Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTERLINK (2008) REALTY CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: FFL, MNDCL-S, MNDL-S
For the Tenant: FFT, MNDCT, MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Parties under the *Residential Tenancy Act* ("Act").

The Tenants applied for:

- compensation for my monetary loss or other money owed in the amount of $2,950.00;
- all or part of the security deposit back in the amount of $1,517.32; and
- recovery the $100.00 filing fee for the application.

The Landlord applied for:

- compensation for damage caused by the tenant, their pets or guests to the unit, site or property in the amount of $900.00 - holding security deposit for claim;
- compensation for my monetary loss or other money owed in the amount of $200.00 - holding security deposit; and
- recovery of the $100.00 filing fee for this application.

The Tenants, M.B., T.H., and B.R., and the Landlord's agents, D.F. and K.Y. (the "Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing, the Tenants and the Agents were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral

and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision letter. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

In terms of the exchange of documents, the Agent, D.F., said his associate, P.C., sent the Landlord's application and documentary evidence to the Tenants in three separate registered mail packages; however, the Tenant, M.B., said that he received all three packages and he said the other Tenants told him they did not receive anything.

The Tenant, M.B., said he sent their application and documentary evidence to the Landlord's agent, P.C. The Agent, D.F., said he only received two pages with no evidence regarding the allegations. Later in the discussion, he said he had 12 pages of documentary evidence from the Tenants before him.

Further to hearing the Parties' testimony on this matter, I am satisfied that both Parties received the other Party's application and documentary evidence and had sufficient time to consider it prior to the hearing. I find there are no service issues in this matter.

The Parties referred to the Agent, P.C., throughout the hearing, but the Agents in attendance said that P.C. was unavailable that day, so they attended in his place.

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that they entered a fixed term tenancy starting on December 1, 2017, with an end date of November 30, 2018. The Parties agreed there was a monthly rent of $2,950.00, due on the first day of each month, and that the Tenants paid the

Landlord a security deposit of $1,475.00 and no pet damage deposit. The Parties agreed that the rental unit is a three bedroom, two bathroom condominium unit that is 10 to 15 years old (the Agent said it has two bedrooms and a den).

The Parties agreed that the Landlord gave the Tenants a two month notice of the end of the tenancy in September 2018 for a vacancy effective date of November 30, 2018; however, the Parties disagreed about the intent and validity of this notice.

The Landlord says the tenancy ended on December 4, 2018, when a move-out condition inspection was completed and when the Tenants say they gave the Landlord their keys and forwarding addresses.

TENANTS' CLAIMS

Incorrect Notice

The Tenants said they were evicted from the rental unit, contrary to the Act. They said that the Landlord's Agent, P.C., had ulterior motives for evicting them, in that the Tenants had previously applied for dispute resolution, which the Tenants say P.C. told them was "untrustworthy". The Tenants also said the notice was not in the right form.

The Tenants said that the Landlord's eviction notice was in the form of a letter dated September 26, 2018, from the Agent, P.C., which said:

> Notice to all 3 current tenants at Suite [rental unit address]:
>
> The landlord wants to notify all 3 current tenants that the one year lease will expire on November 30, 2018. The landlord does not want to renew the lease. The landlord wants to repossess the premise.
>
> The tenants need to vacate the premise on November 30, 2018. According to the Residential Tenancy Act, the tenant(s) must vacate the premise at 1:00 pm (not 12:00 am mid-night) on the last day of occupancy.
>
> Therefore, the tenants and all of their belongings must be gone by 1:00 pm November 30, 2018 at the latest. If any belongings are left behind after 1:00 pm November 30, 2018, they will be removed by sheriff/bailiff through court order at tenants' own expense. The tenants will have to pay for the expense of seizure, transport, and storage of their own belongings.

> Finally, photos of the entire suite had been taken prior to the tenants' moving in. The tenants are responsible, accountable, and liable to leave the suite in the same conditions as when they first moved into the premise one year ago. i.e. cleanliness, no floor, ceiling and wall scratches and damages.
>
> [P.C.]
> Licensed Real Estate Agent and Licensed Rental Property Manager
>
> [Landlord's corporate name]
> [telephone number]
> [email addresses]
>
> [reproduced as written]
>
> (the "Notice")

The Tenants said this end of tenancy notice is inconsistent with the requirements of the Act and that the Landlord should have given them the last month free.

Landlord's Response

The Agent, D.F., said in the hearing:

> There is no notice of eviction. If we evict someone, we use an official form. This was just a request on the email saying what the owners want. It was a request for the Tenants to move off after the fixed term is completed. We have to follow the instructions of the owner. The owner talked to [P.C.] – 'let's get the premises back.'

The Agent also said that there were "no formal forms used", because they were:

> …not really evicting the Tenants, just letting them know what we want. They are very familiar with the law and Act and they could say 'no, I won't move out.' That's it, if we forced them to give a notice, they are familiar with that. They can reject it, so I don't see it as an eviction. They are coming back with an email dated November 3 – written from [B.R., M.B. and T.H.]. This was to say that they will be moving out.

In the hearing, the Tenant, M.B., said:

> I talked to [P.C.] about the recent changes to BC law at the exact time we signed

the lease agreement. I said it will not be terminated, but going on a month- to-month basis. He had served a letter of eviction to all three of us in separate forms and in person. He told us: 'You are going to be evicted and we are not renewing for December 1; you are expected to leave.'

We asked if we are subject to one month of free rent, and he said no, as per his rules and regulations. He was not practicing the rules of Residential Tenancy Branch or *Residential Tenancy Act*

We asked what our options are. We would like to stay. He said we would need to be evicted.

[P.C.] illegally evicted us and did not provide us with a month of free rent after the eviction letter. There was a breakdown of communication. It became hostile, going into toxic areas, slander, emails and text message from [P.C.] using derogatory language.

Security Deposit

The Tenant, M.B., said that they tried to communicate with P.C. going forward, asking about the status of their security deposit. He said he told the Agent that "there is procedure, policy and process to follow. You can't just use your own rules." The Tenant said that unfortunately, they were not getting anywhere trying to communicate. "This is why we are here today. We were very surprised with the service of the cross-application. This is our request that the laws be followed."

The Tenants submitted an email they received from P.C. dated December 15, 2018, entitled: "The amount of money you owe to Strata Council and the landlord". This email states the following:

[B., M., and T.],

Regarding the email notice dated Fri Dec 14, 2018 and sent to all of you. You owe the Strata Council $200.00 in fines and you owe the landlord $900.00 in cost of repairing damages you had incurred.

You did not return the keys, FOBs, and parking pass to [corporate Landlord] on Fri Nov 30, 2018 at 1:00 pm (the official and contractual move out date and time) as stated in the Residential Tenancy Act, as stated in our rental agreement, and

as per my several advance reminder notices (see my email reminder notices as concrete evidence). In spite of my repeated reminder notices, you returned the keys, FOBs, and parking pass to [corporate Landlord] much later; on Tue Dec 4, 2018. You had occupied the premise for 4 extra days. This is a direct breach and violation of our contractual agreement and the Residential Tenancy Act. In this case, the 14 days do not start from Dec 1, 2018, but rather from Dec 4, 2018 because you moved out and returned the keys, FOBs, and parking pass on Tue Dec 4, 2018. You had occupied the premise for 4 days. You must compensate for these 4 days of occupation.

Therefore, $2,950.00 monthly rent divided by 30 days in the month = $98.33 per day x 4 days = $393.92 rent money owe by you to landlord.

Therefore, the total amount you owe to the Strata Council and the landlord = $200.00 + $900.00 + $393.92 = $1,493.92

Your damage deposit is $1,475.00

In fact, you actually owe the Strata Council and the landlord $18.92. ($1493.92 minus $1,475.00). All of these are supported and substantiated by concrete evidence and proofs.

[the corporate Landlord] is waiting for you to pay the $18.92 as soon as possible in order to settle and clear your account.

Regards,
[P.C.]

[reproduced as written]

There is no evidence before me that the Tenants had an opportunity to return the keys and FOBs to the Landlord prior to the condition inspection on December 4, 2018. Further, the Landlord only applied for $1,100.00 in compensation from the Tenants.

The Agent said that they do not have any objection to repaying or reimbursing any expenditure with the proof.

LANDLORD'S CLAIMS

Monetary Order for Damage to the Rental Unit

The Landlord claims that the Tenants owe the Landlord $900.00 in damage to the rental unit. In their application, the Landlord said:

1) Entry area nail hole patch up marks on walls; marks still very visible.
2) Kitchen floor entry area, entry wooden ledge comes out.
3) Living room walls, many nail hole patch up marks and tape marks; marks are still very visible.
4) Utility room (washer / dryer) outside wall that's right beside the door; nail hole patch up marks; marks are still very visible.
5) Parking stall # 180; large oil leakage spots.

The Landlord submitted a document dated December 13, 2018, with an estimate of the cost to repair the damage. The estimate includes:

1. Fill holes, sanding & painting walls with materials $730.00
2. Machine scrub the parking stall floor & clean oil spill $100.00
3. Replace 1 window handle with parts & labor $ 25.00
4. Fix kitchen floor molding with labor $ 45.00

All rates with 5% GST

We would be happy to give our services as soon as your confirmation.

[reproduced as written]

The Landlord submitted several photographs of the walls of the rental unit showing that the Tenants had left the walls patched, sanded, and painted. The Landlord also submitted a photograph of parking spot number 180 with what looks like oil stains on it.

The Landlord submitted a condition inspection report that has been completed for move-in and move-out inspections. On the move-in CIR, there are check marks indicating these walls were in “Good” condition. On the move-out side of the CIR it says there are “nail patch up marks” in the entry, the living room, and the utility room.

The CIR also indicates that the parking stall was in “good” shape on move-in, but that it has “oil leakage spots” on move-out.

Both Parties signed both sides of the CIR; however, the Tenants indicated on the CIR and in the hearing that they do not agree that this report fairly represents the condition of the rental unit at move-out.

Strata Bylaw Infractions

In the hearing, the Agent said that the Tenants did not pay the Strata Council bylaw fines they incurred during the tenancy.

The Landlord submitted an email dated November 30, 2018, from a property management company representing the Strata Council saying that the rental unit Tenants had two outstanding bylaw fines:

$100 – improper garbage disposal
$100 – bicycle infraction

The email also states: “There is a long trail of oil leak from a black truck parked in stall 180 belonging to that unit.”

Tenants’ Response

The Tenant, M.B., noted in the hearing that the move-in CIR says the living room window had “one handle missing”, which the Tenant said is the one that the Landlord is now charging them $25.00 to repair.

In the hearing, M.B. said they “returned the place to its original state.” He went on to say:

> There were uses for wear and tear, as we have documented through pictures. In the unit there was a repair kit provided by the Landlord that had the same paint colours as were used by the unit. I used a professional service to patch the markings. We patched and painted them about three days prior to the move out. Paint requires 2 – 3 layers. These markings were evident as expected on any paint application or repair application. During our walk-through [P.C.] voiced that these were quite severe and would need a professional touch up. We said we’d like pictures for quotes for a second opinion. We documented all walls with a video.
>
> We were available to leave the premises Nov 30. He was unable to complete a walk through for us then. As per Residential Tenancy Branch law, we need only one. We provided him another date on which all three would be available, which was Dec 4.

The Tenants submitted a copy of a text that the Tenant, T.H., received from P.C. on

November 29 at 9:22 p.m., which said:

> Tomorrow is your last day of tenancy. You and your belongings should be gone by 12:00 midnight tomorrow at the latest. An email was sent to you earlier. A meeting with you [B., and M.] is required on this Saturday December 1, 2018 at 2:00 pm. Your prompt reply to this meeting is required ASAP. [P.C., corporate Landlord]

Tenants' re Strata Fees

The Tenants submitted a copy of a cheque made out to the Strata Corporation for $200.00 dated July 1, 2018. A note on the memo line of the cheque says it is "move in fees – Dec 2017".

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

TENANTS' CLAIMS

Incorrect Notice

The Agents' evidence is that they did not "evict" the Tenants, but rather, they expressed the wishes of the Landlord to have the premises back. The Agents testified that the Tenants were in a position to reject the Landlord's Notice.

I reject the Agents' assertion that the Tenants were in a position to continue the tenancy, despite the Notice, particularly based on statements in the Notice, such as:

- The landlord does not want to renew the lease. The landlord wants to repossess the premise[s]; and

- If any belongings are left behind after 1:00 pm November 30, 2018, they will be removed by sheriff/bailiff through court order at tenants' own expense. The tenants will have to pay for the expense of seizure, transport, and storage of their own belongings

I find that the Landlord fully intended to end the tenancy with service of the Notice on the Tenants, giving them two months' notice, pursuant to section 49 of the Act; however

the Landlord tried to avoid paying the Tenants the amount required when a two month notice is given. I find it would be appropriate to award the Tenants what they would be entitled to, had the Landlord ended the tenancy in accordance with the Act. Section 51 of the Act sets out "Tenant's compensation: section 49 notice".

> **51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Based on the evidence before me, I find that the Landlord owes the Tenants one month's rent. I award the Tenants **$2,950.00** from the Landlord.

Security Deposit

Section 38 of the Act also addresses parties' rights and responsibilities surrounding security and/or pet damage deposits at the end of a tenancy.

> **Return of security deposit and pet damage deposit**
>
> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of the Parties, I find that the Tenancy ended on November 30, 2018, as the Tenants were ready for the move-out condition inspection at that time. I also find that the Tenants provided their forwarding addresses on December 4, 2018, at the time of the move-out condition inspection. The Landlord applied for dispute resolution on December 19, 2018, which was 15 days after the forwarding addresses were provided by the Tenants to the Landlord. I find the Landlord was in compliance with section 38 of the Act in making a claim against the security deposit within the

required timeline. I address the security deposit further below.

LANDLORD'S CLAIMS

Test for damages or loss

A party who applies for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Pursuant to Policy Guideline #16, an applicant must prove the following on a balance of probabilities:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

[the "Test"]

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally the Landlord must prove that they did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Monetary Order for Damage to the Rental Unit

The Agents did not specify how the Tenants violated the Act, Regulation or tenancy agreement with the Landlord's evidence of having to fill holes, sand and paint walls that the Tenants had already filled, sanded and painted.

The Agents provided an estimate of what it would cost to complete the "repairs" they believed were needed. The Tenants' undisputed evidence is that they repaired any holes in the rental unit in the days prior to the end of the tenancy. The photographs the

Landlord submitted of the rental unit were dated December 4, 2018, or the day of the move-out condition inspection was conducted.

Section 32 of the Act states:

> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37(2)(a) of the Act requires tenants to leave rental units “reasonably clean, and undamaged except for reasonable wear and tear”.

The evidence before me is that the Tenants caused holes in the walls no larger than those used to hang pictures and artwork. I find that these holes form part of normal wear and tear of a rental unit that the Tenants were not obliged to repair; however, the evidence before me is that the Tenants did arrange for the holes to be repaired. The Landlord’s photographs of the walls on December 4, 2018, reveal what the Tenants said needed time to dry, having been given three layers of paint. The Agents did not comment on this evidence in the hearing. The Agents did not indicate why the walls needed to be patched and sanded again, let along re-painted.

Further, there is no evidence before me that the Agents did any more than get an estimate of the repairs they said were needed; they did not provide an invoice indicating that the work had been done. In addition, the Agents obtained only one estimate, so they did not provide evidence of having mitigated or minimized the cost of the repairs. I find that the Landlord has failed all four steps of the Test for the cost of filling holes, sanding and painting walls. I, therefore, dismiss their claim for $730.00 in this regard, without leave to reapply.

The Landlord claimed $100.00 for the cost to clean the oil spill from the parking spot. I find that the Landlord has established that the oil stains on the parking spot are more than ordinary wear and tear, so they pass the first step of the Test. However, again, the Agents submitted an estimate of what it would cost for their maintenance company to repair this damage, rather than a receipt of having incurred the cost of this. I find that the Agents failed the second step of the Test, as well as the third and fourth steps, since they did not indicate that they obtained different quotes on having the work done, thereby demonstrating having minimized the damage of loss they incurred. I dismiss this claim without leave to reapply.

The Landlord claimed $25.00 to replace a window handle; however, the Tenants pointed out that the window handle was noted as missing in the move-in condition inspection report. Accordingly, I find the Landlord has not established the first step in the Test, and I dismiss this claim without leave to reapply.

The Landlord claimed $45.00 for the cost of fixing the kitchen floor molding. The Landlord provided a photograph of what I find to be a piece of moulding on the floor in the entryway to the kitchen. I find this damage goes beyond ordinary wear and tear, so the Agents have satisfied the first step of the test. However, there is no evidence before me that they fixed the damage, incurred a cost, and had obtained different estimates on the cost of this repair. Accordingly, I find the Agents have failed the last three steps of the Test, so I dismiss this claim without leave to reapply.

Strata Bylaw Infractions

The Agents submitted evidence from an independent source, which indicates that the Tenants incurred $200.00 in fines to the Strata Council. The evidence that the Tenants submitted shows that they paid $200.00 for a move-in fee, not for the fines documented by the Landlord.

Based on the evidence before me, I find that the Landlord has established that this amount is owed by the Tenants to the Strata Council. Although the Landlord did not supply receipts of having paid these fines, I find the Landlord would be responsible to the Strata to satisfy these claims. I, therefore, find the Landlord has satisfied the Test in this regard, so I award the Landlord $200.00 from the Tenants for the Strata fines.

As I have found the Landlord to be unsuccessful in their application for the most part, having only awarded them $200.00 for the Strata Council fines, I do not award the Landlord recovery of their filing fee.

I, therefore, order the Landlord to return the **$1,475.00** security deposit to the Tenants (no interest is payable on this), less the $200.00 awarded to the Landlord.
As the Tenants were predominantly successful in their application, I award them recovery of the $100.00 filing fee.

Conclusion

The Tenants applied for compensation of $2,950.00, which is the amount I found the Landlord owes them for having given them two months' notice of the end of the tenancy. The Tenants also applied for the return of their $1,475.00 security deposit and for

recovery of the $100.00 filing fee for this application. I have found the Tenants to be successful in all of their claims in this application. I award the Tenants $4,425.00, plus $100.00 for recovery of the filing fee, less the $200.00 I awarded to the Landlord for the Strata Council fines.

The Landlord applied for $900.00 compensation for damage they said the Tenants left in the rental unit that the Landlords say they had to repair. The Landlord also applied to recover $200.00 they said was owing to the Strata Council for bylaw fines that the Tenants did not pay, as well as recovery of their filing fee for their application. The Landlord failed to meet the burden of proof in establishing their claims pursuant to Policy Guideline #16, other than for the $200.00 Strata Council fines owing by the Tenants. I dismissed their other claims without leave to reapply.

I grant the Tenants a monetary order under section 67 of the Act from the Landlord for **$4,325.00**. This order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 14, 2019

Residential Tenancy Branch