landlord requested \$1,000.00 additional rent for September and October in the first application, and \$3,000.00 on the second application.

The Tenant testified that the mother and daughter came to stay in the rental unit in for the month of October as guests. The Tenant said that they vacated the rental unit at the end of October. The Tenant did not receive any money from the occupants and doesn't think that she was subletting.

Fixed Term Tenancy

The Tenant testified that on October 1, 2024 they gave the Landlord one month notice to end the tenancy.

The Landlord stated that the Tenant ended the fixed term tenancy agreement in December 2024, six months early. The Landlord claims compensation for rent up to the end of the fixed term. The Landlord also explained that the tenancy agreement stated that the Tenant has to compensate the Landlord for one month of rent if the lease is terminated early. The Landlord did not specifically claim for this.

The Landlord testified that new tenants began occupying the rental unit on January 15, 2024 and are paying the same rate of rent as the Tenant was.

The Landlord testified that the Tenant did not pay rent in November 2024, or December 2024. The Tenant gave the Landlord a cheque for November rent, but it "was fake". The Landlord said the cheque 'bounced'.

The Tenant testified that they did not give the Landlord a 'fake cheque'. The Tenant argued that they should not have to pay rent for December when they did not live in the rental unit. The Tenant testified that they had the bank 'stop' the cheque.

Utility Bills

The Landlord testified that the Tenant did not pay their portion of several utility bills. The Landlord submitted copies of those utility bills. The Landlord also provided detailed testimony of their claims.

The Landlord testified that they sent the bills to the Tenant each month as they arrived, but the Tenant has not paid anything for utilities.

The Landlord's \$1,911.68 claim represents the total of all of the submitted utility bills. The Landlord also argued that the Tenant should have to pay 80% of the bills which equals \$1,592.34, instead of the agreed upon 70%, because the Tenant had two extra people living in the rental unit.

I calculate that 70% of each utility bill is the sum of \$1,338.18

The Tenant testified that she owed the Landlord \$359.47 for unpaid utilities as of October 16, 2024. The Tenant agreed that she owed for some utilities for the rest of October and November as well. The Tenant was unsure of how much she owed the Landlord in total.

Damage to the Bathroom

The Landlord testified that the Tenant caused a fire in the bathroom by leaving the bathroom fan on for too long. The Landlord provided photos of the bathroom which show a large portion of the walls and ceiling are black. The Landlord testified that the Tenant refused entry to the Landlord to inspect the rental unit and would not allow any workers into the rental unit during the tenancy after the fire.

The Landlord hired an electrician to complete a report, which the Landlord submitted as evidence. The Landlord testified that the report shows that the Tenant caused the fire. The fan was installed in 2013.

The Tenant testified that no one noticed the fire when it happened as it was very small. The Tenant testified that the fan catching on fire was not their fault. The bathroom does not have a window, and the Tenant left the fan running for about 3 hours. The fan is 10 years old the Tenant argued that the Landlord did not maintain it.

The Landlord testified that, at the start of this tenancy, they told the Tenant not to run any fans for a long time and even included this requirement as a term of the tenancy agreement. The Tenant denied that the Landlord told them how long to allow the fans to run for.

The Landlord testified that when he completed an inspection of the bathroom and other portions of the rental unit after the fire, he observed fans running in the rental unit. The Landlord believes that the Tenant always left fans running for long periods of time.

The Landlord testified that the bathroom repairs cost \$ 6,685.34 and provided the invoice and receipts for materials and labour. Their claim on the Monetary Order Worksheet was an estimate.

Cleaning

The Landlord provided photos of the rental unit from December 1, 2024. The Landlord testified that cleaning the bathroom and kitchen cost \$1,050.00 because the Tenant did not leave the rental unit clean. The Landlord provided a copy of the cleaning invoice.

The Tenant testified that they cleaned the rental unit on December 1, 2024 at the end of the tenancy. The Landlord said that it was not clean enough, so they cleaned more, and rescheduled the condition inspection for December 4, 2024. The Tenant provided photos of the rental unit after they cleaned it.

The parties completed the condition inspection report together at the start and end of this tenancy. The Tenant provided their forwarding address to the Landlord on December 4, 2024.

The Tenant argued that the Landlord's name is not the same on the tenancy agreement as it is on their application, so the entire agreement should be invalid. The Tenant stated that the name on the title of the property is not the same name as the Landlord.

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. 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.

I will first address the Tenant's argument that the tenancy agreement is invalid because the Landlord's name does not match on the title of the property, the application for dispute resolution, and the tenancy agreement. The definition of a 'landlord' in the Act, includes the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act. I find that the person named on this application is a landlord under the Act. I find that the person who entered into the tenancy agreement with the Tenant is the same person as the Landlord in this application. Upon review of the tenancy agreement I find that it complies with the Act. I find that the tenancy agreement is a valid and enforceable agreement.

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

Rent

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulation, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Section 7 of the Act explains that when tenant does not comply with their tenancy agreement, the tenant must compensate the landlord for the damage or loss that results. A landlord who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline #5 (PG #5) explains, that when a tenant gives notice to end a tenancy that is earlier than is permitted by the tenancy agreement, then the landlord is not required to rent the rental unit for an earlier date. To minimize their loss, however, the landlord must make reasonable efforts to find a new tenant to occupy the rental unit the date following the date that the notice takes legal effect.

Further PG #5 states that the purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred.

I find that the Tenant ended this tenancy before the expiry of the fixed term, in breach of the fixed term tenancy agreement. If the Tenant had not breached the fixed term tenancy agreement, the Landlord would not have lost rental income from December 1, 2024 to January 14, 2025. I find that the Landlord is entitled to unpaid rent from December 1, 2024 to January 14, 2025.

The rent was \$4,600.00 per month, or \$151.23 per day. The Landlord suffered a loss of rent for 44 days which is \$6,654.12, calculated as follows:

$$\begin{aligned} \$4,600.00 \text{ per month} \times 12 \text{ months} &= \$55,200.00 \text{ annually} \\ \$55,200.00 \text{ per year} / 365 \text{ days} &= \$151.23 \text{ per day} \end{aligned}$$

Utilities

The Tenant testified that they did not pay all of the utility bills, and that an amount is still owing to the Landlord. I find that the Tenant breached the tenancy agreement by failing to pay the utilities as agreed.

The Landlord claimed \$1,911.68 which is the total of the utility bills submitted as evidence. The Landlord also argued that the Tenant should be ordered to pay \$1,592.34, which is the sum of 80% of each bill.

The tenancy agreement states that the Tenant will pay 70% of utilities, and four persons live in the property. The tenancy agreement does not state that the Tenant's portion of utilities will change based on occupancy. I find that the Tenant did not agree to pay 80% of the utilities.

The Tenant and the Landlord provided conflicting testimony of how much the Tenant owed the Landlord for unpaid utilities. I accept the Landlord's testimony that the Tenant failed to pay the utility bills which were submitted as evidence. I calculate the amounts as follows:

Utility	Invoice Amount	Tenant portion 70%
Natural Gas	\$147.21	\$103.05
	\$236.84	\$165.79
	\$200.46	\$140.32
Electricity	\$234.92	\$164.44
	\$300.23	\$210.16
Water	\$657.62	\$460.33
Cable	\$67.20	\$47.04
	\$67.20	\$47.04
	Total	\$1,338.18

On a balance of probabilities, I find that the Landlord's evidence establishes that the Tenant failed to pay \$1,338.18, which is 70% of the utility bills up to the end of November, 2024.

I find that the Landlord is entitled to \$1,338.18 compensation from the Tenant for the utilities which the Tenant agreed to pay but did not.

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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent and utilities under section 67 of the Act, in the amount of \$7,992.30 (\$6,654.12+\$1,338.18.)

Is the landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act states that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32 (1) of the Act requires that landlords provide and maintain the rental unit in a state of decoration and repair that “complies with the health, safety, and housing standards required by law”, and “having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Under section 7 and 67 of the Act, to be awarded compensation for a breach of the Act, the Landlord must prove:

- the Tenant has failed to comply with the Act, regulation, or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the Landlord acted reasonably to minimize that damage or loss

The Landlord has the burden to prove that the Tenant failed to comply with the Act, regulation or tenancy agreement. I have reviewed the tenancy agreement. I find that the tenancy agreement does not stipulate how the Tenant may use the fans in the rental unit. The only reference to fans, is that the Tenant must pay special attention to grease on the fans.

I find that the Landlord has not established the amount of time that the fan was running on the day of the fire. I find that the Landlord has not established that the fire in the bathroom is a result of the Tenant's deliberate action or negligence. The report from the electrician states that there was “prolonged fan operation, which may have caused the motor bearings to overheat and wear down, ultimately leading to bearing failure and motor seizure.” The report does not state how long it would take for something like this to happen.

There is also no evidence on the state of the fan at the start of this tenancy. I find the Landlord has not proven that the condition of the bathroom fan became worse during this tenancy due to the actions or neglect of the Tenant.

Under section 32 the Act, the Landlord is responsible for maintaining the rental unit to comply with safety and housing standards. Ensuring that ventilation systems are safe is the requirement of the Landlord.

On a balance of probabilities, based on the evidence before me, I find that the Landlord has not established that the Tenant breached the Act, tenancy agreement or regulation, with respect to the bathroom fan catching fire.

As the Landlord has not proven that the Tenant breached the Act, regulation or tenancy agreement, the Landlord's claim for compensation for damage to the rental unit is dismissed without leave to reapply.

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Under sections 7 and 67 of the Act, to be awarded compensation for a breach of the Act, the Landlord must prove:

- the Tenant has failed to comply with the Act, regulation, or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the Landlord acted reasonably to minimize that damage or loss

Subletting

The Landlord claims \$1,000.00 per month for September, and October, as well as an additional \$3,000.00 compensation for the Tenant subletting the rental unit without approval. I find that the Landlord has failed to establish that the Tenant was subletting the rental unit. The Landlord and the Tenant provided conflicting evidence on this point. The Landlord provided an unsworn statement from a witness who did not testify.

Residential Tenancy Branch Policy Guideline #19 explains that if the tenant remains in the rental unit, then the tenant does not become a landlord under the act. The third party would be considered an occupant/ roommate with no rights or responsibilities under the Act. I find that the Tenant remained in the rental unit and did not sublet the rental unit.

On a balance of probability, I find that the Landlord has not proven that the Tenant was subletting the rental unit.

Cleaning

The Landlord claims \$1,050.00 for cleaning the bathroom and the kitchen. Some of the Landlord's photos are of dirt and dust from behind appliances. Under Residential Tenancy Policy Guideline 1, the Tenant is not required to clean behind appliances that

are not on rollers. The Landlord did not establish the any of the appliances are on rollers.

I accept the testimony of the Tenant that they finished cleaning the rental unit after the Landlord took photos on December 1, 2024. I accept the photos of the Tenant as evidence that the kitchen was left reasonably clean at the end of this tenancy.

I accept the evidence and testimony of the Landlord that the Tenant did not leave the fire damaged bathroom reasonably clean. The Tenant did not supply photos of this bathroom. The Tenant was not required to remediate the fire-damaged portions of the bathroom but was required to leave the rest of the bathroom reasonably clean.

The Landlord's invoice does not have any details of the costs of cleaning the different areas. Given that the fire-damaged bathroom needed to be remediated and re-painted, I find that the Landlord has not proven the value of their loss for cleaning the bathroom.

I dismiss the Landlord's application for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement without leave to reapply.

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. The forwarding address was provided on December 4, 2024, and the Landlord made their application against the security deposit on November 10, 2024. I find that the Landlord made their application within the time frame required.

I find that the Landlord and the Tenant completed the condition inspection report together at the start and the end of this tenancy in compliance with the Act and regulations.

Section 72(2)(b) of the Act states that if there is an amount owing from a tenant to a landlord, an arbitrator may deduct that amount from a security or pet deposit due to the tenant.

The security deposit at the start of the tenancy was \$2,300.00 and the pet damage deposit was \$1,250.00. Together these deposits accrued \$53.36 interest under the regulations, giving them a value of \$3,603.36.

In accordance with the offsetting provisions of section 72 of the Act, the Landlord may retain the Tenant's entire security deposit and pet damage deposit, with interest, \$3,603.36, in partial satisfaction of the Monetary Order.

Is the landlord entitled to recover the filing fee for either or both of their two applications from the tenant?

The Landlord's first application, which claimed compensation for the Tenant having sublet the rental unit, was not successful. Therefore, the Landlord must bear the cost of the filing fee for their first application.

The Landlord's second application was partially successful, and I find the Landlord is entitled to recover the filing fee for their second application.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$4,488.94** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and utilities under section 67 of the Act, in the amount of \$6,654.12. \$6,654.12 rent + \$1,338.18 utilities	\$7,992.30
authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act (\$2,300.00+\$1,250.00+ \$53.36)	-\$3,603.36
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$4,488.84.

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

The Landlord's application for money owed or compensation for damage to the rental unit is dismissed without leave to reapply

The Landlord's application for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement is dismissed without leave to really.

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: February 25, 2025

Residential Tenancy Branch