



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Provisio Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNR, MNSD, MNDC, FF
Tenant: MNDC, MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by an agent for the landlord and the tenant.

The landlord submitted that she wanted increase their monetary claim to include lost revenue for the month of March 2016. As the landlord's original Application for Dispute Resolution was for unpaid rent or lost revenue due to the tenant's early end to the fixed term tenancy I find it is reasonable to allow the amendment for a subsequent rental period claim. As such, I allow the landlord to increase their claim by an additional month's rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for the costs of a service call; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for a return of rent; for excessive electrical charges; moving costs; the cost of a security deposit at a new rental property; for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on June 19, 2015 as a 1 year and 11 day fixed term tenancy for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. The parties also agreed the tenant vacated the rental unit as of January 31, 2016.

The landlord submitted that as a result of the tenant ending the tenancy prior to the end of the fixed term they were unable to collect any rent for the property for the period of February and March 2016 and that they entered into a new tenancy agreement at a reduced rental rate of \$850.00 with their current tenants.

The landlord submitted that they advertised the availability of the rental unit on Kijiji but could not secure new tenants until approximately mid-March 2016 to start a new tenancy effective April 1, 2016.

The landlord also seeks reimbursement, in the amount of \$61.95, for a service call by a technician called to check out the refrigerator. The tenant submitted that he had to cancel the call when the technician arrived.

The tenant submitted that the landlord had failed to deal with a ventilation problem in the rental unit. He stated both the bathroom and kitchen fan in the unit did not work. He stated that as a result, he could smell other tenant's cooking food and cigarette smoke in his rental unit. He stated he was also concerned about mould growth in his bathroom if moisture could not escape.

The tenant submitted that when he raised his concerns with the landlord they took no action and as a result he determined that they were in breach of a material term of the tenancy agreement. The parties agreed the tenant provided the landlord with a letter advising of the breach. The letter states, in part:

"This is intended to be a breach letter. The landlord must provide a tenant with a rental unit that meets the health and safety standards required by law and have the rental unit in good repair. I have been in you contact with your agent, NM, since late December 2015 about the lack of ventilation and that the bathroom fan does not work. These issues have me concerned about potential formation of mould; not to mention that is a building code violation according to the Building Code of British Columbia. As to my knowledge, there have been no attempts made, since my initial drawing of attention to the issues, to have this repaired and I have been given less than satisfactory solutions to this problem by Mrs.

NM. I find this to be a breach of a material term of the tenancy agreement and will end the tenancy if these issues I have indicated are not fixed by January 21, 2016.”

While neither party submitted a copy of the tenancy agreement they confirmed that the agreement used by the landlord was the agreement available off of the Residential Tenancy Branch website. The tenant confirmed, after I read the clause aloud, that the relevant material term of the tenancy agreement was Clause 10.

Clause 10 outlines that the landlord's obligations include the provision and maintenance of the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law. The clause goes on to state that if the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may seek an arbitrator's order under the *Residential Tenancy Act* for the completion and costs of the repair.

The tenant submitted that he was advised by the landlord to open the windows to allow ventilation. He stated that he found that an unreasonable suggestion during winter months due to the cold temperatures outside. The tenant submitted that as a result of having to open his windows his electrical costs increased substantially over the winter months.

The tenant submitted that as a result of the breach and the landlord's failure to deal with the breach he seeks the following compensation:

Description	Amount
Reduction in rent for the month of January 2016	\$250.00
Excessive electrical charges	\$200.00
Return of his security deposit	\$450.00
Reimbursement for his new security deposit at current home	\$450.00
Moving costs	\$210.00
Total	\$1,560.00

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy 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.

Residential Tenancy Policy Guideline # 8 defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, an arbitrator will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

While I accept that the provision and maintenance of a rental unit is a primary obligation of the landlord in a tenancy agreement, I find that this must be considered in the broadest sense. That is to say that if the landlord has failed to provide or maintain the rental unit in a manner that renders unsuitable for occupation by a tenant or that does not comply with health, safety and housing standards required by law then this term might be considered a material term.

However, in the case before me, I find that the tenant has provided no evidence that the failure to ensure working fans in the kitchen and bathroom constitute a failure to comply with any health, safety or housing standard required by law. The tenant speculated that

the current systems were contrary to current code, however provided no specific evidence from local authorities to confirm that the ventilation was contrary to codes or that a no occupancy order was issued for failure to comply.

I also find the tenant has provided no evidence to establish that failure to have a working fan in the kitchen or bathroom rendered the rental unit unsuitable for occupation.

As a result, I am not persuaded that the landlord's failure to provide a working fan in the rental unit constitutes a breach of a material term of the tenancy agreement. Therefore, I find the tenant could not rely on Section 45(3) to end his tenancy and was required to end the tenancy in accordance with Section 45(2).

Therefore, I find the tenant was responsible for the payment of rent until the end of the fixed term in the tenancy, subject to the landlord's obligation to mitigate their damages or losses.

I find the landlord took reasonable steps, including the lowering of the rent sought, to re-rent the unit to new tenants. As such and in regard to their undisputed testimony I find the landlord is entitled to lost revenue for the months of February and March 2016 in the amount of \$1,800.00.

I find that the landlord had responded to the tenant's complaint regarding his refrigerator in a reasonable manner and it was the tenant's actions that prevented the technician from entering the rental unit to assess the fridge. Section 32(1) of the *Act* requires the 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 make it suitable for occupation by a tenant.

I find the tenant's action of preventing the landlord's technician from entering the rental unit interfered with the landlord's ability to ensure they were compliant with Section 32(1) of the *Act*. In addition, I find the tenant's action resulted in the landlord incurring the costs of service call that they would not have incurred at the tenant allowed the technician access.

As a result, I find the landlord is entitled to reimbursement of the costs for the technician in the amount of \$61.95.

As to the tenant's claim, I find that since I have determined he has not provided sufficient evidence to establish a breach of a material term or that the need for any repairs to the rental unit were in contravention of any part of the tenancy agreement or *Act*. As such, I find that all of the tenant's claims related to his assertion of a breach of a material term are dismissed. Therefore, I dismiss the tenant's Application for Dispute Resolution in its entirety.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,961.95** comprised of \$1,800.00 rent owed; \$61.95 service call; and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,511.95**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 04, 2016

Residential Tenancy Branch

