# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes For Landlord: FFL MNDCL MNDL MNRL
For Tenant: FFT MNDCT MNSD

Introduction

In this dispute, the landlord and the tenant sought compensation against each other, for various claims, under the *Residential Tenancy Act* (the "Act").

On February 4, 2020 the parties attended the arbitration hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both sides acknowledged the exchange of documentary evidence and there were no issues raised in respect of the service of any evidence.

In this decision, while I have reviewed evidence submitted that met the *Rules of Procedure,* under the Act, and to which I was referred, I have only considered and referenced evidence relevant to the issues of this application. As such, not all of the parties' testimonies is reproduced within the decision.

Issues

1. Is the landlord entitled to any or all of the compensation claimed in his application, pursuant to section 67 of the Act?
2. Is the landlord entitled to recovery of the filing fee pursuant to section 72 of the Act?
3. Is the tenant entitled to the return of his security deposit pursuant to section 38 of the Act?
4. Is the tenant entitled to any or all of the compensation claimed in his application, pursuant to section 67 of the Act?
5. Is the tenant entitled to recovery of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The landlord seeks compensation in the amount of $20,398.75 for the following claims against the tenant (as outlined in a monetary order worksheet): cleaning fee $500.00, garbage removal $700.00, new toilet $172.00, toilet removal and install $380.00, smoke alarm and install $580.00, painting walls and doors including paint $2,680.00, flooring $8,415.75, deadbolt pass lock $184.00, remove and installation of pass lock on different entrances $340.00, kitchen pot lights damaged and installation $347.00, financial compensation for “family pain and suffering”, and the Residential Tenancy Branch application filing fee of $100.00. The tenant testified that he disputes the entirety of the landlord’s claim.

The tenant seeks compensation in the amount of $5,234.85 for the following claims against the landlord (as outlined in a monetary order worksheet): landlord turned off power to washer/dryer $150.00, letter of resolution from lawyer (“illegal eviction”) $1,100.00, security deposit $1,100.00, storage of belongings $178.45, storage of snowmobile $240.00, rental of locker $125.95, rental of post office box $62.00, and a rental of storage locker $178.45, all of which comes to a subtotal of $3,134.85. The remaining claim of $2,000.00 is for, as the tenant described in his application (and an earlier version of his monetary order worksheet) “intimidation and harassment by landlord.” This aspect of the claim is broken into several sub-claims on the most current version of the monetary order worksheet as follows: “illegal eviction notice,” “landlord blast music,” “landlord  take my belongings off my balcony,” landlord enters my apartment without notice,” “landlord says doesn’t care about my rights,” and, “landlord harasses and threatens.” There are also two entries for “landlord walk through,” although it is unclear what this refers to in relation to a claim for compensation. The landlord testified that he disputes the entirety of the tenant’s claim.

By way of background, the tenancy started on November 15, 2018 and ended on July 1, 2019. Monthly rent was $1,100.00, due on the first of the month. The landlord testified that there was no security or pet damage deposit required or paid by the tenant. The tenant testified that he paid a $1,100.00 security deposit, and produced a one-page letter dated November 18, 2017, on which the landlord stated, “I have received $1100 deposit from [tenant’s first and last name” and next to which was the landlord’s signature. The landlord did not reference or dispute this letter.

I note that neither party produced a copy of any written tenancy agreement, though neither appeared to dispute the basic terms of the tenancy agreement.

The tenancy ended on or about July 1, 2019, though there was some disagreement about how long the tenant had possession of the rental unit. On or about May 7, 2019, the landlord purportedly issued a notice to end tenancy which was received by the tenant on May 9, 2019. A copy of a letter (submitted into evidence) dated June 26, 2019, from the tenant's lawyer to the landlord, states that "This is not a proper notice under the residential tenancy act [*sic*] as it does not give appropriate notice for landlord's use of property." The letter then goes on to provide a "compromise" as to when the tenant would decide to move out.

A copy of the notice to end tenancy was also submitted into evidence. The "notice" is not in the prescribed form of a notice to end tenancy under the Act. Within the "notice" is request that the landlord needs the tenant "to move your snowmobile and the motocycle [*sic*] not later than May 12th 2019 due to a large load of construction materials" being placed in the backyard.

The tenant ended up vacating the rental unit and removing most of his personal belongings on June 30, 2019. He returned later to pick up remaining items and asked the landlord on July 3 if they could do a walk-through inspection. The landlord apparently refused to do a walk-through and said to the tenant that "you have to do it a month before vacating." A copy of a text message conversation between the parties confirms that the landlord stated, "You should have done that prior 1 of the month." In summary, no Condition Inspection Report was completed at any time.

The landlord testified at length and in detail regarding the various aspects of his claim for compensation, which included various alleged damage, repairs, and cleaning to the rental unit. Photographs of the alleged damage were submitted into evidence.

Regarding the pain and suffering claim, the landlord testified that the $6,000.00 sought was for behavior of the tenant including following the landlord's wife at work, bullying the landlord's children, calling the landlord a "fucking ass," trying to intimidate him, bringing parts of a motorcycling into the rental unit, not giving the landlord access to a mechanical room (which could only be accessed through the rental unit), and "many things that I don't remember all of them." He variously described the tenant as "just a hassle to have that person around the house" and that he "abused my willingness to help." The tenant was, in summary, "just a pain."

Before turning to the tenant's testimony, I should note that it was clear during the hearing that the relationship between the two parties is extremely acrimonious. They agreed on very little, though they maintained a level of restraint during the hearing.

The tenant countered the landlord's submissions regarding his allegedly being such a bad tenant and referenced the favourable and positive language that was included in the notice to end tenancy document drafted by the landlord.

In his testimony, the tenant explained that the landlord had shut off the power on July 1, 2019. He further explained that it was the landlord who changed all the locks, not him. He added that the landlord installed a new toilet on July 2, before the tenant had even removed all of his belongings. The tenant explained that it was his understanding that he had exclusive possession of the rental unit until July 15, 2019. The remainder of the tenant's testimony regarding the alleged damages, repairs, and cleaning of the rental unit will not be reproduced: the tenant disputed the entirety of the landlord's submissions in this regard.

Regarding the claim for no washer/dryer use, the tenant testified that the landlord shut off power to the washer/dryer. A copy of a text message between the parties, dated June 11, 2019, reads as follows:

Tenant: Can you reset breaker for washer/dryer in the apartment?

Tenant: The washing machine and dryer are still not working in my apartment. Can you reset the two separate breakers that operate the machines?

Landlord: Well you washed all your stuff Friday also yesterday

Also we can't provide laundry for all your friends or girlfriends

You reached the maximum days you can use the laundry

I am sorry for the inconvenience

Regarding the tenant's claim for "intimidation and harassment," the tenant testified that he lost time dealing with the landlord, he had to listen to the landlord's blaring music, the landlord's harassing of his girlfriend, and so forth. In support of his claim in this regard the tenant submitted copies of two text messages. The first was a brief text on June 5, 2019 about the landlord's playing loud music. The second was a brief text (undated) which reads as follows (reproduced as texted):

Tenant: Please follow the law when it comes to dealing with your tenants.

Landlord: I don't give a fuk about the law
So fuk off
You pushed my limits I have all documented already
Make me come after your ass and you can see what I can do

Tenant: I'm trying to be civil. But you are trying to bully me. Who's the mature one now?!

The remainder of the tenant's claim and testimony was regarding storage costs that he incurred as a result of vacating the rental unit, including the cost for setting up a mail box for safety reasons. Finally, both the tenant and landlord provided lengthy testimony about the tenant's snowmobile and whether he was or was not permitted to park it on the property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. If the respondent is found to have not complied with the Act, the regulations, or the tenancy agreement, then the arbitrator may award compensation pursuant section 67 of the Act.

**A. Landlord's Claim**

***Claims for Damages, Repairs and Cleaning to Rental Unit***

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, the landlord seeks compensation for various costs and anticipated costs in relation to alleged damage, cleanup, and repairs to the rental unit and property. The tenant disputes the entirety of the landlord's claim.

While the landlord submitted photographs of the alleged damage, this is insufficient proof in determining to what extent, if any, the tenant was responsible. There is no evidence of the state of the rental unit *at the start of the tenancy.* No photographs, and most importantly, no Condition Inspection Report.

A landlord is required to complete a Condition Inspection Report at both the start and at the end of tenancy, pursuant to sections 23 and 35 of the Act. Failing to complete such a report has significant consequences for landlords later claiming compensation against a former tenant for alleged damage or repairs. Indeed, section 21 of the *Residential Tenancy Regulation* states the following:

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence that the tenant breached section 37(2) of the Act.

Certainly, while it is within the realm of possibility that the tenant caused some or all of the alleged damages, the onus is on the landlord to prove this with documentary evidence. Evidence establishing the condition of the rental unit at the start of the tenancy – before a tenant has had an opportunity to damage a rental unit – is the only way to establish a baseline from which later damage may be assessed. There are many instances where a tenant has moved into an already-damaged rental unit, and thus I cannot assume or find, based on an absence of evidence, that the tenant has caused the damage as claimed by the landlord.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for compensation for damages, cleanup, or repairs to the rental unit and property.

As an aside, while the landlord placed some emphasis on the tenant's supposed unauthorized storing of a snowmobile, there is no written tenancy agreement presented before me that might place limits or restrictions on the storage of the snowmobile. No

claim for costs in relation to the snowmobile may therefore arise. No breach of the Act or of the tenancy agreement has been proven.

***Claim for Pain and Suffering***

Regarding the landlord's claim of $6,000.00 for "family pain and suffering," the landlord failed to establish what section of the Act, the regulations, or the tenancy agreement, the tenant has breached that might lead to such compensation. Allegations of bullying, of the tenant following the landlord's wife around at work, and so forth, are not supported by any evidence beyond that of the landlord's testimony.

Whether the landlord has a basis for a common law tort of intentional interference, however, would be a matter for the courts to decide. Under the Act, the regulations, or the tenancy agreement, however, there is no basis for a claim of pain and suffering. As such, this aspect of the landlord's claim is dismissed without leave to reapply.

***Claim for Application Filing Fee***

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was unsuccessful in his application I dismiss his claim for reimbursement of the filing fee.

**B. Tenant's Claim**

***Claims Related to "Illegal Eviction"***

I turn first to the tenant's claims related to what he presented as an "illegal" eviction. These claims include $1,100.00 for the "illegal eviction," storage and storage locker costs, and the rental of a post office box, but for the purposes of my analysis I do not include the claim for the return of the security deposit. This will be dealt with later.

The tenant calls the series of events that lead to him vacating the rental unit to be an "illegal" eviction. His lawyer's letter correctly refers to the fact that the landlord's "notice to end tenancy" of May 7, 2019 is "not a proper notice" under the Act. In other words, and this cannot be overstressed, *the tenant was at no point legally obligated to vacate the property.* The tenancy was not and would not be ended by the invalid notice. It is not that the notice to end tenancy was illegal, but rather, it simply did not meet the criteria of

an end of tenancy notice under sections 46 to 49 of the Act. The end of tenancy notice had about as much legal effect as a blank Post-It note stuck on the front door.

Neither option presented in the lawyer's letter to the landlord was accepted or acted upon, and the tenant simply moved out in late June 2019. A third option open to the tenant (and I do not know whether the tenant's lawyer advised him as such) was to simply do nothing. But the tenant decided to vacate the rental unit of his own volition. Any costs (i.e., storage costs, storage locker rental costs, and the post office box rental cost) that flowed from the tenant's decision to vacate the rental unit are therefore his own responsibility. For this reason, I dismiss, without leave to reapply, this aspect of the tenant's claim for compensation.

***Claim for Return of Security Deposit***

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

In this dispute, the landlord testified that he did not require or accept for that matter a security deposit. In response, the tenant testified that he paid the landlord $1,100.00 as a security deposit, and he provided a letter, signed by the landlord, which established that he did, in fact, pay a security deposit. The landlord did not provide any response to, or dispute, this evidence.

Regarding whether the tenant provided his forwarding address in writing to the landlord, there is conflicting testimony, and no documentary evidence. The tenant claims that he provided his forwarding address (though, it may have been when he filed his dispute); the landlord denies that he ever received the tenant's forwarding address in writing.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for the return of his security deposit in the amount of $1,100.00. As there is no evidence the tenant provided his forwarding

address in writing to the landlord prior to his application for dispute resolution, I will not consider whether section 38(6) (the “doubling provision”) applies in this case.

I grant the tenant’s claim for compensation in the amount of $1,100.00 for the return of the security deposit.

***Claim for Landlord Entering Rental Unit Without Notice***

The tenant claims compensation in the amount of $150.00 for the landlord illegally entering the rental unit on or before June 17, 2019. The tenant submitted into evidence a copy of a text message where the tenant asks the landlord, “Legally aren’t you supposed to give me 24 hours notice in writing before entering my apartment?” To which the landlord replies, *inter alia,* “Well I don’t need to give you any notice due to our agreement at the beginning saying I need [remainder of message omitted.]”

Section 29 of the Act outlines the six means by which a landlord may enter a rental unit. None of those options were exercised in this case.

The landlord did not provide an adequate explanation for his entry into the rental unit. That the mechanical room can only be accessed through the rental unit is not a defensible reason. And, while the text message refers to a problem with a water supply, nowhere has the landlord explained that the reason for his entry was because of an emergency and that entry was necessary to protect property or life (as is permitted under section 29(1)(f) of the Act).

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving that the landlord breached section 29 of the Act, in addition to breaching section 28(c) of the Act, which protects a tenant’s right to exclusive possession of the rental unit subject only to a landlord’s right of entry under section 29.

While there was no significant or lasting monetary loss from the landlord’s breach of the Act, the tenant is entitled to nominal damages. “Nominal damages” are a minimal award. Nominal damages may be awarded where 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, there was an infraction of a legal right and I find that the amount claimed in the amount of $150.00 is reasonable.

Indeed, I find the landlord's rather cavalier attitude toward compliance with the Act to be an aggravating factor in my not reducing the nominal damage amount from that claimed. While the temporary disturbance from music or a one-time restriction on washer/dryer use is an inconvenience (as will be discussed below), entering a tenant's home without proper notice lies at the higher end of egregious behavior, and is wholly unacceptable.

***Claim for Landlord Moving Property from Patio***

Regarding this aspect of the claim, the tenant submitted one photograph of equipment sitting at the end of the driveway, and text messages between the parties about police involvement. However, there is no further evidence that the property was on the patio previously, and no documentary evidence that the landlord moved it.

There is, I find, simply no evidence establishing this aspect of the tenant's claim, and therefore no evidence that the landlord breached the Act, the regulations, or the tenancy agreement that gives way to an award for compensation. Therefore, I dismiss this aspect of the tenant's claim without leave to reapply.

***Claim for Landlord Turning Off Power to Washer/Dryer***

Section 27(1) of the Act states that

> A landlord must not terminate or restrict a service or facility if
>
> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
>
> (b) providing the service or facility is a material term of the tenancy agreement.

In this dispute, the tenant seeks compensation for the landlord's shutting off the power to the rental unit's washer/dryer. While there is no written tenancy agreement that speaks to whether the washer and dryer are included in the rent, it may be assumed that it was provided as part of the rent, as evidenced by the landlord's language in the text about reaching "the maximum days you can use the laundry." And, that the lack of evidence or anything else suggesting that washer/dryer use was ever restricted between November 2018 and the summer of 2019. The landlord's additional comments about not providing laundry to the tenant's friends and girlfriend suggest that the landlord simply chose to cut off power to the washer/dryer without a legal reason.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving the landlord breached section 27(1) of the Act.

As was the case for illegal entry into the rental unit, the temporary shut off did not cause any significant or lasting monetary loss. However, the tenant is entitled to a nominal award for the landlord's breach of the Act. The amount claimed of $150.00 is, I find, rather high for a one-time cessation of washer/dryer use; the tenant did not provide any evidence of being short of clean clothes or suffering additional loss such as having to visit a laundromat. I thus grant the tenant a reduced nominal award in the amount of $20.00 for the landlord's breach of section 27(1) of the Act.

***Claim for Landlord "Blasting Music"***

The tenant submitted a text message to support his claim regarding the landlord's "blasting of music." But I find that this one-time disturbance to be of such a trifling nature that, while there was a technical breach of section 28(b) ("right to quiet enjoyment") of the Act, nominal damages of no more than $20.00 is reasonable in the circumstances. As such, I grant this aspect of the tenant's claim but award nominal damages in the amount of $20.00.

There is no additional evidence showing the duration of the music/noise disturbance, the time of day, the decibel level, or anything else that might substantiate a reason to award anything more than a minimal nominal amount.

It should be noted that – and this is no doubt obvious to the parties – the tenant resided in a basement suite; he cannot expect such a living arrangement to be completely noise-free. Nor, for that matter, can the landlord expect to live free of noise emanating from a tenant-occupied basement suite.

***Claim for Intimidation and Harassment (Remaining Aspects)***

Turning now to the remaining parts of this portion of the tenant's claim (excluding those matters already dealt with) for the matters described as "landlord says doesn't care about my rights" and "landlord harasses and threatens" the tenant has, I find, failed to establish that the landlord breached the Act, the regulations, or the tenancy agreement.

There is no evidence that the landlord harassed the tenant's girlfriend as claimed, and the landlord disputed this claim. The tenant's girlfriend did not testify about the alleged

harassment. Second, the tenant claimed that he lost time dealing with his ongoing dispute with the landlord, but he did not provide any accounting for this time. And, while the landlord said to the tenant that he doesn't "give a fuck" about the law, such communication does not, I find, give rise to a claim whereby the landlord breached the Act, the regulations, or the tenancy agreement. As with the landlord's claim concerning pain and suffering, the tenant may (or may not) have a basis for a civil claim of tortious intentional interference. Any such claim, however, would fall within the jurisdiction of the courts.

In summary, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving that the landlord breached the Act, the regulations, or the tenancy agreement which may give rise to a claim for compensation related to intimidation and harassment. As such, this aspect of the tenant's claim is dismissed without leave to reapply.

***Claim for Application Filing Fee***

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) of the Act by one party to a dispute resolution proceeding to another party. The successful party is generally entitled to recovery of the filing fee. As the tenant was predominately successful in his application, I grant his claim for recovery of the filing fee in the amount of $100.00.

**B. Summary of Monetary Award for Tenant**

Pursuant to section 67 of the Act, I award the tenant compensation in the amount of $1,390.00, which is calculated as follows:

| | |
|---|---|
| Return of security deposit | $1,100.00 |
| Unlawful entry into rental unit | 150.00 |
| Temporary restriction of washer/dryer | 20.00 |
| Loss of quiet enjoyment ("blasting music") | 20.00 |
| Filing fee | 100.00 |
| TOTAL | 1,390.00 |

A monetary order for the tenant, against the landlord, in the above-noted amount is issued to the tenant in conjunction with this decision.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is granted, in part, and I issue a monetary order in the amount of $1,390.00. This order must be served by the tenant on the landlord in accordance with the Act. If necessary, the order may be filed in and enforced as an order of the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 6, 2020

Residential Tenancy Branch