Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 05, 2019 (the "Application"). The Landlord sought:

- Compensation for monetary loss or other money owed;
- To recover unpaid rent; and
- To keep the security deposit.

This matter came before me March 19, 2020 and was adjourned. An Interim Decision was issued March 24, 2020.

This matter came before me July 24, 2020 and was adjourned. An Interim Decision was issued July 27, 2020.

This decision should be read with the Interim Decisions.

The Landlord filed amendments dated February 28, 2020 and July 06, 2020 changing the amount of the claim (the "Amendments"). These Amendments were addressed in the Interim Decisions. These Amendments were permitted and have been considered in this decision.

The Landlord appeared at the hearing with the Witness and J.G. The Witness was not involved in the conference call until required. The Landlord was originally going to call J.G. as a witness; however, the Landlord chose not to. J.G. was not involved in the conference call.

The Tenants appeared at the hearing.

I explained the hearing process to the parties who did not have questions about the process when asked. The parties and Witness provided affirmed testimony.

The Landlord submitted evidence for this matter in March and July. The Tenants acknowledged receipt of the Landlord's evidence which is therefore admissible.

The Tenants had submitted one package of evidence prior to the first hearing. This had not been served on the Landlord. When the first hearing was adjourned, it was decided that the Tenants did not need to serve their evidence on the Landlord because it was either evidence the Landlord had or was not relevant to the issues before me. This is addressed in the Interim Decision.

At the second hearing, the Tenants had submitted further evidence. The Tenants had not served this on the Landlord. When the second hearing was adjourned, the Tenants were permitted to serve their evidence on the Landlord. This is addressed in the Interim Decision.

At the third hearing, the Tenants had submitted further evidence.

At the third hearing, the Landlord testified that the only evidence he received from the Tenants in relation to this matter was one receipt dated October 03, 2019.

Tenant A.L. testified that the Tenants' evidence was emailed to the Landlord. Tenant A.L. confirmed the Tenants did not submit documentary evidence of service.

In the Interim Decision dated July 27, 2020, I stated as follows at page two:

> The Tenants are permitted to serve their evidence on the Landlord and, if the Tenants do so, I will consider it at the next hearing.
>
> Both parties can submit further evidence prior to the next hearing…
>
> All evidence submitted must be served on the other party no later than 14 days before the next hearing date. This includes the Tenants' evidence submitted but not yet served on the Landlord. The parties are permitted to serve their evidence by email. I have included each party's email on the front page of this decision. At the hearing, I told the Tenants to serve their evidence by mail if the Landlord did not confirm receipt of their email. I am changing this position. Upon further consideration, both parties can serve any further evidence on each other by email

> at the email addresses noted on the first page of the decision. The parties confirmed this decision could be sent to those emails and I am satisfied the emails are operational and the parties can receive documents at them. The parties **must** submit evidence showing the email service meaning showing what was sent, when and to what email address. All parties **are ordered to** reply to the others to confirm receipt of emails received. These emails confirming receipt should be submitted as evidence prior to the next hearing.
>
> (emphasis in original)

Rules 3.15 and 3.16 of the Rules of Procedure (the "Rules") state:

> **3.15 Respondent's evidence provided in single package**
>
> …
>
> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant…as soon as possible…the respondent's evidence must be received by the applicant…not less than seven days before the hearing….
>
> **3.16 Respondent's proof of service**
>
> At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

The Tenants testified that they served their evidence on the Landlord by email. The Landlord denied receiving this evidence. The Tenants did not submit documentary evidence to support their position. It would have been simple for the Tenants to submit documentary evidence of service if they in fact emailed their evidence to the Landlord as they could have submitted a copy of the email showing it was sent. This is what the Tenants were directed to do in the Interim Decision. The Tenants failed to do this. The Tenants failed to follow the direction given in the Interim Decision. The Tenants failed to prove their evidence was served on the Landlord.

Pursuant to rule 3.17 of the Rules, I excluded the Tenants' evidence as I found it would be unfair to the Landlord to consider evidence that I was not satisfied was served on the Landlord. I was not satisfied the Landlord had seen the evidence or could address the

evidence during the hearing. Given this, I found it would be prejudicial to the Landlord to consider the Tenants' evidence.

During the third hearing, the Tenants attempted to rely on the evidence submitted in March prior to the first hearing. I did not permit the Tenants to do so. The evidence had not been served on the Landlord. Tenant S.K. had not sought to rely on this evidence when it was discussed at the first hearing. In the circumstances, I found it would be unfair to consider this evidence when it was not served on the Landlord and therefore the Landlord had not seen it and could not address it.

In the result, two pieces of the Tenants' evidence are admissible. First, the October 03, 2019 receipt is admissible because the Landlord acknowledged receiving it. Second, the forwarding address letter dated November 28, 2019 is admissible because this was discussed during the hearing and the Landlord agreed to admission of it. I also note that the Landlord submitted these pieces of evidence as well. The remainder of the Tenants' evidence is excluded meaning it will not be considered in this decision.

At the first hearing, I confirmed the rental unit address as shown on the Application with the parties who said it was correct. While re-reviewing the evidence, it became clear that the rental unit address as shown on the Application is not correct. Further, the parties have been involved in two prior RTB proceedings in relation to this tenancy, File Number 1 and File Number 2. The decisions on File Number 1 and File Number 2 include the rental unit address shown on the front page of this decision and not the rental unit address shown on the Application. In the circumstances, I have included the rental unit address shown on the documentary evidence and prior decisions on the front page of this decision rather than the rental unit address shown on the Application.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed the admissible documentary evidence. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?

Background and Evidence

Through the Application and Amendments, the Landlord sought the following compensation:

Item	Description	Amount
1	Stove	$95.00
2	Paint, roller, tape	$48.87
3	Light bulbs	$39.57
4	Porch door	$85.00 - $129.00
5	Labour at $18.75 per hour	$337.50
6	Unpaid rent	$8,317.00
7	Unpaid utilities	$1,767.99
8	Bailiff fees	$1,656.60
	TOTAL	**$12,347.53 - $12,391.53**

The issue of the tenancy agreement in this matter arose on File Number 1. The hearing on File Number 1 occurred September 09, 2019 and a decision was issued the same date. The Arbitrator stated as follows at page four:

> I find that S.K. and A.L. are both tenants under the same tenancy agreement. Although S.K. testified that she moved out of the rental unit, I find that, based on the email communications provided, that S.K. continues to have a possessory interest in the rental unit. Based upon the agreed testimony of the parties, I find that the tenants were both obligated to pay the monthly rent in the amount of $2,450.00 each month pursuant to the tenancy agreement.

It has been noted in prior decisions, and is a non-issue between the parties, that the Landlord rented the rental unit from the owner and then rented the unit to the Tenants as sub-tenants.

During these hearings, I confirmed the following points about the tenancy agreement gleaned from the documentary evidence and prior decisions. Both Tenants were tenants under the same tenancy agreement and were sub-tenants of the Landlord. The tenancy started in 2018 but Tenant A.L. was added in 2019. Rent was $2,450.00 due on the first day of each month. A $1,250.00 security deposit was paid. The tenancy ended in December of 2019. The Tenants were responsible for paying 60% of the utilities for the rental unit address.

The Landlord confirmed the above points about the tenancy agreement are accurate.

The Tenants agreed the above points about the tenancy agreement are accurate other than the amount of the security deposit. The Tenants testified that they paid two security deposits, each in the amount of $1,250.00.

Further, Tenant S.K. testified that she vacated the rental unit in December of 2018. Tenant S.K. testified that she ended the tenancy in relation to her on January 31, 2019. Tenant S.K. testified that the only other documentation ending the tenancy provided to the Landlord was the November 28, 2019 forwarding address letter.

Despite the above, there seemed to be no issue between the parties that the Tenants were removed from the rental unit in December of 2019 by bailiffs pursuant to an Order of Possession issued by the RTB and a Writ of Possession issued by the BC Supreme Court in a matter between the owner and Landlord. The Order of Possession and Writ of Possession were issued against the Landlord as a tenant.

The Landlord testified that the Tenants were removed from the rental unit by bailiffs December 28, 2019. The Landlord denied that Tenant S.K. ever ended the tenancy or vacated the rental unit prior to December of 2019.

In relation to the security deposit, the Landlord took the position that the Tenants extinguished their rights in relation to the security deposit and therefore he should be permitted to keep it on this basis alone. The Landlord submitted that the Tenants extinguished their rights in relation to the security deposit by not allowing or not participating in inspections during the tenancy.

Tenant S.K. testified that the Tenants provided the Landlord their forwarding address in a letter dated November 28, 2019. The Landlord acknowledged receiving this letter around November 28, 2019.

The Landlord acknowledged the Tenants did not agree in writing at the end of the tenancy that he could keep some or all of the security deposit.

The Landlord testified as follows in relation to a move-in inspection. No move-in inspection was done. There was nothing put in writing or anything formal done in relation to a move-in inspection. He did not offer the Tenants two opportunities to do a move-in inspection.

Tenant S.K. testified as follows. She completed a move-in Condition Inspection Report ("CIR") on October 01, 2018 and took it to the Landlord to sign. She and the Landlord signed the CIR. She does not remember if the Landlord was present for the inspection. The Tenants were not offered two opportunities to do a move-in inspection.

In response, the Landlord testified that Tenant S.K.'s testimony about a CIR is false.

The parties agreed on the following. No move-out inspection was done. A CIR was not completed on move-out. The Landlord did not give the Tenants two opportunities to do a move-out inspection.

The Landlord testified that he did not give the Tenants two opportunities to do a move-out inspection because they were removed by bailiffs and he only learned of where they had gone when he received the forwarding address letter.

The Landlord had submitted a Notice of Final Opportunity to Schedule a Condition Inspection form for an inspection November 24, 2019. I asked the Landlord about this. The Landlord said he used this form to schedule an inspection during the tenancy.

The parties provided the following testimony and submissions about the compensation claimed.

#1 Stove

The Tenants agreed to pay the Landlord $95.00 for a replacement stove.

#2 Paint, roller, tape

The Landlord sought compensation for damage to the dining room walls which he filled and painted.

The Tenants testified that the damage to the dining room walls was there at the start of the tenancy.

The Landlord could not point to documentary evidence showing the condition of the dining room walls at the start of the tenancy.

#3 Light bulbs

The Landlord sought compensation for the cost of replacing light bulbs which the Tenants took at the end of the tenancy.

The Tenants testified that they returned the rental unit in the same condition as they received it in relation to light bulbs and that light bulbs were missing at the start of the tenancy.

In reply, the Landlord testified that he would not have rented the rental unit with missing light bulbs.

#4 Porch door

The Landlord sought compensation for a porch door that was broken during the tenancy. The Landlord submitted that the Tenants smashed the porch door. The Landlord could not point to evidence to support the position that the Tenants broke the porch door.

The Landlord submitted a witness statement about the porch door from a downstairs tenant who says one day they saw the porch door glass all over the stairs of the rental unit and are not sure who did this.

The Tenants testified that they did not break the porch door. The Tenants testified that they do not know who broke the door. The Tenants testified that the door was used by both them and the downstairs tenants.

#5 Labour at $18.75 per hour

The Landlord sought compensation for his labour to make the above repairs. The Landlord sought $18.75 per hour to cover his time as well as gas for going to get supplies.

The Tenants testified about a door that came off the hinges that they would have fixed but could not on their own. This was in reference to the documentary evidence submitted.

#6 Unpaid rent

The Landlord sought both unpaid rent and loss of rent including the following:

Months	Amount
January/February/March 2019 (partial unpaid rent)	$2,450.00
November 2019 (partial unpaid rent)	$967.00
December 2019 (unpaid rent)	$2,450.00
January 2020 (loss of rent)	$2,450.00
TOTAL	**$8,317.00**

January/February/March 2019 (partial unpaid rent)

The Landlord testified as follows. Rent cheques for January, February and March of 2019 bounced. The Tenants subsequently made a $3,000.00 payment and $1,900.00 payment for January, February and March 2019 rent. The Tenants never paid the remaining $2,450.00 for January, February and March 2019 rent.

The Landlord relied on bank statements submitted to show the Tenants failed to pay $2,450.00 for January, February and March 2019 rent. The Landlord testified that the $1,900.00 payment shows as $2,000.00 because he added $100.00 of his own money to the deposit.

The Tenants testified that they made three payments in April 2019 towards the outstanding rent for January, February and March 2019. The Tenants testified that they paid $3,000.00 and $1,900.00 by e-transfer as well as $2,450.00 by cash.

The Tenants submitted that the Landlord's bank records are not accurate as they show the $1,900.00 was deposited as cash when it was sent by e-transfer. The Tenants acknowledged there is nothing in the admissible documentary evidence to support their position that they paid the remaining $2,450.00 in April in cash. The Tenants pointed out that the Landlord may not have deposited the $2,450.00, submitted that the Landlord previously admitted to taking cash payments directly to the owner of the rental unit and suggested that the Landlord may have another bank account where the money was deposited.

The Landlord denied that the Tenants paid the remaining $2,450.00 in April in cash.

November 2019 (partial unpaid rent)

The Landlord testified that the Tenants failed to pay $967.00 of rent for November of 2019. The Landlord relied on the bank statements in evidence.

The Tenants testified that they paid November rent in full, part by e-transfer and part by cash. The Tenants acknowledged there is nothing in the admissible documentary evidence to support this position.

December 2019 (unpaid rent)

The Landlord testified that the Tenants never paid rent for December 2019. The Landlord relied on the bank statements in evidence.

The Tenants testified that they paid rent for December 2019 in cash. The Tenants acknowledged there is nothing in the admissible documentary evidence to support this position.

The Tenants did not submit that they had authority under the *Residential Tenancy Act* (the "*Act*") to withhold rent. The Tenants testified that there is no rent outstanding.

January 2020 (loss of rent)

In relation to rent for January of 2020, the Landlord sought loss of rent. The Landlord testified as follows. The BC Supreme Court issued a Writ of Possession for the rental unit which was served on the Tenants December 17, 2019. The Writ required the Tenants to vacate the rental unit within two days. The Tenants did not do so. He had potential tenants interested in renting the unit for late December. By the time the Tenants were removed from the unit by bailiffs, the potential tenants had found another place and no longer wanted to rent the unit. The unit remained empty in January. He lost January rent due to the Tenants not vacating the unit in accordance with the Writ of Possession.

The Landlord further testified as follows. He advertised the rental unit for rent December 17, 2019 on four or five rental websites for the same rent amount. The potential tenants did not sign a tenancy agreement. He corresponded with the potential tenants by text message. Others contacted him about renting the unit for January but backed out for various reasons.

As noted above, the Tenants were subletting the rental unit from the Landlord. The Landlord was renting the unit from the owner. The Landlord acknowledged the Writ of Possession was obtained by the owner and issued against him as the tenant. Despite this, the Landlord testified that he tried to re-rent the unit for January. The Landlord testified both that he owed the owner for January rent and that he paid the owner for January rent. When questioned about this further, the Landlord testified that he voluntarily paid the owner January rent to fulfill his obligations in relation to his tenancy.

The Landlord could not point to evidence to support that he paid the owner for January rent. In relation to evidence about potential tenants for January, the Landlord relied on one text message between him and a third party referencing this. I note that I cannot find this text message in the Landlord's evidence. The Landlord said he did not submit his text messages with the potential tenants because he deleted them.

Tenant A.L. testified as follows. The Landlord's tenancy ended with theirs. The Landlord did post the rental unit for rent December 11, 2019 for $2,500.00 in rent. The Landlord is currently renting the unit to another individual.

Tenant A.L. testified that the Tenants were served on December 08, 2019 with an Order of Possession issued by the RTB. Tenant A.L. testified that the Tenants never received the Writ of Possession. Tenant A.L. testified that the Tenants did not vacate the rental unit earlier given personal circumstances as well as the actions of the Landlord.

The Tenants acknowledged that they understood the RTB Order of Possession related to them and required them to vacate the rental unit despite it being issued in relation to the owner and Landlord. The Tenants acknowledged receiving text messages from the Landlord telling them he would have a bailiff remove them. The Tenants testified that they were trying to pack and vacate the rental unit. The Tenants testified that the bailiffs attended December 20, 2019.

The Witness testified that she attended the rental unit with the Landlord who posted the Writ of Possession on the doors of the rental unit December 17, 2019.

#7 Unpaid utilities

The parties agreed the Tenants owed 60% of utilities for the rental unit during the tenancy.

The Landlord provided an outline of utility amounts owing with a balance of $1,767.99. The outline relates to utilities from December of 2018 to January of 2020. The Landlord had already sought unpaid utilities on File Number 1. The Landlord testified that the Tenants only ever paid $51.00 towards utilities.

The Landlord submitted utility bills.

The Tenants testified as follows. They made a $51.00 payment towards utilities. They also made a $100.00 cash payment towards utilities in June, July or August of 2019. A further $249.00 should be deducted from what is owing for utilities because they made emergency repairs during the tenancy. They provided the Landlord notice about the emergency repairs and a receipt for these.

In relation to the Landlord's outline of amounts owing, the Tenants agreed they did not pay their portion of the Fortis bills from July 24, 2019 to December 27, 2019.

The Tenants submitted that they should not have to pay 60% of the Fortis bills for the following reasons. These bills were higher due to the habits of the downstairs tenants and because the Landlord had not cleaned the air ducts in the rental unit. It was unfair that they were responsible for 60% of the utilities because the downstairs unit was a basement unit and therefore naturally required more heat than the rental unit which was upstairs. There were more tenants living downstairs than upstairs. They should not have to pay the amount sought because the Landlord did not serve the utility bills monthly. They negotiated with the Landlord to renegotiate their percentage of the utilities when the first set of downstairs tenants vacated; however, this did not happen.

When asked about the hydro bills, the Tenants said they thought the heat was hydro and then said they do not know whether the heat issue affected the Fortis bills or hydro bills.

The Tenants agreed they did not pay the July 2019 to January 2020 hydro bills. The Tenants submitted as follows. They should not have to pay for utilities for January of 2020 because they did not live in the rental unit at this point. The bills were higher because of the downstairs tenants. The Landlord did not promptly serve the bills.

In reply, the Landlord testified as follows. The Tenants never made a $100.00 cash payment towards utilities. This is the first time he has heard about emergency repairs. The Tenants' testimony about the downstairs tenants is not true.

#8 Bailiff fees

The Landlord sought compensation for the cost of hiring bailiffs to remove the Tenants from the rental unit. The Landlord testified as follows. He told the Tenants he was going to hire a bailiff to remove them from the rental unit. The Tenants would not vacate the unit.

The Landlord submitted an invoice in relation to the bailiffs showing they attended the rental unit December 30, 2019 and that the associated cost was $1,656.60. The invoice is addressed to the Landlord.

The Landlord submitted an Order of Possession issued by the RTB December 05, 2019 in relation to the rental unit on a matter between the owner and the Landlord as tenant. The Order of Possession required the Landlord and all occupants to vacate the rental unit within two days of service.

The Landlord submitted text messages between the Landlord and Tenants in relation to the Landlord arranging for a bailiff and about potential tenants.

Tenant S.K. testified as follows. The Landlord evicted the Tenants illegally. The Landlord harassed the Tenants making it more difficult for them to vacate. She had personal circumstances that made vacating difficult. It was hard to know if the Landlord's threats of calling a bailiff were real because he constantly said he was going to the following day but did not.

In reply, the Landlord submitted that the testimony of Tenant S.K. is not true.

Witness and documentary evidence

I did not find the testimony of the Witness relevant other than as referenced above and therefore have not outlined the testimony further.

The admissible evidence from the Tenants includes the October 03, 2019 receipt and November 28, 2019 forwarding address letter.

I have reviewed all of the Landlord's evidence and have referenced the relevant evidence above. I do not find the remainder of the Landlord's documentary evidence sufficiently relevant to outline in this decision.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides **an equally probable version of events**, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails (emphasis added).

Tenancy Agreement

The parties raised issues about the tenancy agreement in this matter. These issues were raised at the hearing on File Number 1. As stated, the Arbitrator found as follows in the decision on File Number 1:

> I find that S.K. and A.L. are both tenants under the same tenancy agreement. Although S.K. testified that she moved out of the rental unit, I find that, based on the email communications provided, that S.K. continues to have a possessory interest in the rental unit. Based upon the agreed testimony of the parties, I find that the tenants were both obligated to pay the monthly rent in the amount of $2,450.00 each month pursuant to the tenancy agreement.

I am bound by the decision on File Number 1 which was issued September 09, 2019.

At these hearings, Tenant S.K. maintained that she vacated the rental unit in December of 2018 and ended the tenancy in accordance with the *Act* January 31, 2019 and November 28, 2019.

I do not find that Tenant S.K. ended the tenancy in accordance with the *Act* January 31, 2019 given the decision on File Number 1 which was issued September 09, 2019.

I do not find that Tenant S.K. ended the tenancy in accordance with the *Act* November 28, 2019. I have reviewed the forwarding address letter. It is not a notice ending the tenancy in accordance with sections 45 and 52 of the *Act* as it says nothing about ending the tenancy. Further, even if Tenant S.K. had provided proper notice ending the tenancy on November 28, 2019, the notice would not have been effective until December 31, 2019 pursuant to sections 45 and 53 of the *Act*. Therefore, Tenant S.K.

would have remained responsible for fulfilling the obligations of the tenancy agreement until December 31, 2019 in any event.

In the circumstances, I am satisfied Tenant S.K. remained responsible for fulfilling the obligations of the tenancy agreement for the duration of the tenancy.

Security Deposit

The remaining issue in relation to the tenancy agreement is whether the Tenants paid one security deposit of $1,250.00 or two security deposits of $1,250.00. The parties gave conflicting testimony on this point.

I find it unlikely that the Landlord collected two security deposits in relation to this one tenancy. It would be unusual for the Landlord to have done so. It also would have been contrary to section 20(b) of the *Act* for the Landlord to have done so. However, most notably, the issue of the security deposit arose on File Number 1. The Landlord testified that the Tenants paid a $1,250.00 security deposit (page two of the decision). The Tenants did not dispute this, testify that they paid a $2,500.00 security deposit or testify that they paid two security deposits.

The Tenants could not point to evidence to support their position about paying two security deposits. In the absence of further compelling evidence to support the Tenants' position, I find it more likely than not that the Tenants paid one security deposit of $1,250.00.

The Landlord took the position that he should be permitted to keep the security deposit on the basis that the Tenants extinguished their rights in relation to the security deposit by not allowing or not participating in inspections during the tenancy. This position is not supported by the *Act*.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to a security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*").

Section 24 of the *Act* states:

> 24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) **the landlord has complied with section 23 (3)** [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(emphasis added)

Section 23(3) of the *Act* relates to condition inspections at move-in and states:

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

The Landlord acknowledged he did not offer the Tenants two opportunities to do a move-in inspection. Tenant S.K. agreed with this. Therefore, the Landlord did not comply with section 23(3) of the *Act.* The Tenants could not have extinguished their rights in relation to the security deposit under section 24(1) of the *Act* as the Landlord complying with section 23(3) of the *Act* is a precondition to this and the Landlord did not comply with section 23(3) of the *Act*.

Section 36 of the *Act* states:

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) **the landlord complied with section 35 (2)** [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(emphasis added)

Section 35(2) of the *Act* relates to condition inspections at move-out and states:

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

The parties agreed the Landlord did not give the Tenants two opportunities to do a move-out inspection.

The Landlord testified that he did not give the Tenants two opportunities to do a move-out inspection because they were removed by bailiffs and he only learned of where they had gone when he received the forwarding address letter. I do not accept this explanation as the Landlord received the forwarding address letter around November 28, 2019 and the Tenants were not removed by the bailiffs until the end of December. The Landlord could have arranged a move-out inspection while the Tenants remained in the rental unit or could have served the Tenants a Notice of Final Opportunity to Schedule a Condition Inspection form after they vacated at the forwarding address provided November 28, 2019.

I find the Landlord failed to comply with section 35(2) of the *Act.* The Tenants could not have extinguished their rights in relation to the security deposit under section 36(1) of the *Act* as the Landlord complying with section 35(2) of the *Act* is a precondition to this and the Landlord did not comply with section 35(2) of the *Act*.

Whether the Tenants did not allow or did not participate in inspections during the tenancy is not relevant to the analysis under sections 24 or 36 of the *Act* and is not relevant in assessing whether the Tenants extinguished their rights in relation to the security deposit.

Given the above, I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act* and therefore the Landlord is not entitled to keep the security deposit on this basis alone.

It is not necessary to determine whether the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for unpaid rent, unpaid utilities and bailiff fees.

I have accepted that the Tenants paid one security deposit in the amount of $1,250.00. I note that rent was $2,450.00 and therefore the Landlord was only permitted to collect a security deposit equal to half this amount being $1,225.00. I note that the Landlord breached section 19(1) of the *Act* by collecting more than half the monthly rent as a security deposit. However, I find this to be a moot point given the tenancy is over.

In the decision on File Number 1, the Arbitrator authorized the Landlord to keep $586.79 of the security deposit. The Arbitrator did not issue the Landlord a Monetary Order for the $586.79. Therefore, the Landlord was permitted to deduct $586.79 from the

security deposit and I consider the Landlord to have held the remaining $663.21 at the end of the tenancy.

Section 38 of the *Act* sets out specific requirements for dealing with a security deposit held at the end of a tenancy.

Based on the bailiffs' invoice, I am satisfied the bailiffs removed the Tenants from the rental unit December 30, 2019. I find this is the date the tenancy ended for the purposes of section 38(1) of the *Act*.

Given the testimony of both parties, I am satisfied the Landlord received the Tenants' forwarding address in writing November 28, 2019.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or claim against it. Here, the Landlord had 15 days from December 30, 2019. The Application was filed November 05, 2019, prior to the end of the tenancy. I find the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

#1 Stove

The Tenants agreed to pay the Landlord $95.00 for a replacement stove and therefore the Landlord is awarded this amount.

#2 Paint, roller, tape
#3 Light bulbs

Section 37 of the *Act* states:

> (2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear…

Pursuant to section 23 of the *Act*, the Landlord was required to do a move-in inspection and complete a CIR. The Landlord acknowledged he did not do a move-in inspection or CIR. Tenant S.K. testified that she completed a move-in CIR; however, the Landlord denied this and there is no admissible CIR before me. In the circumstances, I am not satisfied a move-in CIR was done. Given the Landlord did not do a move-in inspection as required, I do not have this important piece of evidence before me to determine the state of the rental unit at the start of the tenancy.

The parties gave conflicting testimony about the state of the dining room walls and light bulbs at move-in. The Landlord could not point to evidence to support his position about the state of the dining room walls or light bulbs at move-in. I do not make assumptions about how the Landlord would have rented the unit as I do not know what the Landlord would have done regarding renting the unit in a particular state. This is the very reason for the requirements around completing a move-in inspection and CIR.

Given the conflicting testimony about the state of the dining room walls and light bulbs at move-in, and in the absence of evidence to support the Landlord's position, the Landlord has failed to prove the Tenants damaged the dining room walls or took light bulbs that were there at the start of the tenancy. The Landlord has therefore failed to prove the Tenants breached the *Act* and failed to prove he is entitled to the compensation sought.

The request for compensation for paint, roller, tape and light bulbs is dismissed without leave to re-apply.

#4 Porch door

The parties gave conflicting testimony about who broke the porch door. The Landlord could not point to evidence to support his testimony that the Tenants broke the porch door.

I am not satisfied based on the evidence provided that the Tenants did break the porch door. I did not understand the Landlord to state that he personally observed the Tenants break the porch door. I do not find it unlikely that the porch door was broken by someone other than the Tenants given it is on the outside of the rental unit and accessible to people other than the Tenants. There is insufficient evidence before me to support that the Tenants broke the porch door.

In the circumstances, I am not satisfied the Tenants broke the porch door and am not satisfied they breached the *Act* in this regard. Given this, I am not satisfied the Landlord is entitled to the compensation sought.

The request for compensation for the porch door is dismissed without leave to re-apply.

#5 Labour

I found the testimony of the parties on this point unclear. The Landlord did not provide a clear outline of what labour he is claiming for. This is the Landlord's application and his onus to make the claim clear. The Landlord confirmed at the hearing that the labour cost claimed relates to the damage addressed above yet the parties testified about different issues when asked about this claim. In the circumstances, I have considered whether the Landlord is entitled to compensation for labour costs associated with the damage addressed above alone.

The only damage I find the Tenants responsible for is the stove as the Tenants agreed to compensate the Landlord for this. Therefore, I am satisfied the Tenants breached section 37 of the *Act* in relation to the stove.

I accept that it would have taken time to locate, purchase, pick-up, deliver and install the replacement stove as this accords with common sense. I also accept that it would have required gas to pick-up and deliver the replacement stove as this also accords with common sense. I therefore accept that the Landlord has proven some loss in relation to his time and gas costs.

The Landlord did not provide compelling evidence of how much time or gas it took to replace the stove. Pursuant to section 67 of the *Act*, I award the Landlord $50.00 for this. I find this amount sufficient to compensate the Landlord for a reasonable amount of time and gas as these relate to replacement of the stove. I am not satisfied based on the evidence provided that the Landlord is entitled to more than this amount.

#6 Unpaid rent

January/February/March 2019 (partial unpaid rent)

The issue of unpaid rent for January, February and March of 2019 was raised and addressed on File Number 1. At page five of the decision, the Arbitrator found the Landlord failed to prove rent for January 2019 was outstanding. The Arbitrator dismissed the Landlord's application for unpaid rent.

The Landlord has raised the same issue in this matter as the Landlord is seeking one month of rent for the rent cheques that bounced from January, February and March of 2019. The hearing on File Number 1 was in September of 2019 and therefore any payments made in April of 2019 would have already been made. The Landlord cannot again seek $2,450.00 for January, February and March 2019 rent. This issue has been decided on File Number 1 and I am bound by that decision. Further, the Landlord was not permitted to re-apply for $2,450.00 outstanding from January, February and March of 2019.

The request to recover unpaid rent of $2,450.00 for January, February and March of 2019 was dismissed in File Number 1 and is again dismissed without leave to re-apply.

November 2019 (partial unpaid rent)

Section 26(1) of the *Act* states:

> 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no issue that rent was $2,450.00 due on the first day of each month.

The parties gave conflicting testimony about the rent amount paid for November 2019. The Landlord provided bank records to support his position. The Tenants did not provide any admissible evidence to support their position. Nor could the Tenants point to something in the Landlord's documentary evidence to support their position.

In the circumstances, I am satisfied it is more likely than not the Tenants failed to pay a portion of rent for November of 2019. The bank records show the Tenants paid $1,485.00 and therefore I am only satisfied the Tenants owe $965.00 for November rent. The Tenants did not claim to have had authority under the *Act* to withhold this amount. The Landlord is entitled to recover this amount.

December 2019 (unpaid rent)

The parties gave conflicting testimony about whether December rent was paid. The Landlord provided bank records to support his position. The Tenants did not provide any admissible evidence to support their position. Nor could the Tenants point to something in the Landlord's documentary evidence to support their position.

In the circumstances, I am satisfied it is more likely than not the Tenants failed to pay December rent. The Tenants did not claim to have had authority under the *Act* to withhold this amount. The Landlord is entitled to recover this amount.

I note that I have considered that the Tenants were removed from the rental unit December 30, 2019 but find the Landlord is entitled to the full rent amount for December given rent was due on the first day of each month and given the Tenants remained in the rental unit for all but one day of December.

January 2020 (loss of rent)

I am not satisfied the Landlord is entitled to loss of rent for January of 2020.

There is no issue that the Landlord was a tenant of the rental unit and that he rented the unit to the Tenants as sub-tenants. There is also no issue that an Order of Possession and Writ of Possession were issued against the Landlord as a tenant.

As stated above, I am satisfied the Tenants were removed from the rental unit December 30, 2019. Therefore, as of December 30, 2019, the Landlord's tenancy with the owner of the rental unit was over. The Landlord was not obligated under sections 26 or 57 of the *Act* to pay the owner rent for January 2020. It may be that the owner could have sought loss of rent from the Landlord for January 2020 given how this tenancy ended. However, there is no evidence before me that the owner did so.

The Landlord testified that he voluntarily paid the owner January 2020 rent. It was open to the Landlord to do so; however, the Tenants are not responsible for this choice. In my view, the Landlord failed to mitigate his loss by voluntarily paying the owner January rent despite his tenancy being over and in the absence of the owner filing a claim and proving he was entitled to compensation for loss of rent for January.

The request for compensation for loss of rent for January of 2020 is dismissed without leave to re-apply.

#7 Unpaid utilities

The Landlord provided an outline of amounts owing for utilities. However, this outline is not accurate as it includes amounts already considered and awarded on File Number 1. On File Number 1, the Arbitrator considered utilities owing from January 15, 2019 to July 16, 2019. The dates referred to by the Arbitrator on File Number 1 are different than the dates the Landlord has included in the outline of utilities owing.

The Landlord was required pursuant to section 59(2)(b) of the *Act* to include full particulars of the dispute. In my view, this includes providing a clear indication of what utility amounts remain outstanding considering the decision on File Number 1. The Landlord should not have sought amounts in the Application that have already been considered and awarded.

Given the above, I will only consider the utilities owing after July 16, 2019 as outlined in the Landlord's outline of utilities owing. The request for unpaid utilities prior to this date is dismissed without leave to re-apply.

The utilities outstanding after July 16, 2019 as outlined in the Landlord's outline include the following:

Utility	Date	Amount
Fortis	July 24, 2019	$51.31
Fortis	August 26, 2019	$50.62
Fortis	September 25, 2019	$55.25
Fortis	October 25, 2019	$109.39
Fortis	November 26, 2019	$140.74
Fortis	December 27, 2019	$197.42
Hydro	May – July 18, 2019	$142.54
Hydro	July – September 18, 2019	$151.77
Hydro	September – November 19, 2019	$328.17
Hydro	November – January 17, 2020	$360.17
	TOTAL	**$1,587.38**

The parties agreed the Tenants owed 60% of utilities for the rental unit during the tenancy.

The Tenants did not claim to have paid 60% of the above total. They claimed to have paid $151.00 of the above total and provided reasons why they should not have to pay the remainder.

The Tenants submitted that they should not have to pay 60% of the utilities for various reasons including due to the habits of the downstairs tenants, due to the air ducts not being cleaned, because the downstairs unit was a basement and naturally cooler and because there were more tenants living downstairs. I do not find that any of these reasons change that the Tenants owe 60% of the utilities. The Tenants agreed to pay 60% of the utilities and therefore this is what they were responsible for. I would only reduce this amount in very rare circumstances such as when there is compelling evidence showing the utility bills were higher than expected due to factors beyond the Tenants' control that could not have been anticipated or accounted for when entering the tenancy. Here, the Tenants have not provided compelling evidence to support their claims about why the utility bills were high and the Landlord disputed the Tenants'

testimony on these points. In the absence of further compelling evidence, I am not satisfied there is a reason to deviate from the agreement reached between the parties.

In relation to the Tenants paying $51.00 towards utilities, this was already accounted for in the decision on File Number 1 and therefore I do not take it into account in relation to the remaining amount owing.

The parties gave conflicting testimony regarding whether the Tenants made a $100.00 cash payment towards utilities in June, July or August of 2019. The Tenants did not provide any admissible evidence to support that they made this payment. The Landlord did provide an outline of utilities owing which reflects the $51.00 payment but not the $100.00 payment. Most notably, the decision on File Number 1 does not reflect that the Tenants mentioned a $100.00 cash payment towards utilities and in fact states at page five:

> Based on the agreed testimony of both parties, I find that the tenants have paid the sum of $51.00 towards the utilities after this application was filed (emphasis added).

I find it unlikely that the Tenants paid $100.00 towards utilities in June, July or August of 2019, prior to the hearing and decision on File Number 1, failed to mention this to the Arbitrator and agreed they had paid $51.00. In the circumstances, I am not satisfied the Tenants did make a further $100.00 payment towards utilities.

In relation to the emergency repairs, section 33 of the *Act* sets out when tenants are entitled to deduct the cost of emergency repairs from rent and states:

> (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
>
> (a) claims reimbursement for those amounts from the landlord, and
>
> (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed…
>
> (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The Tenants testified that they provided the Landlord notice about emergency repairs and a receipt for these. The Landlord testified that this is the first time he has heard about emergency repairs. The Tenants did not submit any admissible evidence to support that they made emergency repairs or provided the Landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

I find it unlikely that the Tenants made emergency repairs, provided the Landlord the required documentation and yet have no admissible evidence to support their position at the hearing. In the absence of further evidence to support that the Tenants made emergency repairs and provided the Landlord the required documentation, I am not satisfied they did. I am therefore not satisfied any amount should be deducted from utilities owing based on emergency repairs.

In relation to timing of service of the utility bills, I do not accept that the Tenants are relieved of their obligation to pay for utilities because the utility bills were not served on them earlier. The Tenants agreed to pay 60% of the utilities and are obligated to do so. The bills represent in part the utility usage by the Tenants. The timing of service of the bills does not affect or change the amount owing. I find the Tenants are responsible for paying the amount owing whether they received the bills in a timely fashion or not.

In relation to the Tenants' position about renegotiating the percentage of utilities owed, there is no evidence before me that the agreement to pay 60% was in fact changed and therefore the Tenants owe 60% of the utilities.

I agree the Tenants are not responsible for paying for utilities after they vacated the rental unit December 30, 2019. The last hydro bill covers the period November 20, 2019 to January 17, 2020. The Tenants are not responsible for 18 days of this period. The bill shows the average daily cost of electricity for this billing period was $5.75. Therefore, I find the Tenants are not responsible for $103.50 of the bill. Given this, I reduce the amount owing to $1,483.88.

Given the above, I am satisfied the Tenants owe the Landlord 60% of the utility amount owing of $1,483.88 which is $890.33. The Landlord is awarded this amount.

#8 Bailiff fees

The Tenants acknowledged receiving an Order of Possession issued by the RTB on December 08, 2019. The Order of Possession required the Landlord and all occupants to vacate the rental unit within two days of service. The Tenants acknowledged

understanding that this Order of Possession applied to them and required them to vacate the rental unit. Therefore, the Tenants were required to, and knew they were required to, vacate the rental unit no later than December 10, 2019.

There is no issue that the Tenants did not vacate the rental unit by December 10, 2019. I find based on the bailiffs' invoice that the Tenants were removed by the bailiffs December 30, 2019.

Pursuant to section 77(3) of the *Act*, the Tenants were obligated to comply with the Order of Possession issued by the RTB. I find the failure to comply with the Order of Possession to be a breach of the *Act*.

I am not satisfied the Landlord harassed the Tenants thus delaying their move. I find it unlikely that the Landlord would have done anything to delay the Tenants' move as the Landlord clearly wanted the Tenants to vacate. The parties gave conflicting testimony on this point and there is insufficient evidence before me to support the Tenants' position.

I also note that the personal circumstances of the Tenants did not relieve them of their obligation to comply with the Order of Possession issued by the RTB.

Based on the bailiffs' invoice, I am satisfied the Tenants had not vacated the rental unit by December 30, 2019 and am satisfied the Landlord had to have bailiffs attend the rental unit and remove the Tenants who had remained in the rental unit 20 days after they were legally required to vacate.

Based on the bailiffs' invoice, I am satisfied the cost of having bailiffs attend and remove the Tenants was $1,656.60. Based on the same evidence, I am satisfied this cost was incurred by the Landlord and not the owner.

Based on the text messages submitted, I am satisfied the Landlord let the Tenants know he would arrange for a bailiff if they did not vacate and thus mitigated his loss.

I am satisfied the Landlord is entitled to the cost claimed.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Stove	$95.00
2	Paint, roller, tape	-
3	Light bulbs	-
4	Porch door	-
5	Labour at $18.75 per hour	$50.00
6	Unpaid rent	$3,415.00
7	Unpaid utilities	$890.33
8	Bailiff fees	$1,656.60
	TOTAL	**$6,106.93**

The Landlord can keep the remaining $663.21 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining $5,443.72 owing pursuant to section 67 of the *Act*.

Conclusion

The Tenants owe the Landlord $6,106.93. The Landlord can keep the remaining $663.21 of the security deposit. The Landlord is issued a Monetary Order for the remaining $5,443.72 owing. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: October 08, 2020

Residential Tenancy Branch