



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNDC MNSD MNR 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 received at the Residential Tenancy Branch 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 received at the Residential Tenancy Branch 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 and the Tenant attended the hearing. The Tenant was accompanied by two witnesses, C.H. and J.W., and two observers, E.R. and C.H. All giving testimony provided a solemn affirmation.

The parties acknowledged receipt of each other's application packages and evidence. Neither party raised any issues with respect to service or receipt of the above documents and evidence. 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.

Preliminary and Procedural Matters

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 by the parties during the hearings has been similar although not identical. In any event, 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.

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 fixed-term tenancy began on January 1, 2019 and was expected to continue to July 31, 2019. However, the tenancy ended when the Tenant vacated the rental unit on or about May 31, 2019. Rent in the amount of \$725.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$362.50, which the Landlord holds.

The Landlord's Claim

The Landlord's claim was summarized in the Landlord's Application. First, the Landlord claimed \$200.00 for the cost to make repairs to a bedroom wall and the bathtub, and for general cleaning required throughout the rental unit including the oven, bathtub, and freezer. The amount sought was based on his estimate of 8 hours of labour at \$25.00 per hour. In support, the Landlord submitted photographs depicting scuffs on the Tenant's bedroom wall, what appear to be rust stains in the shower and debris around a bathtub drain, damaged blinds, damage to drywall beside a light switch, dirty floors, a dirty oven, and a freezer with ice build-up.

In reply, the Tenant testified the Landlord did not complete move-in and move-out condition inspections as required. The Tenant also noted that no receipts were submitted into evidence by the Landlord. Further, the Tenant testified the Landlord did not permit the Tenant to return to the rental unit to clean, which was acknowledged by the Landlord.

Second, the Landlord claimed \$1,300.00 because he was unable to rent a bedroom in the rental property. The Landlord testified the Tenant would not permit access to the rental unit to show the 4th bedroom to a prospective tenant.

In reply, the Tenant testified the Landlord never expressed a desire to rent the 4th bedroom until issues arose between them. The Tenant also referred to the tenancy agreement, which limited the maximum number of people living in the rental unit to three.

Third, the Landlord claimed \$725.00 for lost rent due on June 1, 2019. The Landlord testified the Tenant ended the tenancy before the end of the fixed term and that he was unable to re-rent the unit. The Tenant acknowledged she gave written notice of her intention to vacate the rental unit on May 25, 2019. The Landlord testified that due to difficulties with the local municipality created by the Tenant, he now has to sell the property.

In reply, the Tenant testified that she was told to leave. The Tenant referred to a text message dated May 13, 2019, in which the Landlord stated: "What is clear is you are going to leave. This is a fact. The only issue now is when." This was sent after a disagreement between the parties on May 12, 2019, described in greater detail below. The Landlord acknowledged that he lost his temper. The Tenant testified that she left in part because of the dynamic between an older man and a younger woman.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Landlord's Application and requested that he be permitted to retain the security deposit held in partial satisfaction of his claim.

The Tenant's Claim

The Tenant's claim was summarized on Monetary Order Worksheets dated August 13, 2019. First, the Tenant claimed \$725.00 in compensation for loss of quiet enjoyment for the Landlord's harassing behaviour. Specifically, the Tenant testified the Landlord was always at the rental property and that she received text messages and emails from the Landlord. The Tenant referred to copies of text messages attached as Exhibits "C" and "D" to the Affidavit of C.H. dated August 9, 2019. Most of the text messages referred to appear to have been sent from the Tenant to the Landlord and related to a meeting to discuss the end of the tenancy agreement. The Tenant also stated she felt unsafe and again suggested the dynamic between an older male landlord and a young female tenant was a factor.

The Tenant also referred to an audio recording of an interaction with the Landlord on May 12, 2019. In it, the Landlord can be heard to say:

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!

In reply, the Landlord testified that he lived at the rental property and would perform routine maintenance such as cleaning and cutting grass. Further, the Landlord testified they had a good relationship until he lost his temper on May 12, 2019 which he did not dispute. As an example, the Landlord noted an instance when he brought the Tenant soup when she was sick. He testified that the Tenant's testimony is a mis-characterization of their relationship.

Second, the Tenant claimed \$725.00 in compensation pursuant to section 51 of the *Act*. The Tenant testified the Landlord forced her to leave. She stated the Landlord told her different things at different times. Specifically, the Landlord told her that he intended to occupy the rental unit with his partner, and that he intended to perform renovations. Both parties acknowledged the Landlord never issued a notice to end tenancy in the approved form. The Tenant stated it would be unreasonable to expect her to remain in the rental unit in light of the Landlord's statements reproduced above.

Third, the Tenant claimed \$725.00 for double the security deposit held, pursuant to section 38 of the *Act*. She testified that a forwarding address was provided to the Landlord in a letter mailed to the Landlord on June 1, 2019. A copy of the letter was submitted into evidence.

In reply, the Landlord acknowledged receipt of the Tenant's forwarding address. The Landlord's Application was submitted to the Residential Tenancy Branch on June 14, 2019.

Fourth, the Tenant claimed nominal damages of \$100.00 for an "illegal" lock change. The Tenant testified that she vacated the rental unit on May 19, 2019. Notice to end the tenancy was provided to the Landlord on May 26, 2019. The notice was to be effective May 31, 2019. In any event, the Tenant discovered the locks had been changed when she returned to the rental unit on May 28, 2019.

In support, the Tenant referred to Exhibits "U", "X" and "Y" to the Affidavit of C.H. dated August 9, 2019. Exhibit "U" is correspondence to the Landlord in which the Tenant (and her roommates) expressed what they perceived to be breaches of material terms of the tenancy agreement. Exhibit "X" is an email exchange between the Tenant and the Landlord which outlines the parties' positions with respect to the end of the tenancy and her ability to access the rental unit. Exhibit "Y" is a text message from the Landlord which confirms the locks had been changed and suggests that returning to the unit is trespassing.

In reply, the Landlord acknowledged the locks were changed on May 28, 2019. However, he testified he was not aware the Tenant would be returning to the unit.

Fifth, the Tenant claimed nominal damages of \$100.00 for an "illegal" eviction. The Tenant asserted that the Landlord's statements on May 12, 2019, and assertions regarding his intended use of the rental property referred to above amounted to an illegal eviction.

In reply, the Landlord testified that he did not issue a notice to end tenancy.

Sixth, the Tenant claimed nominal damages of \$100.00 for mental and physical stress. The Tenant testified that she had to leave the rental unit and live in "less than ideal" circumstances. She had to share space with a roommate whose boyfriend stayed over. The Tenant repeated that she did not feel safe in the rental unit.

In reply, the Landlord testified that he understands the meaning of "safe" and that there was no reason for the Tenant to believe she was unsafe. He stated the Tenant is using the language of victimhood but that "it doesn't add up".

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 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.

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 \$200.00 for the cost of repairs and cleaning, 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 with respect to the value of the value of the Landlord's loss. 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 \$1,300.00 because he was unable to rent a bedroom in the rental property, 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, 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*. I also note the tenancy agreement between the parties limited the number of occupants to three. At the time the Landlord wished to show and potentially rent the room, there were already three occupants in the rental property. Further, 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 \$725.00 for lost rent due on June 1, 2019, section 45 of the *Act* confirms a tenant may not end a fixed term tenancy before the date specified in the tenancy agreement as the end of the tenancy, except in circumstances set out in the *Act*. Accordingly, the Tenant's notice, received by the Landlord on May 26, 2019, was not effective to end the tenancy until July 31, 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 \$725.00.

To summarize, the Landlord has demonstrated an entitlement to a monetary award for unpaid rent in the amount of \$725.00. In the circumstances, I find it appropriate to order that the Landlord be permitted to retain the security deposit held in partial satisfaction of the Landlord's claim

The Tenant's Claim

With respect to the Tenant's claim for \$725.00 in compensation 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, including the incident on May 12, 2019, was sufficient to give rise to a frequent and ongoing interference or disturbance. If the Landlord's behaviours caused the Tenant concern, she could have applied for dispute resolution to the Residential Tenancy Branch and obtained an order that the Landlord cease making such statements.

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 \$725.00 in compensation pursuant to 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 and when a landlord intends to occupy a rental unit. 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*, even if the tenant provides the landlord with the correct form to complete. In this case, the parties agreed that a notice in the proper form was not issued by the Landlord. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for \$725.00 for double the amount of the security deposit held, 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 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's Application was made 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 above, this aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for nominal damages of \$100.00 for an "illegal" lock change, I find there is insufficient evidence before me to grant the relief sought. The Tenant testified that she vacated the rental unit on May 19, 2019 and provided the Landlord with written notice of her intention to vacate the rental unit on May 26, 2019. Although the Landlord acknowledged locks were changed on May 28, 2019, the Tenant had already vacated the rental unit. As she has not been required to pay any cleaning costs, I find there is insufficient evidence of any loss on the part of the Tenant. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for nominal damages of \$100.00 for an "illegal" eviction, I have found the Tenant was not evicted in accordance with the *Act*. Indeed, in the absence of a notice to end tenancy being issued by the Landlord, the Tenant provided her own written notice dated May 26, 2019. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for nominal damages of \$100.00 for mental and physical stress, I find there is insufficient evidence of mental and physical stress such as medical or other documentary evidence to ground a claim for compensation. This aspect of the Tenant's Application is dismissed.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$725.00. Deducting the security deposit held (\$362.50), I find the Landlord is entitled to recover a further \$362.50 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 order in the amount of \$212.50 (\$362.50 - \$150.00). As both parties have had limited success, I decline to grant recovery of the filing fee to either party.

Conclusion

The Landlord is granted a monetary order in the amount of \$212.50. 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: November 27, 2019

Residential Tenancy Branch