



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNSD, MNDC, FF

For the tenant – MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover double the security deposit; for a Monetary Order for the cost of emergency repairs; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant's wife, who was acting as the tenant's agent and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover all or part of the security deposit?
- Is the tenant entitled to have the security deposit doubled?
- Is the tenant entitled to a Monetary Order for the cost of emergency repairs?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy was due to start on June 01, 2015. Rent had been agreed at \$1,600.00 per month due on the 1st of each month. The tenant paid a security deposit of \$700.00 on May 11, 2015. The tenant did not take possession of the rental unit. The tenant provided a forwarding address by registered mail on June 04, 2015.

The landlord's application

The landlord testified that the tenant agreed to rent this unit on May 11, 2015. The landlord agreed that the tenancy agreement was only signed by the landlord but keys were given to the tenant and a security deposit was paid by the tenant to secure the unit for June 01, 2015. On May 19, 2015 the tenant contacted the landlord and advised that his mother was no longer moving to Canada and therefore the tenant no longer needed the unit. The tenant breached the agreement he had with the landlord to rent the unit from June 01, 2015.

The landlord testified that he requested that the tenant return the keys but after the landlord described to the tenant how the security deposit is withheld because the tenant

breached the agreement, the tenant became hostile and threatened to hold the keys hostage. The landlord testified that he reluctantly agreed to return \$500.00 of the security deposit and retained \$200.00 for damages caused by the tenant's breach of the agreement.

The landlord testified that the tenant threatened to take over the unit and the landlord did not know if the tenant had copied the keys to the unit. Therefore, the landlord had to have the locks changed on an emergency service on May 30, 2015. The tenant did return the keys on May 30, 2015 and the \$500.00 security deposit was returned to the tenant on that day, the landlord seeks to recover the cost of the lock change of \$345.00 and has provided an invoice for this work in documentary evidence.

The landlord testified that in order to mitigate the loss he advertised the unit again and only had eight days in which to find new tenants. The unit was re-rented to new tenants on June 01, 2015; however, the landlord had to accept a lower rent for the unit of \$1,500.00 per month. The landlord seeks to recover the difference in rent for June and July, 2015 of \$200.00.

The landlord testified that he had to show the unit many times and had to meet with the tenant a few times. This resulted in additional costs going to and from the unit in gas for the landlord's vehicle. The landlord testified that these trips could have been avoided had the tenant not breached the agreement. The landlord testified that his vehicle only does eight miles to the gallon in town and he used approximately 10 gallons over the 80 miles extra traveled. The landlord therefore seeks to recover the cost of additional gas used of \$137.44.

The landlord testified that on June 03, 2015 the new tenants informed the landlord that this tenant entered the property while they were moving in. The landlord testified that he is unsure if the tenant actually gained access to the unit but the tenant told the new tenants he was there to collect mail. The tenant also made accusation about the landlord to the new tenants and made the new tenants feel uncomfortable. The landlord

referred to a letter provided in documentary evidence, written by the new tenants concerning this tenant's visit to the rental property. The landlord testified that the tenant's actions towards the landlord and the new tenants caused the landlord great concern and emotional distress. The landlord seeks \$200.00 in punitive and non-pecuniary damages.

The landlord testified that the total amount claimed is \$932.44; however, as he holds \$200.00 from the security deposit this amount can be deducted from the landlord's claim.

The tenant's agent disputed the landlord's claim. The tenant's agent testified that the tenant had entered into a verbal agreement to rent the unit for \$1,500.00. They went away to get the security deposit and when they got back the landlord informed them that another lady had offered him \$1,600.00 for the unit. The tenant said he did not want to pay this amount and so they left without signing the rental agreement. At this point they felt they could not trust the landlord as he had entered into a verbal agreement with the tenant. After thinking about it the tenant and his wife decided they would pay \$1,600.00 a month and contacted the landlord. The tenant's agent referred to the tenancy agreement which clearly shows rent was \$1,500.00 and was then altered to \$1,600.00.

The tenant's agent testified that the addendum to the agreement outlines the work the landlord needed to do on the property. The house was in a very poor condition due to damage caused by previous tenants. The landlord had verbally agreed to do all this work and have the unit cleaned by May 20, 2015. The landlord also agreed the tenant and his family could move into the rental unit on May 20, 2015 although the tenancy agreement was to start on June 01, 2015. The tenant informed the landlord that he would sign the tenancy agreement after the repair work was completed. On May 16, 2015 the tenant returned to the unit and found that only some cleaning had been done and the landlord informed the tenant that the basement must be taken as is and he was not willing to do any work in the master bedroom located in the basement.

The tenant's agent testified that as the landlord had not fixed the damages they informed the landlord by email and by telephone that he had not kept his end of the bargain so the tenant and his family were not going to move into the unit. The landlord informed the tenant that he could not find new tenants for June 01 so the tenant and landlord had a verbal agreement that the landlord could return \$500.00 of the security deposit and retain \$200.00. The landlord later informed the tenant he had found new tenants for July, 2015. The tenant's agent testified that they offered to move in as agreed on June 01, 2015 and then give the landlord a month's notice so the landlord had time to find tenants for July. The landlord refused to allow the tenant to move into the unit. The landlord then said he had new tenants who were moving in on June 15, 2015 and he would get \$200.00 from them for moving in earlier.

The tenant's agent testified that as they live in the area they drove by and saw that new tenants had moved in on June 01, 2015. The landlord's agent stopped and asked a neighbour and was told the new tenants had moved in on May 31, 2015. The tenant's agent referred to the letter provided by the landlord's neighbour stating this. The tenant's agent disputed that her husband ever went to the house. She agreed he did drive by. The tenant's agent testified that in the new tenant's letter to the landlord she has described the tenant as an older Middle Eastern gentleman driving a beige minivan. The tenant's agent testified that her husband, the tenant, is only 33 years old and is African not Middle Eastern; the tenant also drives a gold minivan not beige. The tenant's agent suggests the letter written by the new tenants is fabricated. Furthermore, if the landlord agreed the tenant had returned the keys on May 30, 2015 how could the tenant have entered the unit if the locks had been changed and he did not have keys.

The tenant's agent testified that the landlord had said that the tenant informed him they were not moving in because his mother was not moving to Canada. The tenant's mother lives in South Africa and has never had any intention of moving to Canada and the tenant's mother in law lives happily in Calgary.

The tenant's agent asked the landlord why he lied about the tenant saying his mother was not moving in. the landlord responded that he did not lie this is what the tenant told him and later changed this. The tenant's agent asked the landlord if he made the repairs to the unit. The landlord responded that the repairs were done on May 31, 2015 on the day the tenant dropped the keys off except one door which had to be ordered and this was not replaced until June, 2015.

The tenant's agent testified that the tenant did discuss with her that the landlord had people at the unit when he dropped the keys off but they don't know if the repairs were done.

The landlord testified that the new tenants signed their tenancy agreement on May 29, 2015. The tenant had told the landlord on May 19, 2015 that he did not want to move in. The addendum to the agreement does not mention a date the repairs had to be made by but the verbal agreement was that the repairs would be done by the tenant's move in date of June 01, 2015.

The tenant's application

The tenant's agent testified that the tenant seeks to recover \$200.00 of the security deposit that was withheld for a portion of the rent. As the unit was re-rented for June 01, 2015 then the landlord did not lose any rent for June. The tenant also seeks to recover double the security depot of \$700.00 as the landlord did not return all the security deposit to the tenant.

The tenant's agent testified that as they had given notice on their old unit they had to drive around every day looking for a new place to live. It was the landlord that breached the verbal agreement to have the work done by May 20, 2015 and nothing had been done by May 16, 2015. Due to this the tenant seeks to recover \$100.00 in gas used to find a new home.

The tenant's agent testified that their family of five suffered emotional stress and hardship as a result of the landlord's breach of their agreement. The tenant seeks to recover \$500.00 from the landlord because of this. The tenant also seeks to recover a further \$500.00 for defamation of character and for the fabricated lies told by the landlord about the tenant. The landlord lied about saying the tenant's mother was not coming to live there and that the tenant had trespassed on the property after new tenants had moved in.

The landlord disputed the tenant's claim for the cost of gas. The landlord testified that it was the tenant who backed out of the agreement and the landlord had until June 01, 2015 to get the work on the unit done not May 20, 2015.

The landlord also disputed the tenant's claim for emotional stress and hardship. If the tenant or his family suffered in this way it was because of their own actions in breaching the agreement. The landlord testified that he did not tell any lies about the tenant.

The tenant's agent asked the landlord why he did not go to the police if the tenant had threatened him or held his keys hostage. The landlord responded that he always tries to resolve conflict. The tenant's agent asked the landlord did he agree they could move in on May 20, 2015 and he would have the place ready by then. The landlord responded no he did not agree to this; the tenancy agreement clearly stated the tenancy would start on June 01, 2015. The tenant's agent asked the landlord why he gave the tenant the keys to the unit. The landlord responded as a consideration. The keys were exchanged with the payment of the security deposit. The tenant's agent asked why the landlord did not keep all the security deposit if he felt the tenant had breached the agreement. The landlord responded that he was going to keep it all but the tenant asked for \$600.00 back and they negotiated that to \$500.00. The landlord agreed the tenant did not put in writing that the landlord could keep \$200.00 it was all a verbal agreement. The tenant's agent asked the landlord when they asked for the \$200.00 back did the landlord say he was keeping it and would counter file against the tenant. The landlord

responded that he did not return the \$200.00 as he had incurred damages and as the relationship had gone sour he decided to file this application.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's application regarding a Monetary Order to recover the costs incurred to have the locks changed. The landlord agreed the tenant returned the keys to the rental unit on May 30, 2015. The tenants are required to return keys to the landlord and the tenant did as he was required. Here is insufficient evidence to show that the tenant made any copies of the keys and this is an assumption on the part of the landlord. If the landlord then decided to change the locks to the rental unit the landlord is not entitled to pass this cost onto the tenant. The landlord's claim for \$345.00 is therefore dismissed without leave to reapply.

With regard to the landlord's application to recover the difference in rent for June and July, 2015; The *Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

Section 91 of the *Act* stipulates that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Act*.

In terms of the tenancy agreement; despite the fact that this was not signed by the tenant a tenancy agreement was established orally when the tenant paid a security deposit for the rental unit and agreed to rent the unit from June 01, 2015. There is insufficient evidence to show that the parties had a further verbal agreement that the

landlord would do the repairs by May 20, 2015 and that the tenant could move in on that date and not before June 01, 2015 when the tenancy was due to start. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof, in this case the tenant, has not met the onus to prove their claim that they had a verbal agreement with the landlord that the repairs would be completed by May 20, 2015 and that the tenant could take possession of the rental unit on that date. Furthermore, I find the tenant appeared to have made a decision not to rent the unit when they visited the unit on May 16, 2015 and found the repair work was not complete. Consequently, I am satisfied that the tenant broke the agreement made to rent the unit from June 01, 2015.

Due to this, I find had the tenant taken possession of the rental unit and then given one month's notice as required under s.45 of the *Act* the earliest the tenant could have ended the tenancy would have been June 30, 2015. As the landlord did manage to re-rent the unit for June 01, 2015 at a lower rent it is my decision that the landlord is entitled to recover the difference in the rent of \$100.00. The tenant cannot expect the landlord to allow the tenant to move into the unit after it was re-rented to someone else and after the tenant had already informed the landlord he was not going to rent the unit. As this was a month to month tenancy the landlord is not entitled to recover a loss of rent for any further months and the landlord's claim for \$100.00 for the difference in July's rent is dismissed without leave to reapply.

With regard to the landlord's claim for \$137.44 for gas used; I have considered the landlord's claim in this matter, I find it is not the tenant's fault if the landlord has a car that only does eight miles to the gallon, furthermore, the landlord cannot hold the tenant responsible to pay the landlord's costs in gas to meet with the tenant or any new tenants. This is regarded to be the cost of doing business as a landlord and consequently, the landlord's claim to recover the cost of gas is dismissed without leave to reapply.

With regard to the landlord's claim for \$200.00 for punitive and non-pecuniary damages; in this matter the landlord has the burden of proof to show that he suffered as result of the tenant's breach of the agreement or that the tenant threatened the landlord or held the keys to the unit hostage. Under the *Act* the landlord does not have a reciprocal right to quiet enjoyment and without further evidence to show that the tenant's actions caused the landlord great concern or emotional distress I dismiss this section of the landlord's claim without leave to reapply.

With regard to the landlord's claim to keep \$200.00 of the security deposit; as the landlord has been partially successful with his claim and has been awarded **\$100.00** I find the landlord may retain this amount from the security deposit of \$200.00 pursuant to s. 38(4)(b) of the *Act*.

With regard to the tenant's application to recover the balance of the security deposit of \$200.00; as I have awarded \$100.00 to the landlord then I Order the landlord to return **\$100.00** of the security deposit to the tenant pursuant to s. 38(6)(b) of the *Act*.

With regard to the tenant's application to recover double the security deposit of \$700.00; s 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy did not commence; however, the landlord did receive the tenant's forwarding address in writing on June 09, 2015 as it is deemed to have been received five days after posting when sent by registered mail. As a result, the landlord had 15 days from this date until June 24, 2015, to return the tenant's security deposit or file an application to keep it. I find the landlord did file an application to keep the balance of the security deposit within the 15

day time frame on June 08, 015. Therefore, I find that the tenant has not established a claim for the return of double the security deposit and the tenant's application for this is dismissed without leave to reapply.

With regard to the tenant's application for gas used to find alternative accommodation; as I have found above that the tenant breached the tenancy agreement I am not prepared to award the tenant an amount for gas used to find alternative accommodation. This section of the tenant's application is therefore dismissed without leave to reapply.

With regard to the tenant's claim for \$500.00 for emotional stress, in this matter the tenant has the burden of proof; the tenant has insufficient evidence to show that any emotional stress caused to the tenant and his family was as a direct result of the landlord's actions. There is insufficient evidence to show the landlord agreed to complete repairs by May 20, 2015 or that the tenant could take possession of the rental unit on that day. This would be insufficient cause to end the agreement between the parties so if the tenant and his family found this stressful it is not as a result of the landlord's actions. This section of the tenant's application is dismissed without leave to reapply.

With regard to the tenant's claim for \$500.00 for alleged lies and fabrications; the tenant has the burden of proof in this matter and without corroborating evidence to show the landlord lied or fabricated the truth and the effect this had on the tenant or his family I must dismiss this section of the tenant's claim without leave to reapply.

As both parties applications have some merit I find both parties must bear the cost of filing their own applications.

Conclusion

I HEREBY find in partial favor of the landlord's monetary claim. The landlord is entitled to retain **\$100.00** from the balance of the security deposit.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$100.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court (Small Claims Division) 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: November 17, 2015

Residential Tenancy Branch

