



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MND, MNR, FF, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the Act). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence of the other party. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing package, I am sufficiently satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset extensive discussions were brought up on jurisdiction. Both parties agreed that the title to the signed agreement was "Furnished Travel Accommodation Tenancy Agreement". The landlord argued that the Act does not apply as this is a travel accommodation. The tenant disputes this claim stating that this is an elaborate attempt by the landlord to contract out of the Act.

The landlord argued that although the landlord applied for dispute resolution, the landlord believes that the Act does not apply and has applied in consideration of being found wrong. The landlord referred to the signed tenancy agreement which specifically both parties signed in agreement which states in part that the Act does not apply. The landlord also relied upon the fact that the tenant requested a short term stay (July 1, 2018 to August 31, 2018) and that this proves that the "short term stay" is for travel purposes.

The tenant argued that this is not a travel accommodation stating that the landlord is not licensed as a hotel or short term rental. The tenant stated that the landlord's own advertisement shows that terms vary and include yearly terms. The tenant stated that the landlord cannot just add the words "Travel Accommodation" and be exempt from the Act. The tenant stated that he was moving to Vancouver from overseas and was looking for a permanent residence.

I find based upon the direct testimony of both parties that the Residential Tenancy Branch has jurisdiction and that this is not a "Travel Accommodation" as claimed by the landlord. The landlord's reliance on the dates provided by the tenant on the application for rent (July 1, 2018 to August 31, 2018) does not indicate that the rental is for travel purposes. I find that this is only a specific term of 2 months and that the landlord has not provided sufficient evidence that this rental was for "travel accommodations". As such, the hearing proceed on the applications filed by both parties. No further issues were raised.

Due to extensive discussions on jurisdiction the hearing was adjourned due to a lack of time. Both parties were advised that a notice of an adjourned hearing notice would be sent with this interim decision to advise both parties of the continuation date. Both parties were also cautioned that no new evidence was to be submitted nor would it be accepted.

On March 22, 2019 the hearing was reconvened with both parties and resumed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss, for damage, for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss, for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties agreed that a tenancy agreement was made for a period between July 1, 2018 and August 31, 2018 for 2 months. The monthly rent agreed upon was \$2,600.00 per month. A security deposit of \$1,300.00 was paid on June 13, 2018.

The landlord seeks a clarified monetary claim of \$2,860.00 which consists of:

\$175.00	Cleaning Costs
\$80.00	Repairs
\$2,600.00	Unpaid Rent, August 2018

The landlord seeks \$175.00 in cleaning costs, \$80.00 in repairs to replace a towel bar and a kitchen drawer door as well as \$2,600.00 in unpaid rent for August 2018.

In support of these claims the landlord has provided a condition inspection report completed by both parties at the start of tenancy dated July 4, 2018. The landlord noted in her direct testimony that the condition inspection report for the move-out completed without the tenant that it states in the report, "DC" for Damaged and Needs Cleaning. A review of the copy of the report submitted by the landlord is of such "low" quality that the "notes" made are not discernable. The landlord also claims that the tenant failed to give 1 months' notice to end the tenancy and vacated the rental unit July 31, 2018 upon receiving the tenant's notice on July 6, 2018. The landlord claims that despite the short term, the landlord made reasonable efforts to re-rent the unit, but was unsuccessful.

The tenant in response argued that the rental unit was provided dirty requiring cleaning, at the start of the tenancy, the kitchen drawer door and the towel bar were damaged prior to moving in as shown in the tenant's submitted photograph and an email dated July 5, 2018 which noted the pre-existing damage.

The tenant argues that the landlord was part of a "bait and switch" providing the rental unit not as claimed and as such caused a breach of a material term of the tenancy agreement that forced the tenant to end the tenancy as per their notice given on July 5, 2018 to resolve the issues. The tenants argued that all of the issues were reported to the landlord and that no action was taken.

The landlord provided affirmed testimony that as issues that were reported on July 5, 2018 and were dealt with on July 6, 2018 regarding the cleaning and handyman services for repairs.

The tenant seeks a monetary claim of \$5,432.44 which consists of:

\$1,300.00	Return of Security Deposit
\$1,300.00	Compensation, Sec. 38(6) Fail to Comply
\$75.00	Move-in Fee
\$2,600.00	Compensation, Loss of Quiet Enjoyment
\$57.44	PayPal Fee(s)

The tenants seek monetary compensation from the landlord for the loss of quiet enjoyment due to the landlord misrepresenting aspects of the tenancy and failing to correct defects that left parts of the rental unit unusable.

The landlord provided undisputed testimony that the tenant did not provide his forwarding address in writing for return of the security deposit until August 31, 2018 when it was received by the landlord.

The tenant seeks recovery of a \$75.00 "move-in fee" arguing that this was not a strata fee. The landlord noted that the "move-in fee" was part of the signed contract and not for the strata. The tenant further argued that this building was not part of a strata corporation. During the hearing the landlord abandoned this part of the monetary claim and accepted its return to the tenant.

The tenant seeks \$2,600.00 for the loss of quiet enjoyment. The tenant claims that for the 1 month period that he was occupying the space, the tenant suffered a loss of use

of 1 bedroom, all of the kitchen and part of the bathroom. Both parties confirmed in their direct testimony that the tenant notified the landlord of the issues on July 5, 2018 after only staying 1 day. The tenant further stated that he never slept in the bedroom, but instead on the couch and used the kitchen for approximately 1 week. During the hearing the tenant stated that they would amend the monetary claim for this portion of the application to \$2,000.00 based upon an arbitrary amount and that no details of the calculation was provided. The landlord argued that upon being notified the landlord organized a cleaning service and repairs which were done 1 day later.

The tenant seeks recovery of \$57.44 for paypal fees incurred as unlawful fees. The tenant argues that the landlord passed on service fees incurred which the tenant should not be responsible for. The tenant has provided a copy of a payment of \$2,777.00 via paypal detailing a \$51.00 paypal fee. The landlord disputed this claim arguing that this was not a fee, but an outstanding balance owed. No evidence of an outstanding balance as provided.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the landlord's monetary claim, I find that the landlord has not been successful in establishing a claim for damage(s). The landlord's claim is primarily reliant on an incomplete condition inspection report in which none of the details/notes are discernable. The landlord submitted no further evidence on the state of the rental unit for a clear comparison on the condition of the rental unit. The tenant has emphatically disputed the landlord's claims. As such, this portion of the landlord's claim is dismissed.

On the landlord's monetary claim for unpaid rent of \$2,600.00, I find that a claim has been established. This was a short term tenancy from July 1, 2018 to August 31, 2018 for 2 months. The tenant notified the landlord on July 5, 2018 via email of the listed issues and his intent to vacate the rental unit. I note no end of tenancy date was provided, however, a subsequent email by the landlord dated July 6, 2018 indicates that

an agreement was made to end the tenancy on August 1, 2018 and for the landlord to advertise the unit for rent available on August 1, 2018. On this basis, I accept that notice was given and accepted. The landlord has failed to provide evidence of any efforts to mitigate any possible losses for the remaining 1 month term. As such, I find that the landlord has failed to establish a claim for loss of rental income. This portion of the landlord's claim is dismissed.

The tenant's monetary claim for return of the \$1,300.00 security is granted. Both parties confirmed that the tenant paid to the landlord \$1,300.00 for the security deposit.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. In this case, the tenancy ended on July 31, 2018, provided his forwarding address in writing to the landlord which was received on August 31, 2018 and the landlord applied for dispute on September 12, 2018 which is within the allowed 15 day period. As such, I find that the tenant is not entitled to compensation under the Act for the landlord failing to comply under section 38(6) of the Act. This portion of the tenant's application is dismissed.

The landlord abandoned her dispute of this portion of the tenant's claim and accepted its return to the tenant. The tenant has been successful in this \$75.00 monetary claim.

The tenant's amended monetary claim for \$2,000.00 has not been established. The tenant provided insufficient evidence of an actual amount of loss as claimed as this was an arbitrary amount sought by the tenant not based on any actual losses or expenses. However, the tenant was successful in establishing that a loss of quiet enjoyment did occur as confirmed by the landlord. On this basis, I grant an arbitrary monetary award of \$650.00.

On the tenant's claim for recovery of \$57.44 for unlawful fees collected by the landlord, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. In this case, the tenant has claimed that the landlord charged the \$57.44 unlawful fee as shown in the submitted transaction record provided by the tenant. The landlord has argued that this was an outstanding balance owed, but did not provide sufficient evidence of the outstanding balance. On this basis, the tenant is entitled to recovery of this claim.

The landlord's entire monetary claim is dismissed. The tenant has established a total monetary claim of \$2,082.44. The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord's application is dismissed.
The tenant is granted a monetary order for \$2,182.44.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: April 5, 2019

Residential Tenancy Branch