



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNDC MNR MNSD FF
	Tenant:	MNDC MNSD FF

Introduction

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

The Landlord’s Application was made on June 14, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for compensation for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application was made on August 13, 2019 (the Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf. The Tenant attended the hearing and was assisted by E.H., an advocate. Also in attendance were two observers, E.R. and C.H. A witness for the Tenant was not called. The Landlord and the Tenant provided affirmed testimony.

The Landlord testified that the Landlord's Application package and two subsequent evidence packages were served on the Tenant by registered mail. The Tenant acknowledged receipt of the Application package and the second evidence package. Although the Tenant denied she received the first evidence package, she confirmed she wished to proceed with the hearing.

The Tenant submitted documentary evidence in response to the Landlord's Application. The Tenant testified it was served on the Landlord by registered mail. The Landlord acknowledged receipt.

Further, the Tenant testified that the Tenant's Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. The Landlord did not submit documentary evidence in response to the Tenant's Application.

Neither party raised any issues with respect to service or receipt of the above documents and evidence during the hearing. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
4. Is the Landlord entitled to an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord's claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?
6. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

7. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
8. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the Tenant rented a room in the rental unit and shared common areas with other individuals under separate tenancy agreements. The other tenants and the Landlord have made almost identical claims against each other. The evidence and submissions provided during the hearings conducted to date is similar although not identical. However, each application has been considered on the merits, based on the evidence and submissions of each party. The file numbers of the related proceedings are included above for ease of reference.

The tenancy began on September 1, 2018. The date the tenancy ended was in dispute. The Tenant testified she provided the Landlord with written notice to end the tenancy that was to be effective May 31, 2019, but that she was locked out of the rental unit on May 28, 2019. During the tenancy, rent in the amount of \$675.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$337.50, which the Landlord holds.

The Landlord's Claim

The Landlord's monetary claim was summarized in the Landlord's Application. First, the Landlord claimed \$150.00 to clean the rental unit. The amount claimed was based on the Landlord's estimate of 6 hours of cleaning at \$25.00 per hour. The Landlord testified that he has done some but not all of the required cleaning.

In support, the Landlord submitted photographs taken after the Tenant vacated the rental unit. The photographs include images of the interior of the freezer, the floor behind and under the freezer, a stove, a bathtub, and the floor. The Landlord stated the photographs confirm these areas were not cleaned at the end of the tenancy.

In reply, the Tenant testified the unit was “cleaned quite thoroughly” at the end of the tenancy. However, the Tenant testified that she and the other tenants were locked out of the rental unit on May 28, 2019 and were not able to return to the rental unit to complete the cleaning. The Tenant also provided photographs taken on May 27, 2019. The Tenant testified the Landlord did not complete a move-in or move-out condition inspection. The Tenant also noted the Landlord has made claims in similar amounts against the other tenants but that none of the claims are supported by documentary evidence or receipts. The Landlord testified that the amount claimed is an estimate based on the Tenant’s room and the common areas and that there is no duplication in the claims.

Second, the Landlord claimed \$1,350.00 for lost rent for the months of May and June 2019. The Landlord testified the Tenant would not permit him to access the common area of the rental unit so he could show the fourth bedroom to a prospective tenant.

In reply, the Tenant acknowledged that the Landlord was advised the Tenant did not give her consent for him to enter the rental unit. The Tenant testified this arose in response to an incident on May 12, 2019 during which the Landlord was verbally abusive and inappropriate. An audio recording of the incident was submitted into evidence. In it, the Landlord can be heard to state:

No, it's not the way it's gonna be, okay? It's not. Okay? This is it, okay? I've fuckin' had it with you, okay? All of you, and especially you [Tenant] because I trusted you on bringing these two other people into the house. So look, this is what I've got. I've contacted the house- the building, the whatever, the tenancy thing here and he says I can give you one month's notice, okay? I also have all these unpaid utilities, which I haven't paid - charged you guys. Here's the water one, I think it's like 500 bucks, I have to do divide it out. Okay? It's water, it's utility you have to pay for it? And we can go down this road, here. I've just fuckin' had it with you. So, look, just like when you arrived, this is past the point, get the fuck out of the house, I don't care when you do it. You got 24 hours...Get the fuck out, okay? I've fucking had it...Go fuck yourself!

The Tenant followed up with an email to the Landlord, dated May 12, 2019, which she advised that the meeting was “extremely unprofessional, inappropriate, and completely unacceptable.”

The Tenant also relied on a text message from the Landlord, dated May 13, 2019, attached as Exhibit "L" to the Affidavit of C.H. In it, the Landlord states: "What is clear is you are going to leave. This is a fact. The only issue now is when?"

The Tenant testified that there was really nothing she could have done to prevent the Landlord from entering the rental unit and showing it to the prospective tenant. In addition, the Tenant testified it was a term of the verbal tenancy agreement between them that there would be only three occupants in the rental unit. The Landlord denied this was a term of their agreement and challenged the Tenant's attempt to rely on a term found in another tenant's agreement.

The Landlord acknowledged that he lost his temper during the exchange on May 12, 2019. He testified this was because the parties were trying to negotiate an end to the tenancy and that the Tenant repeatedly changed her mind.

Third, the Landlord claimed \$675.00 for unpaid rent due on June 1, 2019.

In reply, the Tenant acknowledged rent was not paid on June 1, 2019. The Tenant testified the Landlord was given notice of her intention to vacate the rental unit on May 26, 2019. A copy of the notice was submitted into evidence. The notice was to be effective May 31, 2019. The notice was given due to the Landlord's response to an alleged breach of a material term of the tenancy agreement on May 12, 2019, described above. The Tenant referred to section 45(3) of the *Act*.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Tenant's Application, and requested an order permitting him to retain the security deposit held in partial satisfaction of the Landlord's claim.

The Tenant's Claim

The Tenant's claim was summarized in the Tenant's Application. First, the Tenant claimed \$1,650.00. The first aspect of this claim was for a refund of rent paid on May 1, 2019 or \$675.00. The Tenant testified she experienced a loss of quiet enjoyment due to harassment and intimidation related to "illegal" eviction notices dating back to April 15, 2019, and the Landlord's verbal assault on May 12, 2019, described above.

The Tenant also indicated the Landlord breached a material term of the tenancy by changing locks, issuing "illegal" eviction notices, and causing mental and physical stress and inconvenience. The Tenant also testified the Landlord was "always around".

As noted above, the Landlord acknowledged that he lost his temper during the exchange on May 12, 2019. He testified this was because the parties were negotiating an end to the tenancy and that the Tenant repeatedly changed her mind.

The second aspect of this claim was for compensation in the amount of one month's rent pursuant to section 51 of the *Act*. The Tenant referred to a screen print included as Exhibit "D" to the Affidavit of C.H., dated August 9, 2019. In it, the Tenant confirmed her understanding that the Landlord intended to complete renovations in the rental unit. Although the Tenant acknowledged the Landlord did not issue a notice to end tenancy for landlord's use of property, the tenant submitted the Landlord should have issued the appropriate notice, giving rise to compensation.

Notes taken during the hearing confirm that no evidence or submissions were made in support of the remainder of the amount claimed.

Second, the Tenant claimed \$675.00, which is double the amount of the security deposit held by the Landlord. The Tenant testified she provided the Landlord with her forwarding address in writing by regular mail on June 1, 2019. A copy of the letter was submitted into evidence. The Landlord acknowledged receipt of the Tenant's forwarding address in writing.

Finally, the Tenant sought to recover the \$100.00 filing fee paid to make the Tenant's Application.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

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 because 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.

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

The Landlord's Claim

With respect to the Landlord's claim for \$150.00 to clean the rental unit, section 37(2) of the *Act* confirms that a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. In this case, I find there is insufficient evidence before me to grant the relief sought. While I accept that some cleaning was required at the end of the tenancy, I am not satisfied this was beyond reasonable wear and tear. Further, the Landlord acknowledged that the cleaning has not been completed at the time of the hearing and that he was relying only on his estimate for how much time cleaning would take. Therefore, I find the Landlord has not established that he suffered any loss or the value of his loss on a balance of probabilities. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$1,350.00 for lost rent, I find there is insufficient evidence before me to grant the relief sought. While I accept that the Tenant did not give her consent for the Landlord to enter the rental unit, I accept there was little the Tenant could have done to prevent the Landlord from accessing the rental unit in accordance with section 29 of the *Act*. In addition, I find there is insufficient evidence before me to conclude the prospective tenant would have rented the fourth bedroom, or the amount of the rent that would have been paid. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$675.00 for unpaid rent due on June 1, 2019, section 45 of the *Act* confirms a tenant may end a periodic tenancy by giving notice that is effective on a date that is not earlier than one month after the date the landlord received the notice and is the day before the day in the month that rent is payable.

Accordingly, the Tenant's notice, received by the Landlord on May 26, 2019, was not effective to end the tenancy until June 30, 2019. As a result, rent was payable when due on June 1, 2019. The Tenant did not dispute that rent was not paid on June 1, 2019. Therefore, I find the Landlord has demonstrated an entitlement to a monetary award for unpaid rent in the amount of \$675.00.

I find the Landlord has demonstrated an entitlement to a monetary award for unpaid rent in the amount of \$675.00. I find it appropriate in the circumstances to order that the Landlord may retain the security deposit held in partial satisfaction of the Landlord's claim. Therefore, the Tenant owes the Landlord \$337.50 (\$675.00 - \$337.50).

The Tenant's Claim

With respect to the Tenant's claim for \$675.00 for loss of quiet enjoyment, section 28 of the *Act* confirms a tenant is entitled to quiet enjoyment including, but not limited to, rights to freedom from unreasonable disturbance. Policy Guideline #6 states:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

[Reproduced as written.]

In this case, I am not satisfied that the Landlord's behaviour on May 12, 2019 was sufficient to give rise to a frequent and ongoing interference or disturbance. Further, I do not accept the Tenant's submission that the Landlord's behaviour on May 12, 2019 amounted to a breach of a material term of the tenancy agreement sufficient to end the tenancy early under section 45(3) of the *Act*. Indeed, the parties agreed the Landlord did not issue a notice to end tenancy. I also find there is insufficient evidence of mental and physical stress experienced by the Tenant. If the Landlord's behaviours and demands caused the Tenant to question whether or not the tenancy was ending, she could have obtained a decision from the Residential Tenancy Branch concerning the effectiveness of the Landlord's demands by making an application for dispute resolution.

However, Policy Guideline #16 permits an award of nominal damages when there has been no significant loss, or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I find the Landlord's

conduct on May 12, 2019 was a breach of the *Act* and that the Tenant is entitled to nominal damages in the amount of \$150.00.

With respect to the Tenant's claim for \$675.00 as compensation under section 51 of the *Act*, this provision provides for compensation when a tenant receives a notice to end tenancy for landlord's use of property under section 49 of the *Act*. Landlord's use can include renovations. However, a landlord's obligation to pay compensation arises only when a notice is issued. It does not arise based on a tenant's belief the landlord should have issued a notice under section 49 of the *Act*. In this case, the parties agreed that a notice in the proper form was not issued by the Landlord. Therefore, I find that this aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for the return of \$675.00 or double the amount of the security deposit, section 38(1) confirms that a landlord must repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I find the Tenant provided the Landlord with her forwarding address in writing in a letter dated June 1, 2019. The Tenant testified, and I accept that the letter was mailed to the Landlord on that date. Pursuant to section 88 of the *Act*, documents sent by regular mail are deemed to be received 5 days later. Therefore, I find the Landlord is deemed to have received the Tenant's forwarding address on June 6, 2019. Pursuant to section 38(1) of the *Act*, the Landlord had 15 days – until June 21, 2019 – to pay the security deposit to the Tenant or make a claim against it by applying for dispute resolution. I find the Landlord made the Landlord's Application in time on June 14, 2019. Therefore, I find the Tenant is not entitled to recover double the amount of the security deposit held by the Landlord. In light of my order with respect to the security deposit described above, this aspect of the Tenant's Application is dismissed.

I find the Tenant has demonstrated an entitlement to a monetary award in the amount of \$150.00.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$675.00. Deducting the security deposit held, the Landlord is entitled to recover a further \$337.50 from the Tenant. The Tenant has demonstrated an entitlement to a

monetary award in the amount of \$150.00. Setting off the claims, I find the Landlord is entitled to a monetary award in the amount of \$187.50 (\$337.50 - \$150.00). As both parties have had limited success, I decline to grant recovery of the filing fee to either party.

Conclusion

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$187.50. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 28, 2019

Residential Tenancy Branch