



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0931291 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNDL-S
 FFT MNDCT MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of the all or part of the security deposit or pet damage deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The landlord company was represented at the hearing by an agent who gave affirmed testimony. The tenant was also represented by an agent, being the tenant's mother, who advised that she is aware of the facts. The tenant's agent also gave affirmed testimony, and the parties were given the opportunity to question each other.

No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for loss of rental income and replacement of keys and registered mail costs?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for ending the tenancy contrary to the law?

Background and Evidence

The landlord's agent testified that this tenancy began on February 6, 2018 and was renewed for a fixed term commencing February 1, 2019 until January 31, 2020. However, the tenant vacated the rental unit on May 31, 2019 without notice to the landlord. Rent in the amount of \$881.50 per month was payable on the 1st day of each month, and there are no rental arrears to the end of May, 2019. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$440.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a studio apartment in a 14 unit building, and the landlord's agent does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on May 31, 2019 the tenant's mother had texted the landlord's agent in reply to his request for rent and whether or not the tenant would be staying for June. The tenant's mother replied that the tenant would be leaving that day. The text messages have been provided for this hearing. When questioned why the landlord would ask about whether or not the tenant was staying for June, he testified that he wanted to ensure rent was paid on time. The landlord claims \$881.50 for 1 month rent.

The landlord's agent also testified that the tenant's mother told the landlord not to force the tenant out due to a medical issue, and then agreed that the tenant should move out at the end of June. An agreement to end the tenancy was prepared, however, the tenant didn't sign it. No other notice to end the tenancy was given by the landlord or the tenant.

The tenant's mother was supposed to do the cleaning and said she would take care of the tenant's belongings. The landlord's agent knows nothing about what happened to

other belongings, however the landlord's agent and the tenant's mother arrived at the same time for the move-out condition inspection, and the next day said she was going to leave the bed there. The landlord's agent advised that he would have to charge for the removal, and was told by the tenant's mother that the landlord's agent could keep the settee in exchange for the cost of removing the bed.

On July 1, 2019 the lock was changed for a new tenant, and the rental unit was re-rented for July 1, 2019 at the same rental amount.

The landlord also claims \$400.00 for the tenant having an additional occupant, which the tenant admitted was occupying the rental unit with the tenant for 3 months. The tenancy agreement specifies \$200.00 additional rent per month for additional occupants.

A move-in condition inspection report was completed at the beginning of the tenancy and signed by the tenant and by the landlord's agent. A move-out portion was completed on the same form and is signed only by the landlord's agent. The landlord testified that the tenant's agent refused to sign it indicating that the tenant should sign it. The tenant damaged the rental unit in a manner that appeared to be wilful and not accidental, such as markings on walls with permanent marker, holes in the wall and gouges in the hardwood floor. Photographs have been provided which the landlord's agent testified were taken the day of the move-out condition inspection and the following day. Also, the tenant breached the tenancy agreement by smoking in the apartment. The tenant's mother agreed there was evidence of smoking and agreed to pay for remediation and to pay for refinishing the floor. She asked for a list of materials required, which the landlord sent to her, and the tenant's mother purchased masking tape, thinning paint, wall paint, brushes, rollers, cloths and smell reducers. Text messages exchanged between the parties have been provided for this hearing.

The landlord received the tenant's forwarding address in writing on July 9, 2019 in a letter dated July 8, 2019.

The landlord has provided a Monetary Order Worksheet and claims monetary compensation from the tenant totalling \$1,820.97:

- \$881.50 for rent;
- \$400.00 for an additional occupant;
- \$116.04 for remediation repairs and materials;
- \$176.25 for labor for remediation repairs;
- \$116.00, being \$36.00 for keys and \$80.00 for the mailbox key;
- \$31.18 for registered mail; and

- \$100.00 for the filing fee.

The tenant left without returning the main entrance and apartment keys. The tenant was initially given a set for herself and a set for her boyfriend, as well as a mailbox key and laundry room key. The tenant's mother received 1 entrance key and 1 apartment key which were returned as well as another apartment key. A key-cost table has been provided for this hearing, which the landlord testified was given to the tenant at the beginning of the tenancy. Missing are the mailbox key, which cost \$80.00 and laundry room and 2 entrance door key, and 1 apartment key.

The landlord has had an opportunity to review the tenant's application and evidence and denies all claims of the tenant.

The tenant's agent testified that the landlord told the tenant that she had to vacate the rental unit within 15 days because the tenant smoked and used marihuana, and threatened with legal fees. The tenant's agent told the landlord that was not legal, but he insisted that she move out and asked the tenant's agent for a date when she would vacate. The tenant's agent told the landlord of a medical condition that the tenant suffered from, and the landlord still forced her out onto the street, and subsequently into hospital. The tenant did not want to move out, and the tenant told her mother that the landlord changed the lock to the apartment. Technically, the tenant didn't move out; all her belongings were still in the apartment. The landlord's agent gave the tenant a termination agreement, but the tenant didn't sign it. Her medical condition became worse and the landlord was advised of that. The tenant's agent "lost" her daughter who subsequently ended up in hospital.

The tenant's agent denies there was any conversation regarding bed removal or the settee, and the tenant's agent does not know what happened to the tenant's belongings.

The tenant's agent also disputes that she participated in the move-out condition inspection. She told the landlord to give the tenant some time, and the tenant's agent would take care of the apartment. She finally gave the landlord a date of June 30 and said she would take care of the cleaning. The landlord's agent told the tenant's agent to attend to clean, and when she went to do that, painting was already being done. Also, there were different colour patches of paint on walls when the tenant moved in.

The tenant's agent also disputes any other occupants resided in the rental unit. The tenant's boyfriend has another residence.

The tenant claims the costs of the materials provided to the landlord in addition to the equivalent of 12 months' rent for the landlord illegally ending the tenancy, putting the

tenant on the street and subsequently in hospital. A Monetary Order Worksheet has been provided for this hearing, which totals \$13,777.43 and claims as follows:

- \$10,578.00 for 12 months' rent compensation;
- \$439.43 for supplies provided to the landlord;
- \$60.00 for painting costs;
- \$2,100.00 for lost belongings; and
- \$600.00 for extra rent for a guest for 3 months.

Copies of receipts have also been provided for this hearing, as well as 2 witness letters, which are not taken under oath or affirmation.

Analysis

The parties have provided a significant amount of evidence, all of which has been reviewed, being strings of text messages, photographs, emails, letters and receipts, some of which I found to be irrelevant to the issues.

Firstly, with respect to the landlord's claims, the *Residential Tenancy Act* specifies how a tenancy ends (underlining added):

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

In this case, no one has given notice to end the tenancy, and the parties did not agree in writing to end the tenancy. The landlord claims that the tenant vacated the rental unit on May 31, 2019 without notice to the landlord and claims loss of rental income for the month following. I have reviewed the text messages exchanged between the landlord's agent and the tenant's agent. I questioned the landlord's agent at quite length about the text message he sent to the tenant's mother and specifically why he asked, "will she be leaving today, or pay the rent tomorrow." The landlord gave no reasonable explanation, which I found to be evasive.

The landlord has also provided numerous text messages, emails and letters about contraventions to the tenancy agreement, which show clearly that the landlord wanted the tenant to move out, but did not issue a notice to end the tenancy for cause or for any other reason. I find that the landlord has provided that evidence in an attempt to justify ending the tenancy, which it may have, if the landlord had issued a notice to end the tenancy. Ending a tenancy, as the landlord testified, via text messaging with the tenant's mother is not a method sanctioned by the *Act*. I also find that the landlord failed to mitigate any loss of rental revenue by doing everything he could, including telling the tenant she had to be out in 15 days as well as threatening legal costs and Small Claims Court, to have the tenant vacate the rental unit. The landlord's claim for 1 month of rent for the tenant failing to give notice to vacate is dismissed.

The landlord also claims an additional \$400.00 for an additional occupant, as stated in the tenancy agreement, which is disputed by the tenant's agent. The landlord relies on text messages and other correspondence, which I have reviewed. The evidence includes a text message from the tenant dated April 2, 2019 promising to pay the full rent plus \$200.00 and the late fee that the landlord had requested. Also included are text messages from a neighbour to the landlord respecting disturbances dated May 21, 2019, one of which states, in part, "...I think her boyfriend visited her." There is nothing in the evidence to satisfy me that the landlord has established a second person residing in the rental unit for any months other than April, 2019 which the landlord has already collected, and I dismiss the landlord's application for compensation of \$400.00 for an additional occupant.

Where repairs are made to a rental unit after a tenancy the landlord may recover some of the costs, but not costs to purchase assets that the contractors hired by the landlord need. If that were the case, those items would belong to the tenant. Any financial compensation for damage or loss is meant to put the claiming party in the same position as the party would be if no damage occurred. Therefore, I dismiss the landlord's application for \$116.04 for remediation repairs and materials.

The landlord also claims \$176.25 for labor for remediation repairs and has provided a receipt to substantiate the amount. The landlord's agent also testified, and has provided numerous text messages and other material that the tenant smoked in the rental unit which required it to be painted. That is not disputed by the tenant's agent. The *Act* specifies that the move-in/out condition inspection reports are evidence of the condition of the rental unit, however the regulations go into great detail of how that is to happen. The tenant's agent testified that she did not participate in a move-out condition inspection and painting had already commenced when she arrived at the rental unit. That is not disputed by the landlord's agent. The landlord has also provided a copy of a letter addressed to the tenant dated May 31, 2019 from the Manager Leasing of the landlord company stating that the tenant's mother on that day advised the landlord's agent that the tenant would be vacating the same day. It also suggests a move-out condition inspection for 1:30 or 2:00 on May 31, 2019. The regulations to the *Residential Tenancy Act* are very clear with respect to scheduling move-in and move-out condition inspection reports. I have no doubt in my mind that the tenant's agent had no idea at that point that a move-out condition inspection report would be completed when she arrived. I find that the landlord has failed to ensure that the report was completed in accordance with the regulations.

The tenant's agent testified that the rental unit was not freshly painted at the beginning of the tenancy and there were patches of different colors on the walls. The landlord disputed that, however the useful life of interior paint is 4 years. The witness statements also state that the rental unit was not freshly painted. That is not disputed by the landlord, and I am not satisfied that the rental unit didn't need painting at the beginning of the tenancy. The landlord's application for the cost of interior painting is dismissed.

With respect to the landlord's claim for replacement of keys, the landlord testified that some keys are missing, and the locks were changed when the rental unit was re-rented July 1, 2019, but has not made a claim for changing locks, and has not provided any evidence of when the locks were changed. The tenant's agent testified that the tenant told her that the locks were changed prior to the end of May, 2019, which is also consistent with both witness letters. The tenant's agent also testified, and the landlord has provided text messaging proving that the tenant went missing in mid-May. I find it very possible that the landlord, who has claimed absolutely everything he could think of *except* the cost for changing the locks, didn't claim it because he would have to provide a copy of the receipt as evidence, and that receipt would have a date. I accept the testimony of the tenant's agent that the landlord had the locks changed prior to the end of May, 2019, and the landlord has not mitigated any loss for keys.

The *Act* provides for recovery of a filing fee if a party is successful in a dispute but does not provide for costs of service or preparing for a hearing. Therefore, I dismiss the landlord's application for recovery of registered mail costs.

With respect to the tenant's claims, beginning with the \$439.43 claim for supplies and \$60.00 for painting costs, the tenant has provided a receipt in the amount of \$439.43. I accept that the tenant's agent was attempting to mitigate damages, agreeing that the tenant had smoked in the rental unit contrary to the tenancy agreement. However, I am not satisfied that the tenant or the tenant's agent had an obligation to do so. Having found that there is no evidence that the rental unit didn't need painting at the beginning of the tenancy, I find that the tenant is entitled to recover the out-of-pocket expenses for paint materials totalling **\$439.43**.

The tenant also claims \$2,100.00 for loss of the tenant's belongings. I am satisfied that the landlord illegally obtained some of the belongings of the tenant, having testified that in a conversation with the tenant's agent, the parties agreed that the landlord could keep the settee in exchange for the cost of removing the tenant's bed, which is totally disputed by the tenant's agent. However, I have no evidence of what is missing or what its value is, and I dismiss this portion of the tenant's claim.

The landlord's evidentiary material also includes a receipt for the month of April, 2019 stating that is the only month the landlord collected \$200.00 for an additional occupant. The tenant seeks to recover \$600.00 which I find includes the \$200.00 collected in April and \$400.00 that the landlord claims. Having found that the landlord has failed to establish any additional occupant for any months other than April, 2019, and the tenant has not paid that amount, that part of the tenant's claim must be dismissed. I find that the landlord has only collected \$200.00 of additional rent, which the tenant agreed to in the text message dated April 2, 2019. The tenant's claim of \$600.00 for extra rent paid for a guest is dismissed.

The larger claim of the tenant is for the equivalent of 12 months rent for the landlord's breach of the *Act* by causing the tenant to vacate contrary to the law. I refer to emails from the landlord to the tenant. The first is dated April 25, 2019 and indicates that the tenant has been smoking in the rental unit, contrary to the tenancy agreement. The second is dated May 15, 2019 and states that the tenant failed to comply with the agreement, and therefore the lease will be terminated and the tenant will be required to vacate the premises by 1:00 PM on June 30, 2019. It also states that an agreement to terminate is attached which must be signed by 5:00 PM, May 17, 2019, and that failure to do so or any further breaches will result in costs and fees incurred. On May 13, 2019

the tenant's agent told the landlord in a text message provided for this hearing that the landlord cannot move the tenant out in 15 days and to give the tenant more time, and the landlord threatened legal fees. There is no doubt that the tenant was told that the tenancy was terminated, but that did not happen in accordance with the law. As a result of the misinformation which is contrary to the law and threatening to the tenant, regardless of whether or not the tenant was complying with the no smoking rule, and considering other testimony and evidence, I accept the testimony of the tenant's agent that the tenant was forced out of the rental unit.

I have also reviewed the witness statements provided by the tenant. Although that is not affirmed or sworn testimony, both letters speak to the condition of the rental unit, and that the tenant suffered damages as a result of the landlord causing the tenant to vacate the rental unit.

Section 51 of the *Act* sets out compensation for a tenant in an amount equivalent of 12 times the monthly rent payable where the landlord has not acted in good faith in giving a notice to end a tenancy for landlord's use of property. In this case, there is no such notice to end the tenancy, but where a landlord does not act in good faith, I find that the tenant is entitled to compensation in kind, that is 12 months rent, or in this case **\$10,578.00** ($\$881.50 \times 12 = \$10,578.00$).

Having dismissed the landlord's application for monetary compensation for rent, I order the landlord to return the **\$440.00** security deposit to the tenant.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the **\$100.00** filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$11,557.43**.

This order is final and binding and may be enforced.

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: November 19, 2019

Residential Tenancy Branch