



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDCL-S, MNDL-S, FFL

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on November 28, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to the Tenant, via registered mail. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On May 30, 2018 the Tenant submitted 1 written summary and 33 digital images to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord as an employee of the Residential Tenancy Branch told him the Branch would serve it to the Landlord on behalf of the Tenant.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure requires respondents to ensure that evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. As the Tenant did not serve his evidence to the Landlord in accordance with rule 3.15, I am unable to accept it as evidence for these proceedings.

On the basis of the undisputed evidence I find that the parties participated in a previous dispute resolution proceeding on November 14, 2017. The file number for that file appears on the first page of this decision. Given that the Tenant has participated in a previous dispute resolution I find that he know, or should have known, that he was required to serve the Landlord with evidence he intends to rely on at the hearing.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

### Preliminary Matter

Although the Tenant was able to answer some questions on his own behalf during these proceedings, the Tenant frequently provided testimony through his translator.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for lost revenue, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on April 16, 2017;
- the parties signed a tenancy agreement;
- the agreement was for a fixed term, the fixed term of which was to end on June 30, 2018;
- rent of \$1,200.00 was due by the first day of each month;
- the Tenant paid a security deposit of \$600.00; and
- the rental unit vacated on October 30, 2017.

The Landlord stated that on October 30, 2017 he received a text message from the Tenant in which the Tenant told him the rental unit had been vacated. He stated that prior to receiving this text message he did not receive notice from the Tenant regarding his intent to end the tenancy.

The Tenant stated that on October 16, 2017 he personally served the Landlord with written notice of his intent to end the tenancy, which declared that the tenancy would end on December 01, 2017. I note that a copy of this written notice is not included in the evidence the Tenant uploaded for these proceedings. The Tenant stated that this written notice did not inform the Landlord of the reason for leaving.

The Landlord and the Tenant agree that the Tenant provided the Landlord with a letter, dated August 09, 2017, in which the Tenant outlined various concerns he had with the tenancy and demanded that they be repaired within 48 hours. I note that a copy of this written notice is not included in the evidence the Tenant uploaded for these proceedings.

The Tenant (Translator) read out the letter dated August 09, 2017. After reading the entire letter the Tenant confirmed that the letter does not declare that the Tenant considers these problems to be material terms of the tenancy agreement or that the tenancy will end if the Tenant's concerns are not addressed.

The Tenant stated that he did not provide any further written notice of problems with the tenancy after August 09, 2017.

The Landlord stated that on October 31, 2017 he advertised the rental unit on a popular website and was able to locate a new tenant for January 01, 2018. The Tenant did not dispute this evidence.

The Landlord is seeking compensation for lost revenue in the amount of \$2,400.00.

The Landlord is seeking compensation, in the amount of \$600.00 plus tax, for painting the rental unit. The Landlord stated that there were several marks on the walls from furniture; there were several nail holes in the walls; and there were some nails left in the walls. He stated that the walls were in good condition at the start of the tenancy and they required painting at the end of the tenancy.

The Landlord submitted photographs of the wall, which the Landlord stated were taken at the end of the tenancy.

The Tenant agreed that the walls were in good condition at the start of the tenancy and that they were marked in places at the end of the tenancy. He stated that some nails were left in the walls and that photographs 7-1, 7-2, 7-3 and 7-4 accurately reflect the condition of the rental unit at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$150.00 plus tax, for changing the locks to the rental unit. The Landlord stated that he received a message from the Tenant informing him that the keys had been left in the mail box but he did not locate the keys.

The Tenant stated that he sent the Landlord a text message informing him that he left the keys in the mail box, and that he left the keys in the mail box on October 30, 2017.

The Landlord is seeking compensation, in the amount of \$150.59, for cleaning the rental unit. The Landlord stated that the washroom, the stove, the oven, and several counters required cleaning at the end of the tenancy. The Landlord submitted photographs of the top of a stove and the inside of an oven, which he stated were taken at the end of the tenancy. The Landlord submitted receipts, in the amount of \$150.59, that show he paid this amount to clean the unit.

The Tenant stated that the rental unit was left in clean condition at the end of the tenancy. He stated that the photographs of the stove/oven are not representative of the stove/oven in the unit at the end of the tenancy. He submits that the photographs could be of any stove.

The Tenant stated that after this tenancy began he learned that the Landlord did not have an occupancy permit for the rental unit. The Tenant was advised that this submission is not relevant to the issues in dispute at these proceedings.

### Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,200.00 by the first day of each month.

On the basis of the undisputed evidence I find that this was a fixed term tenancy, the fixed term of which ended on June 30, 2018.

On the basis of the undisputed evidence I find that the Tenant vacated the rental unit on October 30, 2017.

Even if I accepted the Tenant's testimony that he provided the Landlord with written notice of his intent to vacate the rental unit on December 01, 2017, I would conclude that the Tenant did not comply with section 45(2) of the *Act* because he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement.

As the Tenant breached section 45(2) of the *Act* and he vacated the rental unit prior to the end of the fixed term of the tenancy, I find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

On the basis of the undisputed testimony of the Landlord, I find that he made a reasonable effort to locate a new tenant but was unable to do so until January 01, 2018. I therefore find that the Tenant must pay the Landlord \$2,400.00 in compensation for the lost revenue the Tenant experienced in November and December of 2017.

In adjudicating this matter I have considered section 45(s) of the *Act*, which stipulates that if a 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 Branch Policy Guideline #8, with which I concur reads, in part:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

that there is a problem;

that they believe the problem is a breach of a material term of the tenancy agreement;

that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and

that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the Tenant has submitted insufficient evidence to establish that he had the right to end this tenancy, pursuant to section 45(3) of the *Act*, on the basis of the letter dated August 09, 2017. Even if I accepted that the concerns the Tenant identified in this letter were breaches of a material term of the tenancy (which I have not), I would conclude that the Tenant did not have the right to end this tenancy, pursuant to section 45(3) of the *Act*, because that letter does not identify the concerns as a breach of a material term of the tenancy and it does not inform the Landlord that the Tenant will end the tenancy if the concerns are not remedied.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Residential Tenancy Branch Policy Guideline #1, with which I concur, reads, in part:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

On the basis of the photographs of the walls the Landlord submitted in evidence, I find that the walls sustained some minor damage from furniture and nails. I find that the nature of the damage shown in the photographs is the type of damage that typically occurs when people hang art or move about a residence.

I therefore find that the damage to the walls should be considered normal wear and tear. As Tenants are not required to repair damage that results from normal wear and tear, I dismiss the Landlord's claim for painting.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant did not leave the keys to the rental unit on October 30, 2017. I find that the text message the Tenant sent on October 30, 2017 serves to support the Tenant's testimony that he left the keys in the mail box on that date. As the Landlord has submitted insufficient evidence to establish that the Tenant did not return the keys at the end of the tenancy, I dismiss the Landlord's claim for changing the locks.

On the basis of the photographs submitted in evidence I find that the stove and the oven required cleaning at the end of the tenancy. I find, on the balance of probabilities, that the photographs submitted in evidence do represent the condition of the stove/oven at the end of the tenancy. I find the Landlord's testimony that he took the photographs at the end of the tenancy is simply far more likely than the Tenant's submission that the photographs are of a different stove/oven.

I find, however, that the Landlord submitted insufficient evidence to establish that other areas in the rental unit were not left in reasonably clean condition. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, which corroborates the Landlord's testimony that other areas required cleaning or that refutes the Tenant's testimony that the rental unit was left in clean condition. Without such photographs I am unable to make an independent assessment of the condition of the unit.

As the Tenant breached section 37(2) of the *Act* by not leaving the stove/oven in reasonably clean condition, I find that the Landlord is entitled to compensation for cleaning the stove/oven.

The receipt submitted in evidence shows that the Landlord paid \$120.00 to an individual for cleaning the stove/oven and washing the floors. Although it is impossible for me to determine precisely how much time this person spent cleaning the stove, I find it reasonable to assume the person spent approximately 50% of the time cleaning the stove and 50% cleaning the floors. I therefore grant the Landlord compensation of \$60.00 for cleaning.

I also find it reasonable to divide the cost for cleaning supplies in a similar manner and I therefore grant the Landlord \$15.30 as compensation for cleaning supplies.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$2,575.30, which includes \$2,400.00 in lost revenue, \$75.30 for cleaning, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$600.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,975.30. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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 *Act*.

Dated: June 29, 2018

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Residential Tenancy Branch