



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant: CNR, RP, LRE, OLC

Landlords: OPU, MNRL-S, MNDL-S, MNDCL-S, FFL

### **Introduction**

This hearing was reconvened from a hearing on August 21, 2023. An interim decision in this matter was issued on August 22, 2023. In the interim decision, the Tenant's application and the Landlords' claim for an order of possession were dismissed without leave to re-apply.

This decision will address the remaining claims in the Landlords' application under the *Residential Tenancy Act* (the "Act"), which are for:

- compensation of \$8,212.69 for unpaid rent or utilities pursuant to section 67 of the Act;
- compensation of \$850.00 to repair damage that the Tenant, their pets or their guests caused during the tenancy pursuant to section 67 of the Act;
- compensation of \$830.00 for monetary loss or other money owed pursuant to section 67 of the Act;
- authorization to keep the Tenant's security and/or pet damage deposit pursuant to section 72(2)(b) of the Act;
- authorization to recover the filing fee for the Landlords' application from the Tenant pursuant to section 72 of the Act.

The Landlords attended this reconvened hearing.

The Tenant did not attend. I find the Tenant was sufficiently served with notice of this reconvened hearing by the Residential Tenancy Branch. Therefore, this proceeding was concluded in the absence of the Tenant.

### **Preliminary Matter: Amendment Sought by Landlords**

The Landlords sought to increase their claim for damage to the rental unit from \$850.00 to \$21,946.10 at the first hearing.

Under Rule 2.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”), a party’s “claim is limited to what is stated in the application”.

The claims in an application may be amended in accordance with Rule 4.1 of the Rules of Procedure, which states in part as follows:

#### **4.1 Amending an Application for Dispute Resolution**

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence on the Dispute Access site or with the Residential Tenancy Branch directly or through a Service BC Office.

An amendment may add to, alter, or remove claims made in the original application.

According to Rule 4.6 of the Rules of Procedure, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Act. These materials must be served on the respondents as soon as possible, and in any event must be received by each respondent not less 14 days before the hearing.

Under Rule 4.2 of the Rules of Procedure, an application may be amended at the hearing in circumstances that can reasonably be anticipated, as follows:

#### **4.2 Amending an application at the hearing**

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.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the Landlords did not submit an Amendment to an Application for Dispute Resolution form to amend their application prior to this hearing in accordance with Rule 4.1 of the Rules of Procedure. The Landlords also did not serve the Tenant with notice of an amendment as required under Rule 4.6 of the Rules of Procedure.

Additionally, I do not find the amendment sought by the Landlords can reasonably be anticipated and amended at the hearing under Rule 4.2 of the Rules of Procedure. I find

the Landlords seek to increase their claim by more than ten times the amount originally pleaded in their application.

I note I do not find service of evidence capable of supporting an amendment, such as a monetary order worksheet, could cause a proposed amendment to become reasonably anticipated at the hearing, as this would render the requirements for completing and serving an amendment form under Rules 4.1 and 4.6 meaningless.

Therefore, I decline the Landlords' request to increase their claim for damage to the rental unit. The Landlords are at liberty to make a separate application to address these issues.

#### Issues to be Decided

1. Are the Landlords entitled to compensation for unpaid rent or utilities?
2. Are the Landlords entitled to compensation to repair damage to the rental unit?
3. Are the Landlords entitled to compensation for monetary loss or other money owed?
4. Are the Landlords entitled to recover their filing fee?
5. Are the Landlords entitled to retain the security deposit?

#### Background and Evidence

While I have turned my mind to all the accepted evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

In September 2021, the Landlords, the Tenant, and a second tenant CML entered into a written tenancy agreement commencing on October 1, 2021. Rent was \$1,700.00 due on the first day of each month. A security deposit and pet damage deposit of \$850.00 each were paid to the Landlords. The parties attended a move-in inspection of the rental unit on September 22, 2021 and completed a condition inspection report.

In or around June 2022, CML moved out of the rental unit.

According to the Landlords, they and the Tenant subsequently entered into an agreement dated July 29, 2022 (the "July 29, 2022 Letter"), which states in part as follows (portions redacted for privacy):

We are sorry to hear that things have not worked out between you and [CML].

We have discussed the situation and agree to lower the rent for the residence of [rental unit] to \$1,200.00 per month. You will still be responsible for all the maintenance and utilities as per your agreement. This will allow you and your children to continue to live in the residence without having to move.

Please note: This rental decrease will only be valid if you keep the residence clean and in showable condition. As we have previously discussed, the realtor can call at any time and give 24hours notice to show the residence. The cleanliness of the residence must not be a hindrance to the sale of our property or the rental agreement will revert back to the original Lease agreement of \$1700.00 per month.

The Landlords gave the following testimony and evidence:

- The Tenant failed to pay rent of \$600.00 for the month of June 2023. The Tenant also had unpaid water bills. The Landlords issued a 10 day notice to end tenancy for unpaid rent or utilities dated June 19, 2023. Throughout the tenancy, rent and payment of the water bills were continuously late. The rent did not include utilities.
- The Landlords requested a walkthrough of the rental unit on June 24, 2023, for which notice was left in the Tenant's mailbox on June 19, 2023. The Landlords were unable to gain access to the rental unit on June 24, 2023 as the Tenant had changed the locks.
- On June 30, 2023, the Landlords contacted the Tenant to schedule a move-out inspection for July 2, 2023. The Tenant informed the Landlords that she will not be out and will let the Landlords know when she left and where to get the keys.
- The Landlords saw that the rental unit was still occupied by the Tenant on July 1, 2023. The Landlords were unsure when the Tenant eventually left, as the Tenant did not contact the Landlords and did not return the keys. The Landlords found out that the Tenant had moved out when they went to mow the lawn in August 2023.
- The Tenant was allowed to have two pets but had four dogs and two cats. The Tenant left behind extensive damage to the rental unit, including damage to the windows, screens, doors, and floor. The Tenant had painted over the floor which sealed in an odour from her pets. The Tenant was aware that the rental unit was listed for sale and was required to keep it clean and allow showings. According to the Landlords' realtors, there as always negative feedback for the showings due to the house being messy and dirty.

The Landlords seek compensation as follows:

Item	Amount
Unpaid Rent (June 2023)	\$600.00
Unpaid Water Bills (November 2022 to April 2023)	\$712.69
Estimated Water Bills (May to June 2023)	\$200.00
Retroactive Rent for Breach of Contract (August 2022 to June 2023)	\$5,000.00
Rent (July 2023)	\$1,700.00
Late Rent Fees	\$400.00
Filing Fee	\$100.00
Time, Ink, Paper	\$300.00
Register Letter Fees	\$30.00
Repairs and Cleaning (Unknown)	\$850.00
<b>Total</b>	<b>\$9,892.69</b>

The Tenant gave the following testimony and evidence:

- The Tenant did not have hot water in December 2022 and there was something wrong with the water tank. The Tenant received a stack of bills. The Tenant does not know what water bills the Landlords sent to CML previously. The Tenant does not agree that she should be responsible to pay for water “infrastructure”.
- The Tenant did not sign the July 29, 2022 Letter. The Tenant’s signature at the bottom of the July 29, 2022 Letter is a forgery. The spelling of the Tenant’s name on the July 29, 2022 Letter is not the proper legal spelling of the Tenant’s name.
- The Tenant vacated the rental unit on the evening of July 1, 2023.
- The Tenant acknowledged that \$600.00 of rent was owing from June 2023. The Tenant agrees for the Landlords to keep the security and pet damage deposits.
- The Landlords did not show the areas of the rental unit that are clean.

### Analysis

#### *1. Are the Landlords entitled to compensation for unpaid rent or utilities?*

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Landlords’ claims under this part consist of (a) unpaid rent, (b) unpaid utilities, and (c) retroactive rent for breach of contract. I will address each of these items in turn.

#### *a. Unpaid Rent*

I find it is undisputed that the Tenant failed to pay \$600.00 for June 2023 rent.

I find the Tenant vacated the rental unit without notice to the Landlords, and the parties did not come to any agreement with respect to the tenancy end date. Furthermore, I find the Tenant did not vacate the rental unit before July 1, 2023. I find the full amount of July 2023 rent became due and payable on July 1, 2023. I find that since August 2022, the Tenant has been paying monthly rent of \$1,200.00 to the Landlords following the parties' agreement to reduce the rent. As further explained below, I find there is insufficient evidence that the parties had agreed rent would revert back to \$1,700.00 per month under certain conditions.

Therefore, pursuant to section 67 of the Act, I order the Tenant to pay the Landlords \$1,800.00, or \$1,200.00 + \$600.00 for unpaid June and July 2023 rent.

*b. Unpaid Utilities*

I find section 3(b) of the parties' original tenancy agreement does not indicate that any utilities were included in the rent. I find the parties' Facebook messages dated July 29, 2022 show that when the parties agreed to reduce the rent, the utilities were still excluded.

I do not find the parties' tenancy agreement or addendum to contain any terms regarding payment of utilities by the Tenant to the Landlords. However, since the rent did not include any utilities, I find it was an implied term of the tenancy agreement that the Tenant would pay for the cost of utilities associated with the rental unit within a reasonable time after receiving a bill or invoice from the Landlords.

I find that on November 30, 2022, the Landlords sent a copy of a utility bill to the Tenant via Facebook, which the Tenant agreed to pay as soon as she could.

I find the Landlords submitted municipal utility bills for the rental unit from November 2022 to April 2023, which include charges for water, sewer, garbage, recycling, water infrastructure, and sewer infrastructure. I do not find the rental unit to have been a shared residence such that any portion of the utility bills may be attributed to a household other than the Tenant's. Therefore, I find the Tenant is responsible for paying for these utility bills in their entirety, including the cost of water and sewer infrastructure.

Pursuant to section 67 of the Act, I order the Tenant to pay \$712.69 for unpaid utility bills from November 2022 to April 2023.

I find the Landlords did not submit any utility bills for May and June 2023, though they had put in a placeholder claim. I dismiss the Landlords' claim under this part with leave to re-apply.

*c. Retroactive Rent for Breach of Contract*

I find the parties' Facebook messages dated July 29, 2022 show that the parties had agreed to reduce the rent to \$1,200.00 per month plus utilities. I find one of the Landlords, LK, messaged the Tenant saying: "So [DM, the other of the two Landlords] has said he would do \$1200.00 per month + utilities. He can't go lower than that." The Tenant responded: "Ok" and "I should have no problem with that". LK replied to the Tenant with a thumbs up. I do not find these messages to mention that this rent reduction was conditional or that the rent would revert to \$1,700.00 per month depending on the cleanliness of the rental unit. I find the tenancy agreement addendum already contains terms about the rental unit being listed for sale and the need to keep the unit clean for showings.

I find the spelling of the Tenant's name on the July 29, 2022 Letter to be different from the tenancy agreement. Given the Tenant's clear testimony under oath that she did not sign this document and that the signature on the document was not hers, as well as a lack of details from the Landlords describing the circumstances under which this letter was allegedly signed, I am unable to find on a balance of probabilities that the Tenant had agreed to the terms in the July 29, 2022 Letter, including the conditions under which rent would revert back to \$1,700.00 a month.

Accordingly, I dismiss the Landlords' claim for compensation under this part without leave to re-apply.

*2. Are the Landlords entitled to compensation to repair damage to the rental unit?*

Section 59(2)(b) of the Act states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find the Landlords did not provide the full particulars for their claim for damage to the rental unit and did not amend their application prior to the hearing in accordance with the Rules of Procedure. Therefore, I dismiss the Landlords' claim for damage to the rental unit (including cleaning) with leave to re-apply. The Landlords are at liberty to make another application to fully address this claim.

*3. Are the Landlords entitled to compensation for monetary loss or other money owed?*

I find the Landlords have duplicated their claim for recovery of the filing fee, which will be addressed in the next section below.

The Landlords seek compensation for their time to submit their application and attend the dispute resolution hearing, the cost of paper and ink to print evidence for the dispute, and registered mail fees. However, aside from the filing fee, the Act does not provide for the recovery of other costs of dispute resolution, such as preparation time, legal fees, registered mail fees, or printing costs. Accordingly, I dismiss the Landlords' claims under this part without leave to re-apply.

The Landlords seek compensation of \$400.00 in late rent fees. I find the parties' tenancy agreement addendum states: "Rent that is not paid by the 1<sup>st</sup> at 5:00pm will be considered a late payment. Late payment returned and/or non-sufficient fund cheques (NSF) are subject to a minimum service charge (*sic*) of \$50.00 each or the then current rate charged for such services".

I find the Landlords submitted screenshots of e-transfers received from the Tenant, which show that the Tenant made partial payments on June 22, 2022, December 22, 2022, February 3, 2023, March 3, 2023, and May 5, 2023.

Under section 7(1)(d) of the regulations, a landlord may charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent, if such fee is provided for in the tenancy agreement.

I find the Landlords' evidence establishes that the Tenant was late paying rent on five occasions as described above. I find the parties' tenancy agreement provides for a late rent fee, though the amount exceeds what is permitted under the regulations. Therefore, I find the Landlords are entitled to a fee for late payment of rent up to the maximum prescribed in section 7(1)(d) of the regulations.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlords late rent fees of  $\$25.00 \times 5$ , or \$125.00. The remainder of the \$400.00 sought by the Landlords is dismissed without leave to re-apply.

*4. Are the Landlords entitled to recover their filing fee?*

The Landlords have been partially successful in their application. Pursuant to section 72(1) of the Act, I grant the Landlords reimbursement of their filing fee.

*5. Are the Landlords entitled to retain the security and pet damage deposits?*



I find the parties had completed a move-in inspection with a condition inspection report. I find the Tenant abandoned the rental unit at the end of the tenancy without proper notice to the Landlords. Therefore, I do not find the Landlords' rights to the security and pet damage deposits were extinguished under sections 24 or 36 of the Act. I find the Tenant did not serve the Landlords with any forwarding address.

I have found above that the Landlords are entitled to compensation exceeding the amount of the security and pet damage deposits held. Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the security and pet damage deposits in partial satisfaction of the total amount awarded to the Landlords in this decision.

### Conclusion

The Landlords' claims for compensation and recovery of the filing fee are partially granted for a total amount of **\$2,737.69**.

The Landlords are authorized to retain the Tenant's security and pet damage deposits in full.

Pursuant to sections 67 and 72(1) of the Act, I grant the Landlords a Monetary Order of **\$1,037.69** for the balance awarded in this decision, calculated as follows:

Item	Amount
June 2023 Rent	\$600.00
July 2023 Rent	\$1,200.00
Utility Bills (November 2022 to April 2023)	\$712.69
Late Rent Fees (\$25.00 × 5)	\$125.00
Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$2,737.69</b>
Less Security and Pet Damage Deposits	- \$1,700.00
<b>Total Monetary Order for Landlords</b>	<b>\$1,037.69</b>

This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial Court, and enforced as an order of that Court.

The Landlords' claims for May and June 2023 water bills, cleaning, and repairing damage to the rental unit are dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation period.

The remaining amounts sought by the Landlords in this application are dismissed without leave to re-apply.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

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 24, 2023

---

Residential Tenancy Branch