Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL-S FFL
Tenant: MNDCT MNSD FFT

Introduction

This proceeding is in respect to cross-applications pursuant to the *Residential Tenancy Act* (the Act) filed by the landlord on February 19, 2018 and the tenant on July 03, 2018; and further to Interim Decisions dated September 24 and November 19, 2018. Each party is seeking monetary orders for damage or loss, determination of the security deposit, and recovery of their respective filing fee.

In the identified hearing dates as set out in the style of cause page the tenant(s) and landlord(s), with respective legal counsel all attended in the conference call hearing. On all dates the parties were provided opportunity to mutually resolve their dispute in whole or in part to no avail. The parties were given opportunity to present *relevant* testimony, and make *relevant* submissions of evidence, present witnesses and ask questions. The matters of service and submissions of evidence were dealt with in the original hearing of September 18, 2018. Pursuant to my (2) Interim Decisions I have not considered evidence submitted after the original hearing date. The parties were previously apprised, and again in this hearing that the landlord's application had previously been heard and that the latest scheduling would be addressing solely the tenant's application with a view to completing this proceeding in its entirety within the extended hearing time allocated. *Prior to concluding the hearing both parties presented all of the relevant evidence they chose to present.*

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The *relevant* evidence in this matter follows. The tenancy ended February 10, 2018 upon the tenant vacating the unit. The tenancy began 4 months earlier on October 01, 2017 as a written 1 year fixed-term tenancy agreement signed by the named parties of this matter. Contrasting evidence of the parties is the 2 signed tenancy agreements: one dated August 24, 2017 and the other dated September 22, 2017 were produced by the tenant. Neither agreement contains addenda. The landlord acknowledged and submitted the September 2017 agreement as the sole agreement they entered into with the tenant and testified the August 2017 version submitted was concocted by the tenant and is fraudulent. At the outset of the tenancy the landlord collected a security deposit in the amount of $850.00 which the landlord retains in trust. The payable rent was $1700.00 due in advance on the first day of each month.

The parties agree there was a *move in* condition inspection at the outset of the tenancy on October 09, 2017. The *condition inspection report* (CIR) is signed by both parties, however has a printed date of October 01, 2017. It must be noted the CIR reflects the rental unit was reasonably deficient of identifiable issues.

It is undisputed that at the end of the tenancy the parties mutually agreed to attend a mutually scheduled *move out* condition inspection on February 12, 2018 which was attended by the female landlord and their daughter, and both tenants and 2 witnesses. This meeting immediately turned to dispute when the parties disagreed on how the inspection could be conducted. In part the tenant insisted upon, and the landlord objected the tenant video recording the inspection with their phone. As well, dispute respecting the presence of the tenant's witnesses to the inspection arose. There was some physicality between the parties. Police were called by the landlord and as a result the landlord and tenant failed to accomplish the planned mutual inspection they each set out to complete. The landlord submitted a copy of their move out inspection which they conducted in the absence of the tenant as permitted by the Act. The landlord found various painting related spotting on floors and carpets and a "dirty" freezer. The tenant disputes the veracity of the CIR. The tenant argued the landlord did not provide a second opportunity to conduct the inspection.

The parties agreed the tenant had provided a forwarding address on February 11, 2018.

Landlord's application

In the initial scheduled hearing of September 18, 2018 the landlord presented the following claims. The landlord sought the amount of $183.75 to repair the laminate flooring in the bedroom, which they claim was damaged during this tenancy. The

landlord provided evidence in respect to the claimed damaged floor. The tenant argued the floor was already damaged when they moved in. The landlord did not dispute that the move in inspection was done with carpeting covering the laminate flooring in question. The tenant testified they indeed signed the CIR at the outset of the tenancy but do not agree with the landlord's claim in this regard.

The landlord testified that once the tenant occupied the rental unit they consented to the tenant's request to repaint the walls of the unit. The parties agreed the landlord would pay for the paint and the tenant painted the walls. The parties later disagreed in regards to whether the landlord would pay for any painting labour. The landlord claims the tenant, "did a poor job" of the painting so that after the tenancy ended the rental unit required repainting, which in the process the landlord also repainted all trim and sills. The landlord provided photo images of the claimed "poor job" of painting. They further testified that prior to this tenancy the entire rental unit was last painted in 2008. The landlord seeks $2640.75 for repainting of the rental unit. They provided a receipt/invoice for the painting. The tenant disputed the landlord's claim, at first testifying that the male tenant whom painted the unit is an experienced painter and their painting work did not require repainting. The tenant disputed whether the landlord actually repainted the unit. Upon subsequent application the tenant was granted *summons to testify* for the claimed painting contractor of the landlord which the tenant presented as their witness, AG. The witness provided affirmed testimony that they indeed repainted the entire rental unit of this matter for which they invoiced the landlord and were paid for the work.

The landlord further seeks $75.50 for cleaning of the rental unit stove and refrigerator freezer as they claim they were left unclean. The tenant claimed, "we cleaned everything". The landlord testified and provided photo image evidence of debris left under the burner trays of the stove and of the freezer the landlord claims was left insufficiently clean.

Tenant's application

During the reconvened extended hearing of April 09, 2019 the tenant presented the following claims.

The tenant seeks *moving costs* in the sum of $578.73 claiming the landlord was in contravention of the Act and responsible for them having to move. The tenant has submitted a series of written notifications to the landlord in respect to their claims of material breaches of the tenancy agreement along with their Tenant's Notice pursuant to Section 45(3) of the Act. The tenant provided invoices for the moving costs. The landlord's response is that the tenant had no cause to rely on Section 45(3); that the

tenant chose to vacate the unit by their own volition and the landlord should not be liable for the tenant's moving costs. The tenant cited the material breaches of the tenancy agreement were the landlord's restrictive/terminated *laundry facility*, lack of use of the *garden area* and lack of *secure storage.* The tenant further cited *loss of quiet enjoyment*, a faulty *fire (smoke) alarm* and a *lack of heat* since the beginning of the tenancy. The tenant referenced renting another unit for more than they paid for the dispute address.

The tenant seeks $165.35 for *paint*, and $300.00 for the *labour to repaint* the rental unit at the outset of the tenancy. The parties agreed their agreement of 2017 was that the landlord would pay for paint and that the tenant, being a, "professional painter", would paint the unit. The tenant acknowledges the extent of the agreement to solely reimburse the tenant for the paint; none the less, the tenant thinks it is reasonable for them to be compensated for their labour as well, stating, "why would I paint someone else's property for free". The landlord's response is that the rental unit did not require painting however acquiesced to the tenant's desire and insistence to repaint.

The tenant seeks compensation of $525.00 for *loss of access to agreed laundry* facilities and claimed interference with use of the facility prior to the loss. The undisputed evidence of the tenant is that the tenancy agreement states laundry is included in the rent which is identified by the words "one a week". The undisputed evidence of the parties is that prior to December 22, 2017 the parties wrangled over their understanding of the tenant's entitlement to the laundry facility and access to it. The tenant testified they understood 'one a week' to mean the facilities' unlimited use for a day in the week. The male landlord testified that 'one a week' was intended as "one laundry load per week" and the female landlord testified that 'one a week' was intended as use of the laundry facility one day per week. Consequently the landlord gave the tenant a *Notice Terminating or Restricting a Service or Facility* document stating that effective January 26, 2018 the laundry facility was terminated and as a result the rent was reduced by $100.00 per month. The tenant claims the laundry facility was an essential facility to the tenant's family with 3 children and a material term of the tenancy agreement. The landlord argued that it was not essential as living accommodation and not a material term. The landlord provided that the tenant's insistence on a key for the laundry room became contentious as the room was part of their living space and they were already providing access to laundry. But moreover the landlord submitted that the tenant was being compensated for the loss. The tenant argued the landlord was controlling over the use of the laundry facility and that termination of the laundry facility would cause them hardship because of the distance to external facilities. Two weeks after the effective date of the termination Notice the tenant vacated.

The tenant seeks compensation in the sum of $595.00 for *termination of 2 facilities* without notice, specifically termination by the landlord of the tenant's use of the *garden area*, which the tenant claims was included in the rent as part of the tenancy agreement dated August 24, 2017. As well, not providing *secure storage*, which the tenant claims was included in the rent as part of the 'agreed ' tenancy agreement dated September 22, 2017. The landlord's testified in response that the agreement submitted by the tenant dated August 24, 2017 is fraudulent, and that the 'agreed ' agreement is "not specific on storage" and that it was explained and should have been regarded as available in-suite storage.

The tenant seeks compensation of $85.00 for lack of, poor, unusable, or non-existent *internet service* which was agreed included in the rent. Again, the parties wrangled over this issue and the landlord was sufficiently convinced a problem existed that they had a technician attempt to remediate any suspected problem.

The tenant seeks compensation of $340.00 for periodic *lack of heat* during the 4 month tenancy. The tenant testified their ground floor rental unit became quite cold and they had to alert the landlord on multiple occasions to provide heat. The tenant provided evidence of the temperature in the unit at times 18 degrees, while the landlord said the tenant's unit, according to a "temperature sensor" in the tenant's unit near the kitchen, advised them the rental unit temperature at 4 to 6 degrees higher. The tenant provided a photo image of the landlord's temperature sensor reading upon which the landlord relied, which the landlord sent the tenant. It is undisputed by the parties the rental unit had 2 thermostats (and a temperature sensor) and the landlord testified their upstairs accommodation also had 2 thermostats, all on the same heating system. The landlord testified it was not reasonable the tenant would require more heat. The tenant and landlord wrangled over their discrepancies and respective expectations over the appropriate amount of heat to no avail.

The tenant seeks compensation in the sum of $3180.00 for a *loss of use* of the rental unit and *loss of quiet enjoyment* due to a reactive smoke alarm in the rental unit hallway, and which the parties agreed was close to the cooking area. When triggered the alarm created urgency in the house and clearly concerned the landlord, which culminated in attendance by a Fire Safety crew. The tenant provided image evidence the smoke alarm/detector unit in question was manufactured in 2002, and also provided document evidence of the unit's manufacturer stating that such type of unit was *recommended replaced every ten years*, *"to benefit from the latest technology upgrades".* The tenant also provided a document respecting a battery operated alarm unit from the same manufacturer stating on the unit, "REPLACE IN 10 YEARS". The tenant claims that the landlord's purportedly *expired unit* placed their family at risk and

thereby further contributed to a loss of quiet enjoyment. As well, the tenant claims they were hesitant to use the cooking facilities fearing setting off the alarm, causing a partial loss of the unit. It is undisputed that the landlord brought in a technician to inspect the *wired* alarm/detection system. The landlord's evidence is that the technician concluded the system operated as intended, despite the subject alarm/detector's manufacture date.

The tenant seeks compensation for *aggravated damages* for "mental, psychological, physical damage"; the latter claimed to be a broken phone. The tenant provided written evidence stating the landlord's daughter assaulted the male tenant, breaking his phone, *"and finger damaged". He had to spend month for a recovery. We bought painkiller for him 9.96 CAD (see attached)"* – as written. The tenant submitted an image of a purchase receipt and packet of Advil caplets. The tenant further provided a video recording of the related incident occurring while attending the failed condition inspection in February 2018 in which the recording shows the landlord's daughter swatting the male tenant's hand holding the recording phone, with her hand, and the phone immediately popping up again and continuing recording for several minutes while the landlord and their daughter are heard talking with Police on their phone. The recording then shows the tenant leaving the rental unit. The tenant provided a letter from a medical clinic physician stating the tenants told them of harassment from the landlord resulting in emotional upset and affecting their sleep. The letter states the tenants were referred for counselling and were provided medication to aid sleep.

Analysis

By the evidence in this matter it is clear during the tenancy the parties endured a disputatious and toxic relationship mired in contrasting expectations and protracted tension.

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

The onus is on the parties to prove their claims on balance of probabilities. On preponderance of the evidence presented, I find as follows.

Under the Act, a party claiming losses bears the burden of proof. Moreover, the applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

I find that the test established by Section 7 is as follows,

1. *Proof the loss exists,*
2. *Proof the loss was the result, solely, of the actions of the other party in violation of the Act or Tenancy Agreement*
3. *Verification of the actual amount required to compensate for the claimed loss.*
4. *Proof the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss.*

Therefore, in summary an applicant bears the burden of establishing their claim on the balance of probabilities. An applicant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, an applicant must then provide evidence that can verify the monetary amount or value of the loss (receipt, invoice, or estimate in respect of the loss). Finally, a party must show that reasonable steps were taken to address the situation to mitigate or minimize the claimed resulting loss.

Landlord's claim

In respect to the parties' dispute regarding the *move in* inspection I find the parties agree they both attended the inspection and each signed the CIR. It must be highlighted that the intent of the initial CIR is to establish a common endorsement by the parties as the basis for comparison at the end of tenancy. I find the CIR is an instrument of the landlord and it was incumbent upon them to ensure that at the start of the tenancy the CIR properly reflected the condition of the unit *when vacant* or in the least free of visual hindrances. Residential Tenancy Act Regulation states that in dispute resolution proceedings a condition inspection report completed properly in accordance with Part 3 of the Regulation is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. I find the

undisputed evidence the laminate flooring area in question was covered during the move in inspection places doubt in respect as to the flooring area in question. I find the CIR lacks sufficient evidentiary weight toward proving the landlord's claim the laminate flooring of the bedroom at the outset of the tenancy was undamaged. As final result on this portion of the landlord's application I find the landlord has not provided sufficient proof the tenant is responsible for the damaged area or the landlord's repair to the laminate flooring in the bedroom. Therefore, I **dismiss** this portion of the landlord's claim without leave to reapply.

In respect to the balance of issues respecting the *move in* and *move out* condition inspections and the CIR, I find the parties agreed to come together to conduct a *move out* inspection with a view to ultimate administration of the security deposit as they were required to do under the Act. That inspection immediately escalated to dispute at the very outset and the inspection was abandoned by both parties. I find that in this matter both parties must share responsibility for engaging in an avoidable disputatious and unproductive effort and in the process failing to achieve the task they acknowledged was required. Simply, I find the parties agreed to accomplish an inspection however respectively contributed to its failure. The Act operates to solely provide the tenant with a second *opportunity to schedule* an inspection. Under the Act neither party is entitled to a subsequent or second *inspection.*

I find that **Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements** states the useful life for an interior painting finish is 4 years. I have not been presented with evidence that the interior paint last applied in 2008 requires consideration of a superior or longer useful life than suggested in the Policy Guideline, which I find takes a reasonable stance. **Section 7(2)** of the Act imposes on the landlord a duty to *reasonably mitigate or minimize their loss /claim*. Therefore, in respect to the landlord's claim for repainting the 10 year old interior finish I find that even if I were to accept that the tenant is responsible for, or by their action damaged the rental unit walls, I find that the factored mitigated or depreciated value of the landlord's entitlement for repainting would be reduced 100% and the resulting allowable compensation to the landlord would be $0.00. Effectively, I therefore **dismiss** this portion of the landlord's claim, without leave to reapply.

I find that in the absence of mutual involvement with the move out inspection the landlord was permitted to conduct an inspection on their own and the landlord has provided sufficient evidence that the tenant left the rental unit with some deficiencies so as to support a claim for cleaning. I find their claimed amount of **$75.50** is not extravagant therefore I grant the landlord this amount.

Tenant's claim

I find the tenant provided their forwarding address February 11, 2018 and the landlord filed their application within the required 15 days to do so in accordance with Section 38(1) of the Act. Subject to any offsetting the tenant is entitled to any balance of their original security deposit.

This matter has substantively referenced *material terms.*. The tenant submitted their Section 45(3) Notice to End on the basis the landlord breached an array of material terms including *loss of laundry facility, lack of use of the garden, lack of secure storage, a reactive smoke alarm, and lack of adequate heat.* It must be known that simply because the parties have put in the tenancy agreement one or more terms does not make them *material terms*. **Residential Policy Guidelines** aptly state that a material term is a term that *both parties* agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. In this matter if I were to accept the tenant's evidence of the existence of 2 tenancy agreements the parties clearly did not agree in respect to *laundry, the garden, or secure storage*, despite that they were claimed to be of paramount importance to the tenant. As example, one agreement highlights the garden, whereas the other does not mention it. Secure storage is not referenced in either agreement, and laundry "one a week" has 3 different meanings to the parties.

However, I find that adequate heat is a reasonable expectation and a material term of any tenancy agreement. I find the landlord's reliance on a system of 4 thermostats in the house and a heat sensor near the tenant's cooking facilities, so as to reasonably provide adequate heat to the lower living accommodations is on its face convoluted and does not make sense. On a balance of probabilities I accept the tenant's evidence they experienced repeated episodes of an uncomfortable lack of heat which clearly eroded the tenancy relationship, the value of the tenancy, and moreover breached the covenant of quiet enjoyment. In respect to this latter issue, I find the tenant was entitled to end the fixed term tenancy on the basis of a breach of the covenant of quiet enjoyment. As a result, I will allow the tenant's claim for the resulting moving costs in the sum of **$578.73**, which amount I find reasonably mitigated.

I find the tenant did not provide proof of what steps were taken toward mitigating a claim for the difference in payable rent upon moving; therefore any claim made by the tenant in this respect is **dismissed**, without leave to reapply.

I find sufficient evidence the parties agreed the tenant would be reimbursed for paint to repaint the unit. I find insufficient evidence the landlord agreed to compensate the tenant for labour to paint the unit. As a result I grant the tenant solely for paint in the amount of **$165.35**, without leave to reapply.

I find that both parties should clearly have better articulated within the tenancy agreement the expectations and terms regarding use of the laundry facility, which clearly would have avoided considerable strife. While I may accept that the tenancy agreement is an instrument of the landlord, in this matter the tenant has argued that the laundry facility was one of the reasons they rented the landlord's unit and they consider to be a material term, yet they accepted ambiguous terminology in respect to use of the laundry in their contractual agreement to stand, and signed the agreement. As such I find that when both tenant and landlord author a tenancy agreement which includes an ambiguous clause the *contra preferentem* doctrine in law has no application. I find the landlord sufficiently met the agreement terms respecting the laundry facility and obliged with their requirement under the Act in respect to terminating the laundry service and reducing the rent by $100.00. I find the tenant is not entitled to further compensation in this regard and I **dismiss** this portion of their claim, without leave to reapply.

I find that the tenancy agreement of September 2017 does not reference that external residential property or garden is part of the tenancy agreement. Again, the tenant has argued that the garden was a material term and reason they rented the unit, yet allowed the tenancy agreement to stand without reference to a garden, and signed the agreement. I find insufficient evidence the landlord beached the tenancy agreement in this regard and as a result this portion of the tenant's claim is **dismissed** without leave to reapply.

I find that the tenancy agreement does not state storage as being secured storage or storage external to the living accommodations. I find insufficient evidence that the landlord has breached the tenancy agreement and as a result this portion of the tenant's claim is **dismissed** without leave to reapply.

I find the evidence is that Internet service is included in rent and it is undisputed the tenant did not receive Internet service for a period of the tenancy. I am satisfied the tenant is owed compensation for loss of Internet service and that their claimed amount of **$85.00** is reasonable. Therefore I grant the tenant this amount.

Having found that the tenancy lacked sufficient heat due to the landlord's conduct I grant the tenant damages for loss in the amount of $60 per month for a sum of **$260.00** for the 41/3 month tenancy.

While I may have accepted the tenant experienced a loss of quiet enjoyment and a partial loss of use of the unit, I find the tenant's ultimate remedy was their right to end the fixed term agreement early and vacate, and for which they have been compensated as a result. I find that in comparison with the overall amount of rent paid for this short term tenancy the tenant's claim of almost half of all rent paid for loss of quiet enjoyment and loss of use is extravagant. As a result of the above, I **dismiss** this portion of the tenant's claim, without leave to reapply.

In respect to the tenant's claim for aggravated damages, **Residential Tenancy Policy Guideline 16** addresses the subject of *Aggravated Damages* as follows:

> *"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.*

Therefore, I find that aggravated damages are damages awarded to compensate and take into account intangible injuries in addition to the normally assessed pecuniary or monetary damages. They are an award of compensatory damages for non-monetary losses. Damages for aggravation (aggravated damages) which the tenant seeks are measured by the wronged person's suffering and must be *sufficient and significant* in depth or duration or both, that they represent a significant influence on the wronged person's life. I find the tenant's claims of aggravation under the circumstances presented by the tenant, while upsetting, do not represent sufficient or significant loss. I find the claim is extravagant and an attempt to punish the landlord and I do not have the authority to award punitive damages. The tenant has not established by their evidence that the landlord's conduct of swatting the tenant's hand *significantly* influenced their life to warrant an award. Additionally, I find the tenant has not provided sufficient evidence of emotional distress or that they ultimately acted to mitigate or take advantage of the psychological ramifications which they claim. Therefore their claim for *aggravation* is **dismissed** in its entirety.

The sum of the tenant's fractional entitlements is **$1089.08.** The landlord's entitlement is **$75.50.** As each party was in part successful in their application they are equally entitled to recover their respective filing fees, which in calculation cancel out. Therefore, pursuant to the offsetting provisions of the Act and the awards made herein the calculation for a Monetary Order is as follows:

tenant's security deposit held in trust	$850.00
tenant's award	$1089.08
Less: landlord's award	*- $75.50*
Monetary Order to tenant	**$1863.58**

Conclusion

The parties' respective applications in their compensable part have been granted. The balance of the parties claims are dismissed, without leave to reapply.

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **$1863.58.** 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: April 17, 2019

Residential Tenancy Branch