



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: CNC MNDCT FFT
Landlord: MNRL-S OPR, FFL

Introduction

This hearing was convened in response to an application by the tenant. However, *both parties confirmed to me their mutual desire to include the landlord's application set for November 01, 2018, as a cross application with the tenant's matter. As a result this Decision addresses both of the parties' applications.*

The tenant filed on August 08, 2018 pursuant to the *Residential Tenancy Act* (the Act) and orally amended in the hearing solely for Orders as follows:

1. A monetary order for loss/abatement of rent - Section 38
2. An Order to recover the filing fee for their application - Section 72.

The landlord filed on September 14, 2018 for Orders as follows;

1. A monetary Order for unpaid rent / landlord holds security deposit in trust – Section 67
2. An Order of Possession / unpaid rent- Section 55
3. An Order to recover the filing fee for their application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle all aspects of their dispute, to limited avail. The parties were provided opportunity to submit document evidence and provide testimony and fully participate in the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The hearing proceeded on the merits of the contested items between the parties.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed for loss and filing fee?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The undisputed *relevant* evidence in this matter is as follows. The tenancy began June 01, 2017 as a written tenancy agreement and currently continues. The rental unit is a house on residential property with adjacent outbuildings. The hearing had benefit of the written Tenancy Agreement and addendum. At the outset of the tenancy the landlord collected a security deposit in the amount of \$750.00 which the landlord retains in trust. The payable rent under the agreement is \$1500.00 due in advance on the first day of each month. The parties agree, and it is relevant to this matter, that the tenancy agreement specifies that 'Storage' is included as part of rent.

Tenant's application

The tenant seeks rent abatement for loss of use of what both parties describe as a "storage shed" on the residential property the size of a small single garage. It is relevant that the tenant had control of a substantially larger double garage also on the residential property. The tenant testified that it was their understanding that the rent also included the small storage shed. The landlord testified that at the outset of the tenancy the parties discussed and agreed that the landlord would have exclusive use of the small shed for their truck. The tenant testified that there was no discussion or decision in respect to the small shed and as they were renting the entire property it was their expectation that all storage capacity situated on the residential property was inclusive as "Storage" with the rent.

Landlord's application

The landlord seeks unpaid rent for the current month of September 2018 in the amount of \$1500.00 and to end the tenancy.

Record of Settlement

Section 63 of the *Residential Tenancy Act* provides that the parties may attempt to

settle their dispute during a hearing and the Arbitrator may record any settlement in the form of a Decision or Order. Pursuant to this provision, some discussion between the parties led to resolution of the state of the tenancy, and the unpaid rent.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

Pursuant to **Section 63** both parties confirmed to me they agreed as follows;

1. that the tenancy will end no later than **October 01, 2018** and the landlord will receive an Order of Possession effective no sooner than the agreed date.
2. that the tenant has not paid the rent for September 2018 and the landlord is owed the rent of \$1500.00 for September 2018. As a result the landlord and the landlord will be awarded/granted this amount.

In respect to the tenant's claim for loss of storage it must be noted that a tenancy agreement is effectively a contract: a contract for a tenancy. One rule referred to as the *Contra Proferentem* (against interest) Rule is often useful when interpreting contracts. This legal doctrine or rule is often stated as follows:

Where there is any ambiguity in the contractual provision it will be interpreted in the manner least favourable to the maker of the contract. It is also often said that the contractual provision will be "strictly construed against the maker".

In this matter the tenancy agreement, or contract, as instrument or offering of the landlord, is ambiguous and moot in respect to what is meant by "Storage" on the residential property. I find that in the absence of clarity as to what storage capacity on the property is or is not included as part of the rent the rule of *contra proferentem* applies to favour an interpretation against the landlord. That is, that in the absence of clarity in the contract the tenant was entitled to conclude that all storage on the residential property was "Storage" included in the rent. I find the parties agreed that the tenant was not given access to the storage shed on the property and as a further result the tenant is entitled to a reduction of the rent reflecting its loss. I find that a reduction to the payable rent by \$50.00 per month reasonably reflects the tenant's loss in this matter. Therefore, I grant the tenant \$50.00 per month multiplied by the number of months of the tenancy from

June 01, 2017 to the agreed end of tenancy October 01, 2018, in the sum of **\$800.00** (\$50.00 x 16 months = \$800.00).

As both parties have been in part successful in their application they are each entitled to recover their respective filing fee, which mathematically cancel.

Calculation for Monetary Order

The security deposit will be offset in the awards herein.

<i>Landlord – award for unpaid rent</i>	1500.00
Tenant - award for loss of use	-\$800.00
net to landlord	\$700.00
<i>Minus security deposit in trust</i>	-\$750.00
balance to tenant	(\$50.00)

Conclusion

The parties' respective applications, in their relevant part, have been granted.

I Order that the landlord may retain \$700.00 from the tenant's security deposit in full satisfaction of their award and return the balance of \$50.00 to the tenant, forthwith.

To perfect my findings and the agreement of the parties;

I grant an Order of Possession to the landlord effective **October 01, 2018**. The landlord is given the Order in the above terms and must serve the Order on the tenant as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$50.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: September 26, 2018

Residential Tenancy Branch