Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For Landlord: MNDCL-S, MNDL-S, MNRL-S, FFL
For Tenants: MNDCT, MNSD

Introduction

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

The Tenants applied for compensation in the amount of $540.00 for having to clean the rental unit when they moved in. The Tenants also applied for the return of double their $550.00 security deposit, as they said the Landlord failed to do legitimate condition inspections or condition inspection reports ("CIR") at move in or move out.

The Landlord filed a claim for compensation for damage caused by the Tenants, their pets or guests to the rental unit in the amount of $2,250.00, holding the security deposit for this purpose. The Landlord said the Tenants left the rental unit damaged and unclean. The Landlord also seeks compensation for monetary loss or other money owed in the amount of $550.00 for insufficient notice of the end of the tenancy.

Both Parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other Party and to make submissions to me.

As both Parties filed applications that were scheduled to be heard at the same time, service of the applications and documentary evidence is not in issue. The Parties described how they served the other in person and via registered mail. They provided Canada Post tracking numbers to establish this service.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, pursuant to Rule 7.4, I advised the Parties at the onset of the hearing that I would only consider the written or documentary submissions they uploaded, if they directed me to this

evidence in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders to the appropriate Parties.

The Parties expressed significant animosity toward each other in the hearing, alleging multiple incidents of disagreement and mistreatment of each other. I have found much of this to be irrelevant to the issues before me and I have addressed only that evidence that relates directly to the issues I must resolve.

Issue(s) to be Decided

- Are the Tenants 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 the Landlord entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2018, with a monthly rent of $550.00, due on the first day of each month. The Parties agreed that the Tenants paid a security deposit of $550.00 and no pet damage deposit. The Parties agreed that the rental unit was a mobile home trailer on the Landlord's property, which is not a mobile home park, so the *Residential Tenancy Act* applies, rather than the *Manufactured Home Park Tenancy Act.* Accordingly, I amended the style of cause to reflect this.

I explained to the Parties that RTB Policy Guideline #16 sets out a four part test that an applicant – and both are applicants and respondents - must prove in establishing a monetary claim. I advised that each must prove their claims on a balance of probabilities, as follows:

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

The Parties agreed that the previous tenant was scheduled to vacate the property at the same time as the Tenants were scheduled to take possession of it. In the hearing, the Landlord acknowledged that he did not have time to clean the rental unit between tenancies. The Parties agreed that the tenancy ended on October 31, 2018, when the Tenants moved out after having given notice in mid-October 2018. The Tenants submitted a "Mutual Agreement to End a Tenancy" form with their documentary evidence, which was dated October 15, 2018 and had an effective vacancy date of November 1, 2018 at 15:00 hours; however, the Landlord's signature was not on the form and in the hearing he testified that he did not agree that this was his intention.

The Landlord said the Tenants did not give him proper notice of the end of the tenancy, so he was unable to find new tenants and earn rental income for November 2018, even though he advertised in October 2018.

Condition Inspection

The Landlord submitted a statement from his friend, J.L., who said he accompanied the Landlord to do an inspection of the condition of the rental unit on October 4, 2018. The friend said in his statement that the Tenants were aggressive and abusive of the Landlord and him and that heated language was exchanged. The friend said in his statement: "The condition of the premises was good. At one point [the Tenant R.D.] asked me if my house was this dirty, to which I replied 'Sometimes'." I note from the Tenants' evidence detailed below that they had done significant cleaning of the rental unit starting on October 1, 2019, when they moved in.

The Tenants submitted audio/video evidence of their interaction with the Landlord and his witness on October 4, 2018, in which the Tenants are trying to point out the level of dirtiness of the rental unit when they moved in. The Tenants raised this issue with the Landlord, as well as asking to participate in the inspection of the rental unit and in the completion of the CIR; however, the Landlord rejected their requests and said he might have to call the police if they did not sit in the kitchen while he did the inspection.

The Tenants said the Landlord sent them a move-in CIR that said "everything was A-okay, all good." However, the Tenants said that it was dirty and that the appliances did not work. The Tenants said the washing machine leaked on the floors, the dryer door would not close, the seal around the stove was not working, and the refrigerator and freezer were left dirty and full. The Tenants provided photographic evidence, which I find supports these claims. The Tenants also said that the wood stove, which was their only source of heat was "chock-a-block full", and they referred me to a photograph they

had taken, which shows the wood stove to be completely full of ash. The bin in front of it is also full of ash. The Tenants submitted multiple photos and videos demonstrating that the rental unit was not "reasonably clean" when they moved in.

In the hearing, the Landlord said that the appliances "all work and still work. The dryer door doesn't stay closed sometimes, so there is a piece of tape to hold it shut. The washer has a little glitch in the timer, so you just have to wiggle it to get it going. As for the stove, I don't know what they're talking about." The Landlord said that the previous tenant had an arrangement with the new Tenants that they could keep anything she left behind and throw out what they did not want. The Tenants denied that this was true and said the previous tenant or the Landlord is responsible for clearing this out.

In terms of the move-out CIR, the Landlord said that the Tenants called him to schedule that, and he said he told them that he could "…be there in the next couple of hours, but I had to get witnesses to do it; [the Tenants] never showed up." He said he did not try to schedule another move-out inspection; rather, he said, "If somebody acts the way they acted, I don't think the tenancy rules should be followed to the letter like that." He went on to say, "Everything was set up to fix whatever grievances they had, but they played games with insisting on rules."

Tenants' Claims

The Tenants submitted letters they mailed to the Landlord, in which they requested compensation for having cleaned the rental unit when they moved in. In a letter dated December 10, 2018 ("Letter"), the Tenants listed the type of cleaning that was required to make the rental unit habitable and it detailed how long it took. The Tenants also submitted diary pages they said they wrote at the time, which list what cleaning they did in the first five days of the tenancy. They said it took the two of them eight hours to clean the rental unit, for a total of 16 hours on October 1 and 2, 2019, plus 8 hours each on October 3, for a total of 16 more hours. The Tenants' evidence is that one person cleaned for 2 hours on October 4, and 2 hours on October 5, 2018. The diary entries list the specific cleaning tasks done each day. The Tenants also provided numerous photos and videos evidencing the level of cleanliness before and after they cleaned the rental unit. The Tenants said they did a total of 36 hours of cleaning and they charged $15.00 per hour for a total claim of $540.00.

In the Letter, the Tenants also provided their forwarding address and requested their security deposit back. They further noted that the Landlord had not attended the rental unit to participate in the move-out CIR at noon on November 1, 2018, which they said

the Landlord had previously arranged. The Letter indicates that the Tenants had requested their security deposit back previously; however, the other letters with this request do not include the first page with dates, so it is not clear when the Tenants first informed the Landlord of their forwarding address from this evidence. However, in the hearing, the Tenant, A.D., said she gave the Landlord their forwarding address in a letter dated November 5, 2018. The Landlord did not dispute this.

The Landlord's evidence is that he retained the security deposit and filed for dispute resolution on December 20, 2018.

Landlord's Claim

In his written submission, the Landlord provided the details of his claim for $2,250.00. He said his "application had real costs associated with preparation, filing, copying, registered mail, and property management." The Landlord listed the following costs as recoverable in his claim:

	Cost	Amount
1	Registered mail receipt	22.68
2	Copies	50.00
3	DVD's	50.00
4	File compilation	200.00
5	Document processing	200.00
6	Process serving	100.00
7	Property Management	300.00
8	Fence	200.00
9	Lino and Laminate flooring	300.00
10	Firepit cleaning	200.00
11	Costs	350.00
12	Rent for Nov. 2018	550.00
	Total	$2,522.68

In his written submission, the Landlord said: "It is my position that I am entitled to costs for the tenants' failed application [previous file number and date (noted on cover sheet)]. I claim $350.00. Attached is a copy of the order from that hearing. . . . This application had real costs associated with its preparation, filing, copying, registered mail, and Property Management."

In terms of the damages the Landlord alleged the Tenants caused to the rental unit, the

Landlord submitted photographs of a wire fence that was not connected to a pole in the ground; he said this shows damage done by the Tenants to the fence. He also submitted photographs of two tree logs loosely bound by some rope. He did not explain the implication of these photos, and he did not direct me to photos of a burned fence that he mentioned in the hearing.

In the hearing, the Landlord said that the Tenants took linoleum flooring when they left. The Tenants said that this was purchased by the previous tenant, T.S., who attended the hearing and confirmed that she had purchased the rolls of linoleum at a second hand store for $25.00, and that they did not belong to the Landlord.

The Landlord testified in the hearing and in his written evidence that the Tenants burned a lot of materials in the fire pit, which he said left it "over flowing with toxic ash, nails, hardware, unburned plastic and glass and that it would take $200.00 to load it in a truck and run it to the dump." The Landlord did not direct me to photos of the fire pit or receipts for the cost of removing these materials to support his claim.

The Landlord said the Tenants did not give him proper notice of the end of the tenancy, as is required by the Act, and he claims one month's rent as compensation. The Landlord said that he placed advertisements to try to find a new tenant for November 2018, but that he was unable to find a tenant until December 2018, so he lost a month's rental income as a result of the Tenants' failure to give proper notice.

Analysis

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

Landlord's Claims

In the hearing, the Landlord made a couple comments about it not being necessary to follow the rules of BC tenancy laws; however, the law contemplates fairness, having both Parties following the rules.

Some of the Landlord's costs are associated with a previous application for dispute resolution between the Parties. I read the Arbitrator's decision in that matter, and the Landlord was not awarded any of those costs. I note that the costs of preparing for arbitration are not recoverable, except for the filing fee. Further, the Landlord did not establish that these costs are associated with any violation of the Act, regulation, or

tenancy agreement by the Tenants. I find these costs relate to numbers 1 – 7 and 11 of the Landlord's list reproduced above. Accordingly, I dismiss the Landlord's claims in this regard without leave to reapply.

The Landlord's next item on the list refers to photos of the disconnected wire fence; however, I find this is not evidence that the Tenants' did this damage. Further, the Landlord did not explain or provide any documentary evidence of why it would cost $200.00 to reconnect the fence to the post. I find that the Landlord did not fulfill his burden of proof in making this claim, so I dismiss it without leave to reapply.

The Landlord claimed $200.00 for the costs he associated with the materials left in the fire pit. I find the Landlord did not provide sufficient evidence to establish this as a cost he incurred on a balance of probabilities. As such, I find that this claim has no merit and I dismiss it without leave to reapply.

Regarding the Landlord's claim for compensation, due to the Tenants' not having given him sufficient notice of the end of the tenancy, I turn to section 45 of the Act:

> **Tenant's notice**
>
> **45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
>
> (a) is not earlier than one month after the date the landlord receives the notice, and
>
> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45 required the Tenants to give the Landlord a month's notice of the end of the tenancy. Giving the Landlord this notice in October 2018 means they were responsible for paying rent until the end of November 2018. I find that the Tenants did not give the Landlord sufficient notice of the end of the tenancy, pursuant to section 45(1) of the Act. I accept the Landlord's submission that he was unable to find a renter for November 2018, so I award him one month's rent in the amount of **$550.00**, subject to any set off below. Since the Landlord was mostly unsuccessful in his application, I do not award him recovery of the filing fee.

Tenants' Claims

Pursuant to section 35 of the Act, a landlord and tenant must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed upon day. Subsection 35(2) requires a landlord to offer a tenant "at least 2 opportunities, as prescribed, for the inspection."

"As prescribed" means as prescribed by regulation. Section 17(1) of the Residential Tenancy Regulation (the "Regulation") states that a landlord must offer a tenant an opportunity to schedule the condition inspection by proposing one or more dates and times for it. Section 17(2) of the Regulation states that if the tenant is not available at the time first offered, then the landlord must propose a second opportunity to the tenant "by providing the tenant with a notice in the approved form."

The "approved form" is RTB form #RTB-22 "Notice of Final Opportunity to Schedule a Condition Inspection". A landlord is required to use this form or the equivalent contents to give the tenant a second opportunity to participate in the move-out condition inspection. The form sets out the tenant's name, the rental unit address, the landlord's name and the date on which the landlord proposes that the condition inspection be conducted, and is signed by the landlord.

If a landlord does not provide the tenant with this written notice of the second opportunity in the prescribed form, the landlord's right to claim against deposit(s) for damage to the rental unit is extinguished pursuant to section 36(2)(a).

Based on the evidence before me, I find that the Landlord did not allow the Tenants to participate in the move-in condition inspection, nor did he prepare the move-in CIR in a manner that reflected the reality of the rental unit when the Tenants moved in. Further, I find that the Landlord did not offer the Tenants two opportunities – the second in writing – to schedule a move-out condition inspection. As a result, and pursuant to section 36(2) of the Act, I find that the Landlord has extinguished his right to claim against the security deposit.

Based on the evidence before me, I find that the Tenants provided their forwarding address and request for their security deposit to the Landlord in a letter dated November 5, 2018. According to section 90 of the Act, the forwarding address was deemed received by the Landlord on November 10, 2018. I find that the Landlord kept the security deposit and filed for dispute resolution on December 20, 2018. Section 38 of the Act requires a Landlord to repay the deposit or apply for dispute resolution within

15 days of the later of the end of the tenancy and the date on which he receives the Tenants' forwarding address. As the Landlord did not do either of these things within 15 days of receiving the forwarding address, I find the Landlord breached section 38(1) of the Act. Section 38(6) of the Act states:

> (6) If a landlord does not comply with subsection (1), the landlord
>
> > (a) may not make a claim against the security deposit or any pet damage deposit, and
> >
> > (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
> >
> > [emphasis added]

I award the Tenants the return of double the security deposit in the amount of **$1,100.00**.

Cleaning the Rental Unit

In terms of the Tenants' claim for compensation for cleaning the rental unit, the condition of the rental unit at move-in is usually not relevant to a tenant's responsibility to clean at the end of the tenancy. However, a Landlord has a responsibility to ensure that a rental unit is "reasonably suitable for occupation", which I find from the Tenants' extensive submissions that this rental unit was not at the beginning of this tenancy.

Policy Guideline #1 is intended to clarify parties' responsibilities regarding maintenance, cleaning, and repairs of residential properties, and obligations with respect to a rental unit. This Guideline states:

> The landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet 'health, safety and housing standards' established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain 'reasonable health, cleanliness and sanitary standards' throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises

> to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

The cleanliness of the rental unit at the start of the tenancy is not relevant to the expectation that a tenant will leave it reasonably clean at the end of the tenancy. "Reasonably clean" is set out in section 37(2) of the Act, which states:

> **Leaving the rental unit at the end of a tenancy**
>
> **37** (2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
>
> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.
>
> [emphasis added]

"Reasonably clean" does not mean spotless or good as new, it means "reasonably" clean. Based on the extensive evidence before me, I find that the rental unit was not left reasonably clean by the previous tenant. I find from the legislation and Policy Guidelines that the Landlord was responsible for ensuring that the rental unit was left reasonably clean by the previous tenant. Since the previous tenant did not fulfill her responsibilities in this regard, it was the Landlord's responsibility to have the rental unit cleaned and go after that tenant for compensation. I am not satisfied that the Landlord attempted to arrange to have the rental unit cleaned for the Tenants before or at the start of the tenancy, so I find the Tenants had to do the cleaning themselves.

I find that a standard rate for cleaning is $25.00 per hour; however, the Tenants only charged $15.00 per hour, which I find shows they minimized or mitigated the cost of cleaning to be incurred by the Landlord. The Tenants' claim, supported by their photographic evidence and testimony, which I have accepted, is that it took them 36 hours to bring the rental unit to a standard of being reasonably clean. Accordingly, I award the Tenants compensation for the cost of cleaning the rental unit in the amount of **$540.00**.

The Landlord's claim for compensation for damage caused by the Tenants in the amount of $2,250.00 is dismissed without leave to reapply. The Landlord is awarded **$550.00** in monetary loss for the Tenants' insufficient notice of the end of the tenancy.

The Landlord's claim for recovery of the application filing fee is dismissed without leave to reapply.

The Tenants are awarded **$540.00** as compensation for the cost of cleaning the rental unit. The Tenants are awarded the return of double their security deposit in the amount of **$1,100.00**.

Conclusion

The Landlord failed to complete a legitimate move-in CIR and failed to offer the Tenants sufficient opportunities to participate in a move-out CIR. Accordingly, he extinguished his right to claim against the security deposit for damage to the unit.

The Landlord's claim and submissions for damages, otherwise, have not established that it is more likely than not that the Tenants caused damage to the residential property. As such, his claim for damages is dismissed without leave to reapply.

The Landlord failed to return the security deposit or apply for dispute resolution within 15 days of having received the Tenants' forwarding address. As such, he is required by section 38(6) of the Act to return double the amount of the security deposit back to the Tenants.

The Tenants did not give the Landlord proper notice of the end of the tenancy, and the Landlord lost a month's rent, as a result. I, therefore, award the Landlord a monetary order in the amount of **$550.00**.

The Tenants' claim for recovery of double the security deposit is successful in the amount of **$1,100.00**. I also award the Tenants **$540.00** compensation for other damage or loss against the Landlord in terms of the cleaning they were required to do upon moving in. I award the Tenants a total of **$1,640.00**.

After the Landlord's award of $550.00 is set off against the Tenants' awards, I grant the Tenants a monetary order under section 67 of the Act from the Landlord in the amount of **$1,090.00**. This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: June 10, 2019

Residential Tenancy Branch