



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNDC, MNR, OC, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The landlord filed on April 30, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows,

1. A monetary Order for damage and loss (\$3079.21) – Section 67
2. An Order to retain the security deposit - Section 38
3. A monetary Order for damage to the unit – Section 67
4. A Monetary order for unpaid rent – Section 67
5. An Order to recover the filing fee for this application (\$50) - Section 72.

The tenant filed on May 29, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for double the security deposit (\$1300) - Section 38
2. A monetary Order for damage and loss (\$200.00) – Section 67
3. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant sworn evidence and make relevant submissions; and, opportunity for the parties to resolve their dispute. Both parties acknowledged receiving all the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on September 01, 2011. The tenancy is composed of 2 individuals each renting a room with use of the shared areas of the rental unit - with each individual paying an equal portion of rent payable monthly, on the first of each month, in the

amount of \$650.00 each (\$1300 per month), plus utilities. At the outset of the tenancy the landlord collected a security deposit in the sum amount of \$650.00 - which the landlord still holds. The tenants vacated April 30, 2012. The parties are in dispute as to whether the tenancy agreement is a periodic (month-to-month agreement) as asserted by the tenant, or if it is a fixed term agreement as asserted by the landlord. None the less, the parties provided a copy of the 2 identical agreements (the tenancy agreement / the agreement) governing this tenancy – each of which states, *“this lease begins September 01, 2011 for the period of one year ending on August 31, 2011”*. The landlord claims the tenant did not respect the agreement as a fixed term from the outset as evidenced by the tenant’s provision of 8 post-dated cheques to only April 2012, and not 12 cheques, as required by the agreement. The tenant argues the tenancy agreement is not valid as it does not contain all the terms and wording found on the Residential Tenancy Branch (RTB) version of a tenancy agreement - provided online. None the less, the tenant signed the agreement, although the landlord did not.

At the start of the tenancy the landlord did not conduct a start of tenancy inspection with the tenant. Near the end of March 2012, the landlord received the tenant’s Notice to Vacate (notice to end) with a stated effective date of April 30, 2012, along with the tenant’s forwarding address. At the end of the tenancy the landlord did not conduct an end of tenancy inspection with the tenant.

The landlord claims the tenant breached the fixed term lease by ending the tenancy early; therefore the tenant is responsible for the balance of the fixed term lease in the amount of \$5200 in rent. The landlord testified they made reasonable efforts to mitigate their losses by advertising and renting the rental unit for 3 of the 4 months in dispute, in the sum of \$3300.00. The landlord provided evidence of online postings / advertising to show their efforts to re-rent the unit. The landlord also claims mailing costs, travel costs from the lower mainland to Victoria to *check on tenant / premises, interview sublets and re-assign rooms to sub-lets*. The landlord further claims the cost to repair a window blind, and cost for cleaning the rental unit and removing some of the tenant’s belongings left by the tenant at the end of the tenancy, as well as for unpaid utilities. The landlord’s claim is as follows:

Loss of revenue – difference (\$5200 - \$3300)	\$1900.00
Travel costs for landlord	\$786.35
Cleaning (\$80 x 2)	\$160.00
Unpaid utilities	\$85.46
Repair bedroom blind	\$75.00
Filing fee	\$50.00
Monetary claim by landlord total	\$3079.21

The tenant claims the landlord’s tenancy agreement is invalid as it does not mirror the example provided by the RTB. Inclusive in this argument the tenant claims the tenancy agreement does not adequately articulate that it is a fixed term tenancy agreement and that any ambiguity in the agreement should be viewed in favour of the tenant - as a

periodic agreement. The tenant argues that as a periodic agreement the landlord received the required Notice to End by the tenants and provided a forwarding address. The tenant also argues that the landlord's right to claim against the security deposit were extinguished under the Act for the landlord's failure to conduct start and end of tenancy requirements, and as such the landlord was obligated to return the security deposit within 15 days of the end of the tenancy, therefore they are owed double the security deposit as afforded by Section 38(60) of the Act.

The tenant does not dispute they owe the landlord utilities in the sum of \$85.46.

The tenant disputes the landlord's travel claims.

The tenant disputes the landlord's claim for cleaning, testifying that the rental unit was left at least reasonably clean.

In addition the tenant claims the landlord return \$200.00, which the tenant paid on the landlord's request, so as to 'top up' the rent of a sub-let tenant to the end of April 2012.

Analysis

On the preponderance of the evidence submitted and the sworn testimony of the parties, I find as follows:

Tenant's claim

On review of Sections 24(2) and 36(2) of the Act, I accept the tenant's argument that as the landlord did not comply with Sections 23 and 35 of the Act the landlord's right to claim against the security deposit for damage to residential property is extinguished. I find that the landlord is still entitled to make a claim against the security deposit for loss unrelated to damage to the residential property. I find the landlord made application for dispute resolution claiming against the security deposit within 15 days of the date the tenancy ended, and that the landlord's application was not restricted to damage to residential property. Therefore, the tenant's claim for double the original amount of the security deposit is dismissed.

I find that the \$200 the tenant purports was improperly accepted by the landlord was a portion of rent that was owed by the tenant under the existing tenancy agreement. The tenancy agreement called for monthly rent of \$650 per month, and the tenant was asked to pay a shortfall in that rent amount of \$50 per month to the end of April 2012, as the sublet tenant wanted to pay only \$600. The tenant agreed to provide the shortfall and paid the \$200. I find that the original tenant remains responsible to the landlord, while the sub-tenant lives in the rental unit. As a result, I do not agree that the landlord improperly accepted \$200, but rather, accepted rent owed to the landlord. Therefore, I **dismiss** the tenant's claim for this amount, without leave to reapply.

The tenant's application effectively **is dismissed**.

Landlord's claim

Section 12 of the Act, in part, states:

Tenancy agreements include the standard terms

12 The standard terms are terms of every tenancy agreement

(b) whether or not the tenancy agreement is in writing.

I find that despite of the fact the landlord's tenancy agreement does not contain all of the language prescribed by the Act or Regulation, the standard terms apply and are terms of every tenancy agreement, including the tenancy agreement of this matter. If a term of any tenancy agreement contradicts or changes a right, obligation or a standard term, that term of the agreement is void. I do not find that the landlord's tenancy agreement contains an unenforceable term, and I find that, by default of the legislation, it includes all of the standard terms as outlined in the *Schedule* of the Residential Tenancy Regulations. I find that despite the landlord not signing the agreement, the agreement is an instrument of the landlord and as such the landlord is a party to the agreement and all the *standard terms apply*, and any ambiguity in the agreement defers in favour of the tenant. In this matter, I find that the agreement clearly contains the date of the beginning of the agreement, and the date of the end of the agreement, including the words that it is for the period of one year, and is void of any language which would categorize it as a month to month or periodic tenancy arrangement. Therefore, I find the tenancy agreement constitutes a valid fixed term tenancy agreement ending August 31, 2012.

Section 45 of the Act, in part, states as follows;

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy,

and

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find that the tenant was not entitled to legally end the tenancy earlier than the effective end date of the tenancy agreement.

Section 7 states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this matter, I find the tenant did not comply with the Act and must therefore compensate the landlord for the loss of revenue that results. I accept the landlord's evidence that they have rented the rental unit for 3 months for the sum of \$3300.00, thereby meeting the test established by section 7(2) of the Act. I note that August 31, 2012 is 2 months from the date of this hearing – making the landlord's claim for compensation for the fourth and last month of the fixed term tenancy, premature. I find the landlord has not demonstrated how the tenant's breach has already resulted in a loss to the landlord for the last month of the tenancy agreement. As a result, I find the landlord has provided evidence establishing they have suffered a revenue shortfall of \$200 per month for 3 of the 4 months remaining in the tenancy agreement for a total shortfall of **\$600**, and I grant the landlord this amount, without leave to reapply for the last month of the tenancy agreement.

I grant the landlord the agreed amount for unpaid utilities in the sum of **\$85.46**.

I find the landlord is not entitled to litigation costs, other than the filing fee. Therefore, I **dismiss** the landlord's application for mail costs associated with this dispute, without leave to reapply.

I find that a tenant is not responsible for the landlord's choice of their domicile or locale in relation to the rental unit. As a result, I **dismiss** the landlord's claim for travel costs associated with servicing or administering their rental unit, without leave to reply.

In the absence of condition inspections of the rental unit I find the landlord has not provided sufficient evidence to support their claim that the rental unit was not left reasonably clean at the end of the tenancy that it required cleaning. However, I find the landlord has provided sufficient evidence that the tenant left some belongings in the rental unit at the end of the tenancy. Therefore, I **grant** the landlord compensation for cleaning in the nominal amount of **\$50.00**.

I find the landlord has not met their burden of proving the tenant damaged a window blind, therefore that portion of the landlord's claim **is dismissed**, without leave to reapply.

As the landlord was partly successful in their application they are entitled to recover their filing fee in the amount of **\$50.00**. The security deposit will be offset from the award made herein.

Calculation for Monetary Order

Loss of revenue	\$600.00
Travel costs for landlord	0
Cleaning (\$80 x 2)	\$50.00
Unpaid utilities	\$85.46
Repair bedroom blind	0
Filing fee	\$50.00
Minus security deposit held by landlord	-\$650.00
Monetary award to landlord	\$135.46

Conclusion

The tenant's application has been **dismissed**. The landlord's application has been fractionally allowed.

I Order that the landlord retain the security deposit of \$650 in partial satisfaction of their claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$135.46**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: June 26, 2012

Residential Tenancy Branch