Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-S, FFL**
MNSDS-DR, FFT

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant the *Residential Tenancy Act.*

The landlord applied for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

- An order for the return of a security deposit that the landlord is holding without cause, pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord LP and the tenant LM attended the hearing. As representatives of both parties attended, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged receipt of the landlord's Notice of Dispute Resolution Proceedings package on behalf of all the co-tenants. Neither party had issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

LP, the person appearing on behalf of the landlord for this hearing, testified that she is the sister of YP, the person named on the tenancy agreement, under an Anglicized name, HP. LP acknowledged that she has been the person responsible for managing the rental unit throughout the tenancy and that both her brother's name and her own should be included in this decision and any orders that should flow from it. The tenant agreed that his application for dispute resolution should also reflect both siblings as landlords. The names on the cover page of this decision have been amended pursuant to section 64(3) of the Act and rule 4.2 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to compensation?
Can the tenants recover their security deposit?
Should either filing fee be recovered?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began June 1, 2022 with rent set at $4,500.00 per month payable on the first day of each month. She collected a

security deposit of $2,250.00 from the tenants and continues to hold it. The landlord's brother did a walkthrough of the rental unit with the tenants and showed them how everything worked but no written condition inspection report was prepared or signed. The landlord claims that they were unaware a condition inspection report was required to be signed at the commencement of the tenancy.

The tenants advised her by text sometime in August that they were ending the tenancy. The tenants had moved out by August 31, 2022 and the landlord acknowledges receiving the tenants' forwarding address in her mailbox on either September 10 or September 11, 2022. The landlord had found new tenants as of September 1, 2022 and is not seeking a claim for loss of rent.

The landlord seeks compensation for four items in accordance with a monetary order worksheet provided.

1. **BC Hydro Bill for June 1 to August 31, 2022 ($160.00).**

The landlord submitted a bill in the amount of $104.40 for the period of June 11 to August 11, 2022. The landlord claims that this represents 2 months and argues that the tenants are responsible not only for the $104.40, but for an additional $50.00 to $60.00 estimated as prorated usage from August 12 to August 31st. The landlord did not provide a written formula or calculation to show how she arrived at the approximate amount of $160.00 for the hydro utility she seeks.

2. **Fortis BC Bill for July 18 to August 31, 2022 ($90.00)**

A bill spanning the period from July 18, 2022 to August 15, 2022 was presented as evidence, in the amount of $54.45. The landlord justified the approximate amount of $90.00 as taking the number 52, dividing by 2, and rounding up to 90, after accounting for 15 days as being half a month. During the hearing, I repeatedly asked the landlord for a written accounting of how she arrived at the estimates, but the landlord acknowledged she did not prepare one.

3. **Door repair and Disposal ($735.00)**

a) While showing the unit to prospective tenants, the landlord discovered an upstairs door was damaged. The landlord notified the tenant who acknowledged they had to force the door open when it had locked them out. The tenants did not repair the door when they left and instead took a closet door from the bedroom to pretend it's the original door. The landlord found the original broken door after the tenants left the unit. The landlord testified the age of the door is 20 years, the approximate age of the house.

b) The tenants left behind the slate from a pool table and pool sticks in the garage that the landlord had to pay their contractor to remove. The landlord provided an invoice from their contractor for $700.00 plus $35.00 GST to replace/repair the door and dump the slate from the table.

4. Garage Door repair ($577.50)

The landlord gave the tenants a remote to access the garage and they had full use of it. When the tenants vacated, the garage door was bent from the inside. It was not hit from the outside. A contractor came to fix it. The landlord submits that the garage door was fine when the tenants moved in.

The tenant gave the following testimony.
The landlord did not do a condition inspection report with them at the commencement of the tenancy. When meeting the landlord's brother, they asked for documentation of the condition but none was given. The tenants also wanted documentation that the condition of the rental unit was good when they moved out, so they made videos of their own walkthrough and presented them for the hearing. The landlord did not do a condition inspection report with them at the end of the tenancy. The tenant agrees with the landlord in that they provided their forwarding address to her via placing a copy of it in her mailbox on September 10 or 11.

Turning to the landlord's monetary order worksheet:

1. BC Hydro Bill for June 1 to August 31, 2022 ($160.00).

The tenant is willing to pay the actual bill for the hydro utility, but not an estimate of usage from the landlord without proper documentation.

2. Fortis BC Bill for July 18 to August 31, 2022 ($90.00)

The tenant testified that the tenancy agreement states that the tenants will be responsible for 85% of the total water/heat usage per month. They shared the house with a creche and there should have been a separate utilities for both. The tenant is willing to pay the amount stated on the bill, but not the estimate provided by the landlord using her calculations.

3. Door repair and Disposal ($735.00)

The door to the bedroom locked when it was closed and the tenants had no way to re-enter it without breaking it down. The tenant testified that they tried to contact the landlord before doing so, but couldn't get a hold of her. The co-tenant works in

construction and replaced the door before moving out. Nothing was said to the tenant before leaving and they videotaped the rental unit showing everything was impeccable. The tenant does not know where the slate pool tabletop issue comes from. They had a pool table and sold it before they moved out.

4. **Garage Door repair ($577.50)**

The tenants only used the garage to store rubbish that wouldn't fit in the bin. None of the tenants owned a car or drove so they never used the garage.

In rebuttal, the landlord testified that the creche was not opened until after the tenants vacated the rental unit so therefore the tenants were required to pay 100% of the utilities. The landlord testified that the replacement door is not the same size as the original door to the bedroom and that the tenants had flipped a door to pretend to make it fit.

Analysis

- Tenant's monetary claim for return of security deposit

At the commencement and at the end of the tenancy, the landlords did not pursue a condition inspection of the rental unit with the tenants, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection.

Secondly, section 38(1) and (6) of the *Act* addresses the return of security deposits.

(1) Except as provided in subsection (3) or (4) (a), **within 15 days after** the later of the date the tenancy ends, and
the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
make an application for dispute resolution claiming against the security deposit or pet damage deposit.

…
(6) If a landlord does not comply with subsection (1), the landlord
may not make a claim against the security deposit or any pet damage deposit, and
must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In the case before me, the landlords' right to claim against the security deposit was extinguished right at the beginning of the tenancy when they failed to conduct a condition inspection report with the tenants.

The parties agree that the tenants served the landlords with their forwarding address on either September 10th or 11th. I deem the landlord served with it on September 14th, the third day after September 11th in accordance with sections 88 and 90 of the Act. Pursuant to section 38(6), the landlord had 15 days from September 14th to return the tenant's security deposit, the only option available, since the landlord's right to claim against it was already extinguished for failing to conduct a condition inspection report with the tenants at the beginning of the tenancy. In accordance with section 38(6)(b), the tenants are entitled to a doubling of their $2,250.00 security deposit for a total of $4,500.00. The tenants are awarded a monetary order for **$4,500.00** pursuant to sections 38 and 67 of the *Act*.

- Landlord's claim for compensation

Section 21 of the Regulations state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, the tenants damaged the rental unit during the tenancy. Though her testimony and photos taken at the end of the tenancy bear some weight, she has not met the burden of proof to show me the difference in condition between move-in and move-out.

Without a condition inspection report, or photos taken at the commencement of the tenancy, I cannot determine whether there was pre-existing damage done to the garage door when the tenants first moved in. Likewise, the tenants did not acknowledge the pieces of pool table that they allegedly left behind when they moved out. Had a proper condition inspection report been conducted at the commencement of the tenancy, both parties could have acknowledged if there were items left behind by previous tenants or if the garage was clean, undamaged and free from debris. Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state that the onus to prove their case falls to the person making the claim and that the standard of proof is on a balance of probabilities. I find that the landlord has failed to provide sufficient evidence to satisfy me the damage

to the garage door was caused by the tenants or that the rubbish belonged to the tenants as claimed by the landlord. Consequently, I dismiss these portions of the landlord's claim.

The tenant acknowledged damaging the bedroom door and I have reviewed the photo taken by the landlord. The tenant testified, however that his co-tenant, a contractor, repaired the door and provided video evidence (including all the doors) taken upon move out. While the landlord argues that the replacement door provided by the tenant was the wrong size and that it was actually a closet door "pretending" to be a bedroom door; she did not provide any photographic proof that the replacement door was inadequate. I find the landlord has provided insufficient evidence for me to determine that the tenant failed to sufficiently repair the door that was broken during the tenancy. Further, according to Residential Tenancy Branch Policy Guideline PG-40 [Useful life of building elements] the useful life of a door is 20 years, the exact age of the door that was broken according to the landlord. Had the tenant been found responsible for replacing the door, I find the age of the door was at the end of its useful life and I would reduce the cost of replacement down to zero in accordance with the guideline.

Lastly, the landlord seeks to recover what she estimates to be the cost of Hydro and natural gas. The landlord did not provide calculations to show me how she arrived at the figures she seeks. Instead, the landlord threw out figures and estimates of dates that were difficult to follow and not substantiated with actual calculations for me to determine the pro-rating structure she was attempting to show. It is not the role of the arbitrator to reconcile the evidence and arrive at a decision based on formulas not presented into evidence, only to determine whether the applicant has provided sufficient and clear evidence to establish their claim. In this case, I am not satisfied that the applicant has provided sufficient evidence to establish her claim because her testimony regarding how she arrived at the figures was both convoluted and confusing. Consequently, the landlord has not succeeded in proving on a balance of probabilities that she is entitled to the amount of compensation she seeks. I find that the tenants are obligated to compensate the landlord for Hydro in the amount as shown in the invoices, **$104.40** for BC Hydro and for Fortis BC: **$54.45**.

The tenants were successful in their application and the landlord was not. The tenants' filing fee of $100.00 shall be recovered from the landlord. The landlord's filing fee will not be recovered.

Item	**Amount**
security deposit (doubled)	$4,500.00

Less BC Hydro	($104.40)
Less Fortis BC	($54.45)
Filing fee	$100.00
Total	**$4,441.15**

Conclusion

I issue a monetary order in the tenants' favour in the amount of $4,441.15.

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: January 25, 2023

Residential Tenancy Branch