Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with monetary cross applications. The landlord applied for a Monetary Order for unpaid rent and utilities; a late fee; and, authorization to retain the security deposit. The tenant applied for a Monetary Order for damages or loss under the Act, Regulations or tenancy agreement; and, return of the security deposit. The tenant also applied for an order for the landlord to return the tenant's personal property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural Matters

I was provided a considerable amount of submissions and evidence by both parties. I have considered everything presented to me; however, with a view to brevity in writing this decision, I have only summarized the parties' respective positions and referenced only the most relevant evidence.

The hearing was held over two dates. An Interim Decision was issued following the first hearing date and should be read in conjunction with this decision. As seen in the Interim Decision, I had requested and the tenant agreed to re-serve the landlord with his Application for Dispute Resolution and evidence because the landlord did not receive two packages that were sent to her while she was out of town. I also authorized the landlord to provide rebuttal evidence during the period of adjournment.

At the outset of the reconvened hearing, I confirmed that the tenant had served the landlord with his Application for Dispute Resolution and evidence as ordered and the landlord served rebuttal evidence to the tenant.

The tenant had attempted to confirm with the landlord that she was able to see/hear the content on the digital device served upon her, as he is required to do under the Rules of Procedure; but, the landlord did not respond to his requests for confirmation. During the hearing, the landlord stated that she did not think she had to provide such confirmation to the tenant. Nevertheless, the landlord confirmed to me that she was able to see/hear the tenant's digital evidence and she had no objection to its inclusion in evidence. Accordingly, I have admitted and considered the tenant's digital evidence in making my decision.

The landlord stated that she had submitted rebuttal evidence to the Residential Tenancy Branch during the period of adjournment. I informed the parties I had not received evidence from the landlord during the period of adjournment and I asked the landlord to provide greater detail as to how and when she submitted evidence. The landlord described how she had delivered it to a Service BC office. I asked the landed to describe the content of her rebuttal evidence, which she did. I determined that the landlord's rebuttal evidence had been uploaded to the Residential Tenancy Branch service portal but it was uploaded as though it was received from the tenant, in error. Accordingly, I confirmed that I was in receipt of the landlord's rebuttal evidence and I have considered it in making my decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for the amounts claimed?
2. Has the tenant established an entitlement to compensation from the landlord for the amounts claimed?
3. Disposition of the security deposit.
4. Is it necessary or appropriate to issue orders with respect to return of the tenant's personal property?

Background and Evidence

The tenant paid a security deposit of $875.00 on April 3, 2017; however, the landlord did not present a written tenancy agreement to the tenant at that time, contrary to the requirements of the Act. Nevertheless, a written tenancy agreement was executed by the parties on May 1, 2017. The tenancy was set to begin on May 1, 2017 for a fixed term ending on October 31, 2017. The tenancy agreement provides that the tenant was required to pay rent of $1,750.00 on the first day of every month. In addition to the

monthly rent, the tenant was also required to pay 65% of “utilities and internet”. The landlord resided in the upper unit at the property and the rental unit was on the lower level of the house. The landlord had her son acting as her agent during the tenancy; although, the landlord appeared to take over for her son after the tenant moved out of the rental unit.

The parties were in dispute as to when the tenancy came to an end. Initially, the landlord testified that the tenancy ended on June 20, 2017 and that she had received an email from the tenant advising her that he had vacated the rental unit and placed a notice to end tenancy in the mailbox. Then the landlord changed her testimony to say the tenancy ended on July 2, 2017. The landlord was asked to explain how she determined July 2, 2017 was the tenancy end date. The landlord explained that she retrieved the tenant’s notice to end tenancy out of a mailbox on the property on June 29, 2017 and that according to the deeming provisions under the Act three days were added to June 29, 2017 to arrive at an end date of July 2, 2017. The landlord stated that she took possession of the rental unit and started advertising the unit for rent on July 2, 2017. The landlord was of the position the tenant put the notice to end tenancy in the mailbox for the rental unit and not the mailbox for the landlord. The landlord produced a letter from Canada Post to corroborate that there are two mailboxes at the property.

The tenant testified that he wrote a notice to end tenancy on June 16, 2017 and tried to deliver it to the landlord in person at the landlord’s service address on June 16, 2017 but she would not answer the door even though she was home and knew he was at the door. The tenant then contacted the landlord’s son, who was acting as the landlord’s agent, via email on June 18, 2017 to advise him a notice of termination was placed in the mailbox but he got no response from the agent. In a text message to the landlord’s agent the tenant says that he put a letter in the mailbox at the corner of the house. The tenant also sent an email to the owner on June 20, 2017 indicating he had given a notice to end tenancy in the mailbox on June 16, 2017; that he had vacated the unit and left the keys in the unit as of June 20, 2017 and requested return of his networking equipment.

The tenant stated that he did not see any other mailbox at the property and there were no markings on the mailbox he used at the corner of the house indicating that it was for the rental unit as opposed to the landlord’s service address. The tenant pointed out that there were other pieces of mail for the landlord in the mailbox. The tenant was of the position the landlord is deemed to be in receipt of his notice to end tenancy as of June 19, 2017. The tenant confirmed that he had vacated the rental unit and left the keys in

the rental unit by June 20, 2017 as he stated in the email sent to the landlord on June 20, 2017. On June 29, 2017 the tenant received an email from the landlord replying to his notice to end tenancy.

Landlord's application

1. Unpaid and/or loss of rent for July 2017

The landlord seeks recovery of unpaid and/or loss of rent for the month of July 2017 in the amount of $1,750.00. The landlord was of the position the tenant breached the fixed term tenancy agreement by ending the tenancy early and did not give sufficient notice to end tenancy. The landlord stated that she commenced advertising efforts on July 2, 2017 and secured a replacement tenant starting August 1, 2017 at the same amount of monthly rent.

The tenant was of the position that the landlord's actions, or lack thereof, as reflected in his notice to end tenancy gave him cause to end the tenancy early. The tenant pointed out that when he gave his notice to end tenancy he offered to compensate the landlord one-half of the monthly rent for July 2017 but way of the security deposit but the landlord rejected the offer. The tenant was also of the position that the landlord neglected to take his notice to end tenancy despite the multiple ways he tried to delivery or communicate that it was there; and, that the landlord's negligence resulted in delayed efforts to advertise the rental unit for rent. As such, the tenant was also of the position that the landlord failed to mitigate losses.

The landlord acknowledged that the tenant was at her door on June 16, 2017 and that she did not answer the door. The landlord alleged that the tenant was banging on her door and that she told him the matter did not concern her. The landlord explained that she had an agent acting on her behalf and that the tenant was not to disturb her. The tenant pointed out that as the owner, the landlord is a landlord as defined under the Act, and that the landlord's service address provided to him for the landlord was the owner's residence upstairs.

2. Unpaid utilities

The landlord points to the tenancy agreement as a basis for seeking 65% of the hydro bill for the period of May 19, 2017 through to July 2, 2017; the cable/internet bill for the months of June 2017 and July 31, 2017; and, estimated water consumption up to July 2,

2017. The utilities sought by the landlord are: $94.25 and $36.48 for hydro; $99.38 and $99.38 for cable/internet; and, $40.38 for water.

The tenant submitted that he did pay $151.43 on June 1, 2017 for hydro and cable/internet even though he did not receive the cable box the landlord's agent agreed to provide him. The tenant submitted that he only occupied the rental unit for 26 days and he paid more than enough for utilities consumed during the period. The tenant was not agreeable to paying any more for utilities.

The tenant submitted that on May 15, 2017 the landlord's agent agreed to provide him with a cable box since a cable box is necessary to watch television. The landlord was of the position that a cable box is not necessary to watch television and that all she was required to provide was the outlet at the wall. The landlord's agent acknowledged that a conversation took place with respect to a cable box and the landlord's agent claims that he told the tenant he was responsible for providing his own PVR/DVR. The parties acknowledged that if the tenant were to provide his own cable box, PVR or DVR it would be the landlord that would have to registered the device with the cable provider since the account is in her name and it is not a separate service for the rental unit.

3. Late fee

The landlord pointed to the Addendum to the tenancy agreement as a basis for charging a late fee for the rent not paid for July 2017.

Term 2 of the Addendum provides as follows: "Late rent $25.00 charge and end of tenancy notice." I find this is an awkwardly worded term and its meaning was unclear to me which resulted in asking the landlord for clarification during the hearing. The landlord stated that it means she would add a late charge of $25.00 if a notice to end tenancy was issued to the tenant. The landlord acknowledged that she did not issue notice to end tenancy to the tenant.

The tenant was of the position he does not owe the landlord a late fee because he does not owe rent for July 2017.

Tenant's Application

1. Return of rent for May 1 – 15, 2017

The tenant submitted that he did not move his possessions and reside in the rental unit prior to May 15, 2017 although he had been provided keys and access to the rental unit on May 1, 2017. The tenant claims that he did not move his possessions in until after May 15, 2017 because the locks were not repaired until then. The tenant was of the position that he daughter was unable to use one of the locks because it was very stiff or tight and another lock barely caught so that his possessions would have been in jeopardy if he moved them into the rental unit. The tenant pointed to an email dated May 5, 2017 where he notifies the landlord's agent of the problematic locks. The tenant was at the property on May 10, 2017 to clean and set up the internet connection and the landlord's agent was at the property but then he disappeared and the locks did not get fixed until May 15, 2017.

The landlord was of the position that the locks were working fine at the start of the tenancy but the landlord's agent did remove some wood from the door jamb on May 15, 2017 so that the lock would insert deeper into the door jamb to satisfy the tenant.

2. Return of security deposit

The tenant seeks return of the security deposit since the landlord did not accept his offer to retain it in an attempt to settle their dispute. Further, the landlord did not permit the tenant to participate in the move-out inspection scheduled for July 2, 2017. The tenant provided a video of what transpired on July 2, 2017. The tenant stated he provided the landlord with his forwarding address in writing on October 15, 2017.

The landlord did not accept the tenant's offer to retain the security deposit in satisfaction of rent for July 2017 and she made a claim against the security deposit on July 12, 2017. The landlord stated she understood the tenant was moving back to his parent's house and that she had that address from his tenancy application. The landlord acknowledged that she did not permit the tenant to participate in the scheduled move-out inspection explaining that she was uncomfortable with the tenant videotaping her.

The tenant stated that he brought a witness and the witness was videotaping the events of July 2, 2017 to protect him from false accusations by the landlord.

I briefly touched on extinguishment of a landlord's right to make a claim for damage against a security deposit if the landlord does not inspect the rental unit with the tenant at the scheduled time; however, I noted that the landlord did not make a claim for damage to the property against the security deposit. Rather, all of the landlord's claims are for amounts other than damage.

3. Return of utilities paid

The tenant seeks return of one-half of the cable/internet bill he paid for the month of May 2017 since he did not move his possessions into the rental unit and start residing in the unit until May 15, 2017 due to the defective locks; and, because he did not get the cable box.

The landlord was not agreeable to returning this amount to the tenant. The landlord was of the position the tenant was required to pay the amount he did for May 2017 pursuant to the terms of their tenancy agreement; the locks did not prevent the tenant from moving in; and, the landlord was not obligated to provide the tenant with a cable box.

4. Carpet cleaner rental

The tenant seeks recovery of the rental fee he paid for carpet cleaning machine in early May 2017. The tenant was of the position that the carpets were dirty and covered in dog hair when he moved in. The tenant stated that the landlord told him that she did not want wet carpets. The tenant proceeded to rent the carpet cleaning machine and did not seek reimbursement of the cost until he filed this application.

The landlord denied that the carpets were dirty when the tenant moved in and pointed to the move-in condition inspection report. The landlord stated that if the tenant had an issue with the cleanliness of the carpets she had a carpet cleaning machine he could have used. Rather, the tenant decided to rent a carpet cleaning machine and waited to raise this issue after giving notice to end tenancy.

The tenant was of the position that the condition inspection report was done very hurriedly.

5. Return of networking equipment

The tenant seeks return of networking equipment that is in the landlord's possession or the cost to purchase the networking equipment in the amount of $377.35. It was undisputed that the tenant set up equipment in the landlord's unit so that he would be provided secure access to the internet.

The tenant submitted that when he gave notice to end the tenancy he requested return of the equipment but it was not returned to him. The landlord claims that she hung it on the mailbox but when the tenant did not pick it up she moved it back inside for safe-keeping. The tenant stated that he was not notified that the landlord had done so.

The landlord stated that she still has the equipment and the tenant is at liberty to send a courier to come pick it up.

6. Damage to dresser

The tenant seeks recovery of the cost of a dresser that he claims was damaged when the hot water tank leaked on to the carpeting in the rental unit. The tenant was of the position that the hot water tank did not have a drain pan that was connected to a drain system and when the hot water tank leaked it leaked onto the carpeting and wicked up the dresser. When the tenant observed this he proceeded to lift the other furniture on pieces of wood to prevent further damage to his furniture.

The landlord denied that the hot water tank leaked onto the carpeting, claiming there is a pan under the hot water tank, and the landlord denied seeing any damage to a dresser. The tenant stated that he moved the dresser away from the wet area but that he still has the dresser as he kept it for evidence purposes.

It was undisputed that the hot water tank malfunctioned in June 2017. In hearing from the parties, it also became clear that a significant deterioration in the landlord/tenant relationship occurred when the landlord or landlord's agent and contractor were attempting to facilitate a repair and gain entry into the rental unit. The parties were of opposing views as to whether the hot water tank replacement, and its other components, constituted an emergency repair on June 12, 2017 and whether the landlord was required to give the tenant notice of entry. The landlord was of the position that it was an emergency repair and was of the view the tenant was interfering with the landlord's efforts to complete the repair. The tenant was of the view the repair

was not an emergency after the hot water tank leak had stopped and that the landlord was violating his right to quiet enjoyment of the rental unit.

7. Tenant's lost billing time

The tenant seeks to recover $1,175.00 from the landlord because the landlord or the landlord's agent wasted his time. The tenant calculates this amount as being the loss of 12.5 billable hours at $94.00 per hour. The tenant stated that he is self-employed and that $94.00 per hour is his gross billing rate. The tenant stated that when the landlord, landlord's agent or contractor sought entry to the unit the tenant wanted to be there. The tenant asserted that the landlord or landlord's agent or contractor were inefficient and had little regard for the tenant's time.

The landlord was of the position that a landlord or a tenant is not permitted to charge for their time such as this. The landlord's agent and contractors were responding to repair issues for the most part.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each application before me.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

- That the other party violated the Act, regulations, or tenancy agreement;
- That the violation caused the party making the application to incur damages or loss as a result of the violation;
- Verification of the value of the loss; and,
- That the party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's application

1. Unpaid rent – July 2017

The parties executed a written tenancy agreement with a fixed term set to expire on October 31, 2017. The tenant ended the tenancy earlier than the fixed term which is a breach of the tenancy agreement.

I have considered whether the tenant had a legal right to end the tenancy early, as provided under the Act. Section 45(3) of the Act permits a tenant to end a tenancy early if the tenant has given the landlord written notice of a breach of a material term of the tenancy agreement and the landlord does not correct the breach. The tenant sent text messages and emails to the landlord's agent voicing concerns or dissatisfaction over repairs and other grieves; and, by way of the letter dated June 16, 2017. I have read the emails, messages and letter thoroughly and they do not indicate the tenant is putting the landlord on notice to correct a breach of a material term and that failure to correct the breach will result in him ending the tenancy. A material term is something so significant that it goes to the root of the agreement and the slightest breach is a basis to end the tenancy. When the tenant did give the letter of June 16, 2017 it is clear to me that the tenant has already decided to end the tenancy and is not seeking correction of a breach. Therefore, I find the tenant was in breach of his fixed term tenancy agreement by ending the tenancy early without the lawful right to end it early.

It is interesting to note that in an email dated June 30, 2017 the landlord had indicated to the tenant that he failed to give a full month of notice as required by the "RTB guidelines". A tenant in a fixed term tenancy agreement is not permitted to end a tenancy by giving a one month notice. A one month notice is a provision that applies in a periodic tenancy (ie: month to month tenancy). It would appear that the landlord does not understand notice requirements for different types of tenancies and she would be well served to familiarize herself with such.

Having been satisfied the tenant breached the fixed term tenancy agreement by ending the tenancy early, and the landlord claims for loss of rent against the tenant, I proceed to consider whether the landlord took reasonable measures to mitigate losses.

The date the tenancy ended is an important consideration as I find it reasonable to expect that once the landlord was aware that the tenancy was ending the landlord, or her agent, would commence efforts to advertise the unit so as to mitigate losses.

In this case, the landlord acknowledged that she did not commence advertising efforts until July 2, 2017. I find the landlord's reasoning for determining the end of tenancy date to be July 2, 2017 was flawed. The landlord has misapplied the deeming provisions of section 90 of the Act when she added three days to the date she retrieved the tenant's notice to end tenancy from the mailbox. Section 90 provides that three days are added to the date the document is placed in the mailbox, not three days after it is taken out by the recipient.

The tenant placed a notice to end tenancy in a mailbox on the property on June 16, 2017. While I accept the landlord's evidence that there are two mailboxes on the property that are recognized by Canada Post, the letter from Canada Post does not indicate the mailboxes are identified with unit numbers or other means to identify one mailbox is for the landlord's service address and one mailbox is for the rental unit. When I viewed the tenant's video evidence, the tenant shows the mailbox at the corner of the house. I do not see any marking or indication on the mailbox that it is for rental unit or the landlord's service address, and there appears to be other mail in the mailbox for the landlord. I am of the view that the lack of clarity or confusion concerning the mailbox is attributable to the landlord's failure to sufficiently identify the mailbox so that one can see which unit is associated with a particular mailbox on the property.

Furthermore, the tenant emailed and sent text messages to the landlord and the landlord's agent multiple times; including a text message on June 16, 2017 saying he had left a letter in the mailbox at the corner of the house; an email to the landlord's agent on June 18, 2017; and, an email to the landlord on June 20, 2017 stating he had left a notice to end tenancy in the mailbox, he had vacated the unit, and left the keys. I am of the view that the landlord was aware of the tenant's departure given his multiple attempts to communicate to the landlord and her agent via in person, by letter, by email and text message but that the landlord and her agent were avoiding sending a response until much later, on June 29, 2017. I note that in the days and weeks prior the tenant had numerous email and text message conversations with the landlord's agent and I was not provided any explanation for the non-response of the agent. From the June 29, 2017 email the landlord sent, it would appear to me that the landlord received the June 20, 2017 email because on June 29, 2017 the landlord wrote: "June 20th you indicated notice for termination your 6 month rental agreement would be at address for service your mailbox you stated. Although checked daily it has not been delivered." Therefore, I find the landlord is deemed to be in receipt of the tenant's notice to end tenancy three days after it was put in the mailbox on June 16, 2017, or June 19, 2017.

Section 44(1)(d) of the Act provides that a tenancy ends when a tenant vacates or abandons a rental unit. I find the tenancy ended on June 20, 2017 as this is the date the tenant vacated or abandoned the rental unit. I also note that this is the date the landlord initially stated when I asked her when the tenancy ended and, as explained above, I find it likely the landlord was aware of this by way of the email and text messages the tenant sent to her and/or her agent. In waiting to post an advertisement until July 2, 2017 I find the landlord lost two weeks of advertising time and the potential to re-rent the unit on an earlier date. In waiting to advertise the unit until July 2, 2017 the landlord made it very unlikely that a replacement tenant would found for July 2017. Accordingly, I prefer the tenant's position that the landlord unduly delayed in commencing advertising efforts and this is a lack of reasonable efforts to mitigate.

Also of consideration is that the tenant had, in an email sent to the landlord on June 29, 2017, stated that he would pay for rent until July 14, 2017 despite the landlord's breaches of the tenancy agreement, and that the landlord may retain the security deposit. I have read this email carefully and it does not appear to be a conditional offer. I am of the view that compensating the landlord for one-half of the monthly rent for July 2017 is a fair result considering the tenant ended the tenancy early and to secure a replacement tenant for July 1, 2017 by way of a notice to end tenancy deemed delivered on June 19, 2017 is very short notice.

In light of all of the above, I award the landlord compensation for loss of rent equivalent to one-half of the monthly rent, or $875.00 as agreed upon by the tenant in his communication of June 29, 2017.

2. Utilities

Section 3 b) of the tenancy agreement indicates that water, heat and cablevision are not included in rent. In the space called "additional information" it states: "Utilities and Internet 65% separate from rent of $1750.00."

Term 4 of the Addendum states: "Tenants pay 65% of shared utilities and internet. Their portion due the 1st of each month with rent of $1750.00. Their portion is for <u>heat, electricity, water and internet</u> and is on top of rent of $1750.00. [My emphasis underlined]

a) Hydro

With respect to the landlord's request to recover "hydro" from the tenant (which is commonly used to describe electricity), based on the tenancy agreement and the Addendum, I am satisfied that the tenant is responsible to pay for electricity to the end of the tenancy. The landlord's hydro claim includes two periods of time, the first being May 19 – June 19, 2017 in the amount of $94.25 and the landlord provided a copy of a hydro bill for that period of time for me to verify the amount claimed. I find the claim to be sufficiently supported and calculated for this period of time and I grant the landlord's request to recover this amount from the tenant.

The landlord also requested recovery of hydro for the time period of June 20 – July 2, 2017 in the amount $36.48. The landlord did not provide a copy of a hydro bill for the period after June 19, 2017 or a detailed calculation to show how she arrived at this amount. Considering the tenant vacated the property on June 20, 2017 and the time of year, I would expect that the next hydro bill would have been lower than the May 19 – June 19, 2017 bill. Therefore, I find this claim is not sufficiently supported by a detailed calculation or evidence that would have been available to the landlord and I dismiss this portion of the claim.

b) Cable and internet

Based on the tenancy agreement, and Addendum, I find it is clear that the tenant is obligated to pay 65% of the internet bill. However, there is no clear indication that the tenant was required to pay the landlord for cablevision. Term 3. b) of the tenancy agreement clearly uses the word "internet" in addition to the more vague word "utilities". The Addendum provides clarity as to which "utilities" are provided to the tenant and which utilities he is required to pay for, which are: heat, electricity, water and internet. However, there is no mention of the tenant being provided or having to pay for cable in the tenancy agreement and Addendum. Accordingly, I find the landlord's evidence does not support a claim for cable charges.

The landlord seeks recovery of $99.38 from the tenant for the period of June 1 -30, 2017 and $99.38 for the period of July 1 – 31, 2017. In support of the claim the landlord provided a copy of only one page of a three page invoice dated May 1, 2017 from the cable/internet provider for services for the period of June 1 – 30, 2017. The landlord did not produce any portion of an invoice for the services provided for July 2017.

The bill for the period of June 1 – 30, 2017 indicates $178.60 is owed for the month which is broken down as follows:

Late payment charge	$ 1.11
Current Monthly Services	196.00
Promotions	-44.10
Long Distance Charges	9.00
Net GST	8.06
Net PST	8.53
Total Current Charges due 01-Jun-17	$178.60

The landlord did not provide a detailed breakdown as to how she calculated $99.38. I note that 65% of the "current monthly services" less the "promotions" is $98.73 [($196.00 – $44.10) x .65 = $98.73]. it is uncertain whether the landlord made a mathematical error or whether she calculated the claim differently. Considering there are long distance charges on the bill provided, I find it reasonable to expect that the "current monthly services" may also include charges for a basic telephone service as well. Perhaps the landlord deducted the telephone charges and added taxes in arriving at $99.38. In any event, without the detailed calculation and all of the pages of the invoice I find I am uncertain as to how the landlord determined the claim for $99.38 and I am unable to verify its accuracy. I note that the tenant had also requested copies of the complete utility bills from the landlord's agent on June 2, 2017 and from the landlord on June 29, 2017 and I find that request reasonable. Despite his requests the landlord has not provided complete copies of the bills.

Since the landlord bears the burden to prove an entitlement to the amount sought and the landlord did not produce all of the pages of the invoices available to her and a detailed calculation so that her claim may be verified, I deny her request for recovery of $99.38 for the months of June 2017 and $99.38 for July 2017.

c) Water

The landlord seeks recovery of water for the period of May 1, 2017 through July 2, 2017. The landlord provided a copy of a water bill for the period of November 16, 2016 through to March 17, 2017 which indicates payment of $117.39 is due as of May 17, 2017. It would appear that the landlord is billed for four months at a time and she relies upon this bill as the next bill was not expected for quite some time after the tenancy ended, which I accept is reasonable. I also find the use of this bill to determine the tenant's liability is non-prejudicial since a winter water bill is typically the lowest bill in

the year. Accordingly, I calculate the tenant's obligation based on this bill; however, I limit the landlord's award to water consumed from May 1 – 2017 through June 20, 2017, the day the tenant gave up possession of the rental unit and bringing the tenancy to an end.

In light of the above, I calculate the landlord's award as: $117.39 x 65% x 51 days / 119 days in billing cycle = $32.70.

3. Late fee

Section 6 of the Act provides that a term in a tenancy agreement, including an Addendum, is not enforceable where: "the term is not expressed in a manner that clearly communicates the rights and obligations under it". As described in the Background and Evidence section of this decision, I noted that the term in the Addendum that provides for a late fee is awkwardly worded since the late fee appears to be connected to issuance of a notice to end tenancy. The landlord never did issue a notice to end tenancy to the tenant and the term is not clearly written. Therefore, I do not uphold this term and I deny the landlord's claim for a late fee.

Landlord's request to retain security deposit

Although the landlord extinguished her right to make a claim for damage against the security deposit in prohibiting the tenant from participating in the move-out inspection, the landlord's claims are for amounts other than damage. I grant the landlord's request to retain the tenant's security deposit in satisfaction of the landlord's award for loss of rent.

Tenant's application

1. Return of rent for May 1 – 15, 2017

It was undisputed that the tenant requested repairs to the locks in an email to the landlord's agent sent on May 5, 2017 and this was accomplished on May 15, 2017. While the tenant was in possession of the rental unit prior to May 15, 2017, the tenant submits by way of this claim that the locks prevented him from moving into the rental unit. I have reviewed the communication from the tenant to the landlord's agent and I note that at no time does the tenant indicate that the issues with the locks were preventing him from moving in. I find it reasonable to expect that if the tenant intended to move in before May 15, 2017 but could not because of locks were not operating

properly that the tenant would notify the landlord of such so as to convey the urgency of the matter. I also note that the tenant does the tenant seek reimbursement of rent paid that was paid in May 2017 for the months of May and June 2017 until this application was filed. Therefore, I find the tenant did not mitigate his losses by putting the landlord on notice that the locks were preventing him from moving into the rental unit and I deny this claim.

2. Return of security deposit

I have authorized the landlord to retain the tenant's security deposit in satisfaction of loss of rent as seen in a previous section of this decision. Accordingly, I deny the tenant's request for its return.

3. Return of half of cable bill for May 2017

The landlord's agent requested $100.75 from the tenant for the bill from the cable/internet provider for the month of May 2017 in an email dated June 1, 2017, which the tenant paid. The landlord's agent attached to the email a "screenshot" of one page of the invoice from the cable/internet provider for services for the period of June 1 – 30, 2017. The tenant requested a copy of the full bill on June 2, 2017 and again on June 29, 2017. For reasons I provided under the analysis of the landlord's claim for utilities, I find the tenant's request for copies of the entire bill to be reasonable as the one page of the invoice provided does not provide a breakdown of the "current monthly services" and it would appear that those services include internet, cable and telephone.

As I found previously in my analysis of the landlord's request for recovery of utilities, the tenant is responsible for internet, but not cable or telephone. Had the landlord provided the tenant with the cable box as he had requested, or if the landlord had registered a PVR/DVR for the tenant then an argument could be made that there was an agreement for the tenant to pay a portion of the cable bill. Without providing a cable box or registering a PVR/DVR, and based on the tenancy agreement as it is written, I find the tenant was not obligated to pay for cable and he is entitled to recovery of monies he paid for cable. Since the landlord had not provided a complete copy of the cable/internet invoice I find it reasonable to estimate the cable portion of the bill. I accept that the tenant's request for return of 50% to be within reasonable and I grant the tenant's request to recover $50.38 of the cable/internet he paid for May 2017.

4. Carpet cleaner rental

The parties were in dispute as to whether the carpeting was dirty and had dog hair at the start of the tenancy. The move-in inspection report indicates the carpeting was in good condition and there is no indication it was dirty and in need of additional cleaning. Although the tenant argued the move-in inspection and the report were performed hurriedly, the tenant did not appear to request another inspection with the landlord, and the tenant proceeded to sign the report indicating he agreed with it. I am of the view that the consequences for the tenant's decision to sign a report that was prepared in a fashion he considered to be hurried and without any objection noted are his to absorb.

Although I accept the tenant did rent a carpet cleaning machine and cleaned the carpets, I find the tenant undertook this task on his own volition. A landlord is expected to provide a tenant with a rental unit that is in "reasonably clean" condition at the start of the tenancy. If a tenant has expectations that are higher than "reasonably clean", the tenant is at liberty to ask the landlord to perform additional cleaning or compensate the tenant but if the landlord does not agree to do so, the tenant does not have a legal basis to claim for reimbursement from the landlord.

Also of consideration is that the tenant wrote in an email to the landlord that she did offer him use of her carpet cleaning machine and he declined the offer.

I find it unreasonable to expect that a tenant sign the move-in inspection report, then proceed to undertake further cleaning task on his own volition, and then seek reimbursement well after the tenancy ended by way of this application. Therefore, I deny the tenant's request to recover the cost of renting a carpet cleaning machine from the landlord.

5. Return of networking equipment

The tenant seeks return of networking equipment, or the cost to purchase these items. The tenant provided evidence to show the value of the items when they were new and established that the items were relatively new at the start of the tenancy.

The landlord has the tenant's equipment and is agreeable to returning them to him.

Upon consideration of all of the evidence presented to me, the acrimony between the parties is abundantly clear and I am of the view that the landlord has a tendency to avoid the tenant's attempts to communicate with her. For instance: the landlord

avoided all of the tenant's attempts to communicate with her about the notice to end tenancy; the tenant's request for the landlord to notify him when she placed the networking equipment outside; the tenant had to serve the landlord with his hearing documents and evidence multiple times, including a request for her to confirm she received and could view digital evidence that went ignored. Accordingly, I find it necessary and appropriate to issue the followings **orders** to the parties.

I order the following:

- Upon receipt of this decision, **the tenant** shall send an email to the landlord indicating the date and time and the name of a party of his choosing (other than the tenant) who will retrieve the networking equipment from the landlord at the front door of the landlord's address of residence. The date selected by the tenant shall be at least seven (7) days after sending the email to the landlord. The email address to use to send an email to the landlord is the same email address the tenant has used in prior communication with the landlord and it appears on the landlord's Application for Dispute Resolution.
- Upon receipt of the tenant's email described above, **the landlord** shall send confirmation to the tenant, via email, that she has received his email. The landlord is to use the tenant's email address that appears on his Application for Dispute Resolution.
- **The landlord** will ensure that she or an agent of her choosing, hands over all of the tenant's networking equipment to the tenant's chosen agent at the date and time selected by the tenant.
- Should the landlord fail to return the networking equipment at the scheduled date and time, and in undamaged condition, as described above the tenant may serve the landlord with a Monetary Order in the amount of $377.35 that I will provide to the tenant with this decision.

6. Damaged dresser

The tenant sent an email to the landlord's agent on June 8, 2017 indicating water was leaking on to the carpeting in one of bedrooms and the water had already damaged the base of one dresser. The tenant provided a photograph of a dresser that appears to have water damage and a receipt showing the purchase of the dresser. Although the landlord denied that carpeting was wet, I find the tenant's evidence is more persuasive and I accept that the dresser was damaged as a result of the hot water tank leak.

Water pipes and mechanical elements of a building do fail from time to time. A landlord is expected to make the necessary repair to the property in a timely manner; however, if the failure and damage is unexpected, a landlord is generally not liable to compensate the tenant for damage to the tenant's personal possessions. An exception to this is where the landlord is negligent and knew, or ought to have known, that the failure or damage was going to occur and failed to take reasonable action to prevent it.

The tenant asserts that the carpeting became wet because there was not a pan under the hot water tank that was connected to a drain. While the landlord stated that there was a pan under the hot water tank, she did not state or provide evidence to show the pan was connected to a drain. I find a reasonable person would expect that once the pan fills with water it will over-flow onto the carpeting unless the pan is connected to a drain system. Therefore, I accept that there was improper installation of the previous hot water tank and its components and this lead to the wet carpeting and damage to the tenant's dresser that was reasonably foreseeable.

The tenant provided a receipt to demonstrate the dresser was nearly new and I find his request to recover $166.88 from the landlord to be reasonable. Therefore, I grant the tenant's claim in this amount.

7. Loss of billable time

The tenant pointed to page 32 of his submission to demonstrate the loss of 12.5 hours of his time that he attributes to the landlord's actions or lack thereof. The tenant claims compensation calculated as 12.5 hours at $94.00 per hour as this is his billing rate.

I note that all of the hours her points to concerned the landlord, the landlord's agent or contractor gaining entry to the rental unit. The first entry was May 10, 2017 and that was to accomplish various repair issues the tenant had identified. The second entry was for purposes of having the property appraised. The third and fourth entry pertained to the hot water tank repair and its related components. What is important to note is that it is the tenant that wanted to be present during all of the entries.

If a landlord seeks entry into a rental unit, the landlord is to get the tenant's consent or give the tenant a 24 hour written notice of entry, unless there is an emergency. If a landlord has the tenant's consent or gives the tenant proper written notice, or if there is an emergency, the landlord may enter and there is no requirement for the tenant to be present. It is not uncommon for a tenant wants to be present when a landlord enters,

but that is the tenant's choice and a landlord is not expected to compensate the tenant for his decision to be present.

If a landlord enters a rental unit unlawfully, the tenant may seek compensation for loss of quiet enjoyment; however, the loss is relative to the value of the tenancy, not a tenant's billable time as sought by the tenant.

In light of the above, I find the tenant's claim for compensation relative to his billable time while he was present for the landlord's entries to the rental unitto be unreasonable and I dismiss it.

Filing fee and Monetary Orders

Both parties had limited success in their respective claims and I make no award for recovery of the filing fee to either party.

Pursuant to section 72 of the Act, I offset the awards and provide a net Monetary Order calculated as follows:

Awarded to landlord:		
Loss of rent	$875.00	
Less: security deposit	(875.00)	
Hydro	94.25	
Water	32.70	
Owed to landlord	$126.95	
Awarded to tenant:		
Recovery of cable payment	$ 50.38	
Damage to dresser	166.88	
Owed to tenant	$217.26	
Monetary Order provided to tenant	$ 90.31	[$217.26 – $126.95]

In addition to the Monetary Order described above, I also provide the tenant with another Monetary Order in the amount of $377.35. The Monetary Order for $377.35 is a conditional order and may only be served and enforced upon the landlord is she fails to comply with the orders I have issued to her in this decision.

Conclusion

Both parties had limited success in their respective claims against the other. I have authorized the landlord to retain the tenant's security deposit in satisfaction of loss of rent. I have offset other awards and ordered the landlord to pay the tenant the net amount of $90.31. The tenant has been provided a Monetary Order for this amount to serve and enforce upon the landlord.

I have also issued orders to the parties with respect to returning the tenant's personal property to him. To motivate the landlord to comply with my orders, I have provided the tenant with a Monetary Order in the amount of $377.35 that he may serve and enforce upon the landlord if she fails to comply with my orders.

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: April 19, 2018

Residential Tenancy Branch