



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: MNRL, MNDL-S, FFL
 Tenants: MNDCT, MNSD, FFT

Introduction

This hearing dealt with applications made by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord applied for:

- compensation of \$1,621.68 for unpaid rent and/or utilities under sections 67 of the Act;
- compensation of \$2,357.25 for damage to the rental unit or common areas under sections 32 and 67 of the Act;
- authorization to retain the security and/or pet damage deposit under section 38 of the Act; and
- authorization to recover the Landlord’s filing fee from the Tenants under section 72 of the Act.

The Tenants applied for:

- compensation of \$4,300.10 for monetary loss or other money owed under section 67 of the Act;
- return of the security deposit and/or pet damage deposit in the amount of \$1,032.50 under section 38 of the Act; and
- authorization to recover the Tenants’ filing fee from the Landlord under section 72 of the Act.

The Landlord, the Landlord’s son WL, the Landlord’s witness DC, and one of the Tenants, JL, attended this hearing and gave affirmed testimony.

Service of Notice of Dispute Resolution Proceeding Package and Evidence

The Landlord confirmed receipt of the Tenants’ notice of dispute resolution proceeding package and evidence.

JL confirmed receipt of the Landlord's notice of dispute resolution proceeding package and evidence, except for pictures of the rental unit listed on the Landlord's application under proof of damage. JL stated that the Tenants had only received one of seven pictures listed prior to the hearing. The pictures were emailed to JL during the hearing, and were reviewed by JL and addressed in his oral submissions. I do not find the admission of these pictures would unreasonably prejudice one party or result in a breach of the principles of natural justice. Therefore, I find the Tenants to be sufficiently served with these pictures under section 71(2)(c) of the Act. In making this decision, I have considered all of the evidence submitted by the parties.

Removal of Applicants

The Tenants' application initially included two other tenant-applicants, who are the Tenants' children. I find the Tenants' children did not sign the parties' tenancy agreement as tenants, and therefore do not have standing as parties. Pursuant to section 64(3)(c) of the Act, I have amended the Tenants' application to remove the Tenants' children as applicants and have unified the style of cause across both applications.

Issues to be Decided

1. Is the Landlord entitled to compensation of \$1,621.68 for unpaid rent and/or utilities?
2. Is the Landlord entitled to compensation of \$2,357.25 for damage to the rental unit or common area?
3. Are the Tenants entitled to compensation of \$4,300.10 for monetary loss or other money owed?
4. Are the parties entitled to recover their filing fees?
5. Is the Landlord entitled to retain the Tenants' security and/or pet damage deposit?

Background and Evidence

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

The rental unit is a house built in the 1980s. This tenancy commenced on October 15, 2021 and ended on January 29, 2023. The Tenants paid a security deposit of \$1,400.00

which is held by the Landlord. At the time that the tenancy ended, the rent was \$3,000.00 due on the 15th day of each month.

The parties attended an inspection of the rental unit at the start of the tenancy and completed a condition inspection report. According to JL, the Tenants did not make a copy of this report.

The parties attended in a move-out inspection of the rental unit on January 29, 2023. The Tenants gave their forwarding address to the Landlord on the condition inspection report. The Landlord did not provide the Tenants with a copy of this report. The Landlord submitted her application for dispute resolution on February 9, 2023.

The Landlord seeks compensation as follows:

Item	Amount
Unpaid utilities	\$1,621.68
Replacing bedroom carpet	\$1,370.25
Carpet cleaning	\$367.50
Replacing living room blinds	\$619.50

Clause 3(b) of the parties' tenancy agreement indicates that utilities such as "water", "sewage disposal", "garbage collection", and "recycling services" are not included in the rent. Clause 3(b) further stipulates that "All utilities and city's utilities fee are not included in the Rent".

The Landlord submitted two municipal flat rate utility bills for the rental unit into evidence. These bills show that the cost of water, sewer, garbage, and recycling for the rental unit was \$1,157.00 in 2021 and \$1,191.00 in 2022. WL explained that the 2023 utility bill was not yet available, but the 2023 flat rate utility charge is expected to be \$1,262.00 based on information from the city's website. According to the Landlord, she paid the bills with the expectation that the Tenants will pay for the bills pro-rated to the period of the Tenants' stay at the rental unit. When the Tenants were asked to pay the utilities, they refused.

JL testified that during the move out inspection, the parties had agreed, in the presence of DC, that the Landlord would not charge for the Tenants for the utilities. In the Tenants written submissions, they argue that an implied contract was established because the Landlord never mentioned the bills or charged the Tenants during the tenancy. The Tenants submit that neither of the parties were aware that the Tenants had to pay the

utilities, and the parties had agreed through their actions that the Landlord was responsible for the bills. The Tenants submit that the issue was only made known to the Tenants during the move out inspection, but the Landlord had agreed to not pursue the charges. The Tenants argue that the Landlord cannot retroactively charge for something that she was not aware of during the Tenants' stay.

The Landlord denied that she had agreed to waive the utility charges. The Landlord testified that the Tenants said they would not come back and sue the Landlord if the Landlord were to let go of the utilities.

DC testified that he did not recall the parties reaching any agreement about utility charges, since nothing was signed. DC testified that as a licensed agent, he would have asked the parties to put any agreement about the Landlord being responsible for the utility charges in writing, because this conflicts with the original tenancy agreement signed by the parties.

WL testified that after cleaning the carpets, the Landlord discovered a dirty stain of approximately one square meter in size would not come out of the bedroom carpet. The Landlord replaced the carpet in the bedroom at a cost of \$1,370.25.

The Landlord submits that there were blinds for the living room patio doors at the start of the tenancy, which were missing at the end of the tenancy. The Landlord provided a picture of the original blinds and a picture showing the blinds missing at the end of the tenancy. The Landlord purchased and installed replacement blinds for \$619.50.

According to JL, the parties had agreed during the move-out inspection that there was no damage to the house at the end of the tenancy. The Tenants agreed to pay to have the carpets professionally cleaned since they were in a hurry to vacate and had only vacuumed the carpets. JL explained that the Tenants did not sign the condition inspection report because they were waiting to hear from DC about the carpet cleaning cost. JL stated that 10 days after the Tenants moved out of the rental unit, the Landlord claimed that there was damage.

JL testified that the original blinds were in poor condition and missing many vanes, but this cannot be seen in the Landlord's picture because the blinds are parted to the sides. JL testified that the condition of the blinds was pointed out by the Tenants to DC at the start of the tenancy. JL testified that the Tenants were asked to note the issue on the condition inspection report. JL testified that the blinds were later removed by a company

hired by the Landlord to replace windows in the rental unit. According to the Tenants' written submissions, the blinds in the living room were removed with other blinds in the house in December 2021, but were not replaced. The Tenants submit that they did not remove or throw away any blinds.

DC testified that he did not recall the Landlord saying there was no damage to the rental unit at the move out inspection.

The Tenants agree for the Landlord to retain \$367.50 from their security deposit for the cost of carpet cleaning only. The Tenants seek the return of their security deposit less carpet cleaning ($\$1,400.00 - \$367.50 = \$1,032.50$).

In addition, the Tenants seek compensation as follows:

Item	Amount
Reimbursement of illegal rent increase paid from October 15, 2022 to January 29, 2023 ($\$200.00 \times 3 + \100.00)	\$700.00
Moving cost	\$800.10
First month's rent	\$2,800.00

In July 2022, the Landlord had requested to increase the rent from \$2,800.00 to \$3,100.00 per month, which was later reduced to \$3,000.00. The Tenants started paying the Landlord rent of \$3,000.00 per month on October 15, 2022.

According to the Tenants' written submissions, they reluctantly gave in to the illegal rent increase due to their work and life circumstances as well as difficulty finding a new residence with two young children. The Tenants argue that the Landlord did not give any notice of rent increase. JL testified that the Tenants were given a document to sign but they did not sign it. WL confirmed that the Tenants started paying \$3,000.00 per month without signing the rent increase document provided by the Landlord.

The Tenants submit that they found a few small mice droppings in early December 2022, and called a pest control company. The company suggested rodent proofing the rental unit by filling holes around the house at a cost of \$700.00. According to the Tenants, the Landlord was unwilling to pay for this expense despite repeated requests. The Tenants submit that more mice were seen in the house, mainly upstairs where the Tenants' children sleep and where there is no food. The Tenants submit that their family was sick from December 2022 to January 2023. The Tenants believe that their illness was due to the mouse infestation.

WL testified that the Landlord had food removed from the rental unit and paid for the exterminators hired by the Tenants. WL testified that the Tenants wanted to move out before the treatment cycle was completed.

Tenants submit that after an incident of a mouse jumping at them on January 11, 2023, they informed the Landlord that they will vacate the rental unit as soon as possible. The parties agreed to end the tenancy by January 29, 2023.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Is the Landlord entitled to compensation of \$1,621.68 for unpaid rent and/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.

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

In her application, the Landlord seeks compensation for unpaid utility bills covering the period that the Tenants resided in the rental unit. I find these utility charges are expressly excluded from the rent in the parties' tenancy agreement, and therefore recoverable from the Tenants by the Landlord.

I do not find the Landlord to have formed any implied contract with the Tenants to accept responsibility for the utilities by paying off the bills first. I note that where a utility

excluded from rent is billed directly to a landlord, the landlord will often pay the bill first before asking the tenant for reimbursement, for reasons such as avoiding penalty charges, interest, or service disruption.

Furthermore, I do not find the Landlord to have waived her right to charge the utilities or was estopped from charging the utilities to the Tenants.

Waiver occurs where a party takes steps which amount to foregoing reliance on some known right or defect in the performance of the other party. Waiver will be found only where the waiving party had full knowledge of their rights and an unequivocal and conscious intention to abandon them. This intention may be expressed in a formal legal document, it may be expressed in some informal fashion, or it may be inferred from conduct.

Estoppel, on the other hand, does not require a reliance on unequivocal conduct, but rather whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it.

Based on the evidence presented, I am not satisfied that the Landlord had, by her conduct or otherwise, communicated to the Tenants an unequivocal and conscious intention to abandon her right to charge the utilities while having full knowledge of such a right. I find the Tenants suggest that the Landlord may not have realized that the Tenants were responsible for paying the utilities under the tenancy agreement.

I find the Landlord had delayed charging the utilities to the Tenants during the tenancy. However, considering that the tenancy was less than a year in half in length and that flat rate utilities are billed and paid for infrequently (i.e. on an annual basis), I do not find the Landlord's delay in the circumstances to be sufficient to estop the Landlord from charging these utilities to the Tenants in accordance with the parties' tenancy agreement.

I conclude that the Landlord is entitled to charge the utilities to the Tenants for the duration of tenancy, from October 15, 2021 to January 29, 2023. I find the amount that the Landlord is entitled to charge is \$1,538.52, calculated as $\$1,157.00 \times 78/365 \text{ days} + \$1,191.00 + \$1,262.00 \times 29/365 \text{ days}$.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlord \$1,538.52 for unpaid utilities.

2. Is the Landlord entitled to compensation of \$2,357.25 for damage to the rental unit or common area?

Under section 37(2)(a) of the Act, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I will address each of the Landlord's claims as follows: (a) replacing bedroom carpet, (b) carpet cleaning, and (c) replacing living room blinds.

a. Replacing Bedroom Carpet

I find the Landlord did not submit a copy of the condition inspection report completed at the start of the tenancy to clarify the condition of the carpet at that time. Furthermore, I accept the Tenants' evidence that this stain had not been pointed out to the Tenants during the move out inspection. Under these circumstances, I am not satisfied that more likely than not, this stain was caused by the actions or neglect of Tenants during the tenancy.

I note that according to Residential Tenancy Branch Policy Guideline 40. Useful Life of Building Elements, carpets have an estimated useful life of 10 years. I find it is unclear in this case whether the original carpet had already exceeded its useful life.

Overall, I find the Landlord has not provided sufficient evidence to establish that the Tenants had caused the stain, and if so, the value of the remaining useful life of the carpet that was lost. Accordingly, I dismiss the Landlord's claim for compensation under this part without leave to re-apply.

b. Carpet Cleaning

I find the Tenants agree for the Landlord to retain \$367.50 for carpet cleaning. By consent of the parties, I order the Tenants to pay the Landlord \$367.50 for carpet cleaning.

c. Replacing Living Room Blinds

I find the Landlord has not provided sufficient evidence to establish that more likely than not, the living room blinds had been removed by the Tenants during the tenancy. I accept the Tenants' evidence that those blinds were removed by the window company

hired by the Landlord in December 2021. I dismiss the Landlord's claim for replacing and installing the living room blinds without leave to re-apply.

3. Are the Tenants entitled to compensation of \$4,300.10 for monetary loss or other money owed?

I will address the Tenants' claims as follows: (a) illegal rent increase and (b) moving cost and first month's rent.

a. Illegal Rent Increase

Pursuant to section 41 of the Act, a landlord must not increase rent except in accordance with Part 3 of the Act.

Under section 43 of the Act, a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations ("annual rent increase")
- agreed to by the tenant in writing ("agreed rent increase"), or
- ordered by the director on an application in the circumstances prescribed in the regulations ("additional rent increase")

The maximum annual rent increase is published on the Residential Tenancy Branch website at: www.gov.bc.ca/landlordtenant/increase. The maximum allowable annual rent increase for rent increases with an effective date in 2022 was 1.5%.

As explained in Residential Tenancy Policy Guideline 37B: Agreed Rent Increase ("PG 37B"), a tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must:

- be in writing,
- clearly set out the rent increase (for example, the percentage increase and the amount in dollars),
- clearly set out any conditions for agreeing to the rent increase,
- be signed by the tenant, and
- include the date that the agreement was signed by the tenant.

(emphasis underlined)

PG 37B further states:

A Notice of Rent Increase must be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

A tenant cannot dispute an amount they agreed to in writing. A tenant can dispute an agreed rent increase if it was not imposed in compliance with the timing and notice provisions or if the other conditions of the rent increase were not met.

Under section 42 of the Act:

- a landlord must not impose a rent increase for at least 12 months after the start of the tenancy and each subsequent rent increase
- a landlord must give a tenant notice of rent increase at least 3 months before the effective date of the increase
- a notice of a rent increase must be in the approved form

I find the \$200.00 rent increase exceeded the maximum allowable annual increase of 1.5% in 2022. I find the Landlord did not obtain the Tenants' agreement in writing to this above guideline rent increase. I also find the Landlord did not issue the Tenants a notice of rent increase using the approved Residential Tenancy Branch form (#RTB-7) with 3 months' advance notice to the Tenants. I find the Tenants nevertheless paid the \$200.00 rent increase from October 2022 until January 2023. Therefore, I find the Landlord had collected a rent increase that did not comply with the requirements under sections 42 and 43 of the Act.

Section 43(5) of the Act states that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. As such, I order that pursuant to section 43(5) of the Act, the Tenants may recover the rent increase paid to the Landlord between October 2022 and January 2023, or $\$200.00 \times 3 + \$100.00 = \$700.00$.

b. Moving Cost and First Month's Rent

Under section 32(1) of the Act, a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Under section 32(2) of the Act, a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In this case, I find the Tenants have not provided sufficient evidence, such as a pest control report, pictures, correspondence records, or a doctor's note to substantiate their claim regarding the mouse infestation. I find there is insufficient evidence regarding the possible causes, the extent of the infestation, and the degree to which the Tenants' quiet enjoyment of the rental unit was impacted.

Additionally, I do not find a tenant's moving costs or first month's rent in a new home to be an appropriate measure of damage or loss that could follow a breach by a landlord with respect to a rodent infestation in the rental unit. I find there is insufficient causal link between the damages claimed and the alleged breach. I also find the amount of one month's rent claimed to be arbitrary.

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

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

Both parties have been partially successful in their claims for compensation. Therefore, I order the reimbursement of both parties' filing fees under section 72(1) of the Act against the other party, with the result that the filing fees are setoff against each other.

5. Is the Landlord entitled to retain the Tenants' security and/or pet damage deposit?

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations. Section 38 of the Act sets out specific requirements for dealing with security deposits at the end of a tenancy.

I find the parties participated in a condition inspection of the rental unit at the start of the tenancy and completed an inspection report, but the Landlord did not give a copy of this report to the Tenants. I also find the Landlord did not give the Tenants a copy of the move-out inspection report.

Under section 18(1) of the Residential Tenancy Regulation, a landlord must give the tenant a copy of the signed condition inspection report made at the start of the tenancy within 7 days after the inspection is completed. The landlord must give a report made at the end of the tenancy to the tenant within 15 days after the later of the move-out inspection or the date the landlord receives the tenant's forwarding address in writing.

Under sections 24(2) and 36(2) of the Act, a landlord's right to claim against a security deposit for damage to the rental unit is extinguished if the landlord does not give the tenant a copy of the condition inspection report in accordance with the regulations. I find

the Landlord's right to claim against the security deposit for damage to the rental unit was extinguished under section 24(2)(c) of the Act.

As explained in Residential Tenancy Policy Guideline 17. Security Deposits and Set Off, extinguishment means that the Landlord may only apply to claim against the security deposit or obtain the Tenants' consent to deduct from the deposit for a claim other than damage to the rental unit. The Landlord may still file a monetary claim against the Tenants for damage to the rental unit after returning the security deposit.

Under section 38(1) of the Act, a landlord must (a) repay a security deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
- the date the landlord receives the tenant's forwarding address in writing,

unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

I find the Landlord has made a claim against the security deposit for a claim other than damage to the rental unit (i.e. unpaid utilities). I find the Landlord received the Tenants' forwarding address in writing on January 29, 2023 and made her application on February 9, 2023. I find the Landlord complied with the 15-day requirement under section 38(1) of the Act. As such, I find the doubling provision of section 38(6) of the Act does not apply.

The total amounts awarded to the parties in this decision are set off against each other resulting in a net payment from the Landlord to the Tenants as follows:

Item	Amount
Amounts Owning by Landlord to Tenants	
Credit for security deposit held by Landlord	\$1,400.00
Reimbursement of rent increase (\$200.00 × 3 + \$100.00)	\$700.00
Filing fee	\$100.00
Subtotal	\$2,200.00
Amounts Owning by Tenants to Landlord	
Flat rate utilities from October 15, 2021 to January 29, 2023 (\$1,157.00 × 78/365 days + \$1,191.00 + \$1,262.00 × 29/365 days)	\$1,538.52
Carpet cleaning	\$367.50
Filing fee	\$100.00
Subtotal	\$2,006.02

Net Payable by Landlord to Tenants (\$2,200.00 - \$2,006.02)	\$193.98
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Conclusion

The Landlord's claims for unpaid utilities, carpet cleaning, and recovery of the filing fee are partially granted for a total amount of \$2,006.02. The remainder of the compensation sought by the Landlord is dismissed without leave to re-apply.

The Tenants' claims for compensation and recovery of the filing fee are partially granted for a total of \$800.00. The remainder of the compensation sought by the Tenants is dismissed without leave to re-apply.

Pursuant to section 62(3) of the Act, I grant the Tenants a Monetary Order of **\$193.98**. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court of British Columbia, and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 03, 2023

Residential Tenancy Branch