



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OAK WEST REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, CNR, MNR, MNDC, RR, FF

Introduction

This hearing was convened in response to cross-applications for dispute resolution by the tenant and landlord pursuant to the *Residential Tenancy Act* (the Act).

The tenant filed to cancel the landlord's Notice and for a Monetary Order as follows:

1. An Order for return of security deposit - Section 38
2. A monetary Order for damage and loss (\$5000.00) – Section 67
3. Cost of emergency repairs – Section 67
4. Cancel the landlord's Notice for unpaid rent – Section 46
5. Allow the tenant to reduce rent – Section 65
6. An Order to recover the filing fee for this application(\$50) - Section 72

The landlord filed for an Order of Possession and for a Monetary for Order as follows:

1. A monetary Order for loss – Section 67
2. A monetary Order for Unpaid rent(\$7800.00) – section 67
3. An Order to retain the security deposit - Section 38
4. An Order of Possession for unpaid rent – Section 55
5. An Order to recover the filing fee for this application (\$100) - Section 72

Both parties attended the hearing and were given opportunity to settle their dispute, present *relevant* evidence, and make *relevant* submissions. The landlord was represented by the owner's agent. The parties each 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.

The parties filed document evidence that on May 28, 2015 they mutually agreed to end the tenancy June 30, 2015 by way of a Mutual Agreement to End Tenancy form, and

the landlord requested an Order of Possession pursuant to the agreement effective on

that date. As the tenant does not dispute the request, I will so Order. As a result the relevant portions of the applications are solely in respect to the parties' monetary claims.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The *relevant* undisputed evidence in this matter is as follows. The tenancy began February 17, 2015 as a written tenancy agreement for a fixed term - without addendum. The payable rent is in the amount of \$2600.00 due in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1300.00 which the landlord retains in trust.

The landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on April 20, 2015 stating the tenant owed \$2600.00 for April 2015. The parties agree the rent has been in arrears since April 2015. Therefore the landlord seeks a monetary order for all unpaid rent comprised of rent for April, May and June 2015.

The tenant claims they should be compensated for the landlord's breach of a verbal agreement made with the owner of the rental unit prior to entering into a tenancy agreement with the owner on January 26, 2015. The tenant claims the owner agreed to attend to a list of requests in respect to the rental unit, prior to the tenant contracting to take possession of the unit, but did not follow through with the requests / agreement. The tenant testified their request for compensation reflects their "lost time" spent on this tenancy, and, "lost opportunity" to acquire alternate accommodations, or otherwise attend to paid work at \$250.00 per hour, and for storage costs - to a total claim of \$5600.00. The tenant did not provide a monetary order worksheet, any receipt, or a breakdown of their monetary claim other than it represents "at least 10-15 hours of (their) time".

The tenant provided a series of photographs they claim depict the state of the rental unit. The tenant claims the landlord had agreed to paint the entire unit, clean the entire kitchen, replace the kitchen faucet, replace a burnt bulb of the stove, clean or replace the carpeting, replace the refrigerator water filter, replace or repair a refrigerator shelf, and attend to mold on a window sill, which the tenant claims caused them health issues.

The landlord testified the owner did not make such agreement with the tenant. The claim the rental unit was reasonably clean at the outset of the tenancy and some issues identified by the tenant were simply resolved without the need to refurbish as demanded by the tenant. The landlord testified all that was necessary was minor cleaning, a bulb replacement, and some painting. The landlord provided evidence they had the carpeting professionally cleaned on the start date of the tenancy, and attended to some painting, and later attended to a microwave repair, and an appliance replacement 2 months later in May. The landlord provided that they offered to end the tenancy early in the contract as the tenant was clearly dissatisfied with the unit and their demands were ongoing and “unreasonable”.

The tenant provided a witness – MT – whom the tenant identified as their girlfriend, and claimed by the tenant was present with the tenant and owner of the unit prior to signing the tenancy agreement. The witness was affirmed / sworn. The witness testified they were with the tenant and the owner of the unit on the initial viewing of the unit, at which time the owner, “*said they would fix the carpet . . . paint the whole unit . . . fix a ceiling light . . . get the mold problem fixed and get (tenant)a storage unit*”. The landlord declined questioning the witness.

Analysis

The onus is on the parties to prove their respective claims. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Landlord's claim

The parties have agreed to end the tenancy. The landlord is given an **Order of Possession** effective on the mutually agreed date of June 30, 2015.

The parties established the rent has not been paid. The landlord is entitled to a **Monetary Order** for unpaid rent in the total amount of arrears.

Tenant's claim

I find the tenant's witness was vague and their testimony consisted of broad statements that were not sufficiently specific in confirming the existence of an agreement as a condition of entering into the tenancy. I do not find the testimony of the witness clarified or provided sufficient confirmation of the tenant's claim. As a result I do not assign the testimony of the witness meaningful evidentiary weight.

Neither party presented evidence they mutually conducted a *move in condition inspection* as required by Section 23 of the Act; however, I find this dispute *is not* about the parties' assessment on the condition of the unit at the start of the tenancy. Rather, I find this dispute is in regards to the parties' difference over the existence of terms under which the tenant would enter into a tenancy agreement. The tenant claims there was a verbal agreement *before* they signed the tenancy agreement and that the agreement supported their version – and, the

landlord claims not to have had any verbal agreement as a condition before signing the tenancy agreement.

The parties were apprised of the challenging nature of undocumented or *verbal* agreements and that none of the items or terms claimed by the tenant were documented as a condition of the written tenancy agreement. It must be underscored that any agreement by the parties must be clearly communicated: preferably in writing. This would then serve to substantiate the existence of the terms of the agreement, and if necessary assist an Arbitrator in deciding if the evidence clearly communicates the obligations and rights of the parties. I find that the *tenancy agreement* in this matter fails to stipulate matters discussed or contracted before signing the agreement or how matters discussed or contracted before signing the agreement were to be addressed during *the tenancy*.

I find the tenant's photographs of the unit of limited value in substantiating the scope of the tenant's claims, and more importantly, that there was a verbal agreement as a condition before entering into a tenancy agreement. I find the photograph of the window frame does not depict the magnitude of the tenant's claims respecting a mold issue. Although some photographs substantiate the claimed condition of the carpet as appearing compromised I do not find the photographs as evidence the parties agreed the carpets would be replaced. None the less, I am satisfied by the landlord's invoice evidence the carpets were professionally cleaned at the start of the tenancy. I am further satisfied by the other invoices of the landlord that they attended to additional concerns of the tenant.

On the face of the evidence I find the tenant has not provided sufficient evidence which meets their burden to prove their claim or meet the test for compensation. Specifically, they did not provide evidence of the existence of a loss, or provided evidence they suffered a loss because of the conduct or neglect of the landlord in violation of the Act or the tenancy agreement.

As a result of all the above, it is clear the rental unit did not meet the expectations of the tenant and they were less than satisfied by the responses of the landlord. However, I find the tenant has failed to provide sufficient evidence to support their claim they are owed compensation due to a failure of the landlord in contravention of the Act. Therefore, I must **dismiss** the tenant's application in its entirety.

Calculation for Monetary Order

As the landlord was successful in their application they are entitled to recover their filing fee. The security deposit is factored and offset within the landlord's award.

Unpaid rent for April, May and June 2015	\$7800.00
Filing fee	\$100.00
<i>Minus security deposit held in trust</i>	<i>-\$1300.00</i>
monetary award for landlord	\$6600.00

Conclusion

The tenant's application is **dismissed**, *without* leave to reapply.

I Order that the landlord retain the security deposit of \$1300.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$6600.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

So as to perfect the parties' Mutual Agreement **I grant** an **Order of Possession** to the landlord effective **June 30, 2015**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia 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 17, 2015

Residential Tenancy Branch