



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 02, 2020 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent;
- For compensation for monetary loss or other money owed;
- To keep the security and pet damage deposits; and
- For reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Landlord. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the hearing package was sent to the Tenant by registered mail on January 03, 2020. The Landlord testified that the package was sent to an address the Tenant provided by text message. This text message was not in evidence. The Landlord submitted the customer receipt for the package with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows notice cards were left January 07, 2020 and January 13, 2020. It shows the package was unclaimed and returned to the sender.

The Landlord testified that some evidence, including the expense sheets submitted, was sent to the Tenant on February 09, 2020 by registered mail to the address the Tenant provided by text message. The Landlord provided Tracking Number 2 for this. I looked

Tracking Number 2 up on the Canada Post website which shows the package was delivered February 26, 2020.

The Landlord testified that she did not serve the itinerary or rental car evidence on the Tenant.

Based on the undisputed testimony of the Landlord, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the hearing package in accordance with section 89(1)(d) of the *Residential Tenancy Act* (the “Act”). The Tenant is not permitted to avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the hearing package January 08, 2020. I also find the Landlord complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

Based on the undisputed testimony of the Landlord and Canada Post website information, I am satisfied the Tenant was served with the evidence in accordance with section 88(d) of the *Act*. Based on the Canada Post website information, I am satisfied the Tenant received the evidence February 26, 2020. I find the Tenant was served with the evidence in sufficient time prior to the hearing.

The Landlord advised that the itinerary and rental car evidence was not served on the Tenant. The Landlord was required to serve all evidence on the Tenant pursuant to rule 3.14 of the Rules. Given this was not done, I exclude the itinerary and rental car evidence pursuant to rule 3.17 of the Rules as I find it would be prejudicial to the Tenant to consider evidence not served on him.

As I was satisfied of service of the hearing package and evidence, other than the itinerary and rental car evidence, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the admissible documentary evidence. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security and pet damage deposits?
4. Is the Landlord entitled to reimbursement for the filing fee?

Preliminary Issue – Compensation Amount

On the Application, the Landlord sought \$2,450.00 being \$2,050.00 for unpaid rent, \$300.00 for compensation for monetary loss or other money owed and \$100.00 for reimbursement for the filing fee.

The Landlord submitted three expense sheets in relation to the compensation for monetary loss or other money owed in the amounts of \$435.00, \$843.95 and \$870.95.

At the hearing, the Landlord sought \$895.95 in compensation for monetary loss or other money owed. I told the Landlord at the hearing that she was required to file an amendment if she was seeking more than the \$300.00 noted on the Application. I told the Landlord I would hear her on the full amount sought and make a decision about amending the Application in my written decision.

Section 59(2) of the *Act* states:

(2) An application for dispute resolution must...

(a) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings...

Rule 4.1 of the Rules states:

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office...

Rule 4.6 of the Rules requires an amendment to be served on the respondent.

Rule 4.2 of the Rules states:

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In my view, the requirements around including full particulars of a dispute in the Application for Dispute Resolution and amending an Application for Dispute Resolution in accordance with the Rules are there to ensure a respondent understands what they must answer to and what will be addressed at the hearing.

It is not the responsibility of the respondent to guess what the applicant is seeking. It is the responsibility of the applicant to make it clear in the Application for Dispute Resolution what they are seeking.

Here, the Application states that the Landlord is seeking \$300.00. The Landlord submitted three different expense sheets outlining three different amounts. The Landlord did not file an amendment or serve an amendment on the Tenant setting out a different amount than the \$300.00 sought on the Application.

I am not satisfied the Landlord complied with the Rules in relation to amending the Application. I am not satisfied it would have been clear to the Tenant that the Landlord was seeking \$895.95, an amount not set out anywhere in the Application or expense sheets. In the circumstances, I decline to allow an amendment to the Application. I will consider whether the Landlord is entitled to the \$300.00 sought in the Application.

I have considered the expense sheet totalling \$435.00 as this is the first expense sheet submitted on January 02, 2020 and the remaining expense sheets add to this expense sheet. I heard the Landlord on all of the items outlined.

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unpaid rent	\$2,050.00
2	Rental posting	\$35.00
3	Showing cost	\$50.00
4	Site inspection	\$50.00
5	Return flight to rental unit location	\$198.00
6	Rental car from airport to rental unit	\$102.00
7	Filing fee	\$100.00

The Landlord submitted one page of a written tenancy agreement. The Landlord confirmed the tenancy was between the Landlord and Tenant in relation to the rental unit. The tenancy started April 06, 2019 and was for a fixed term ending March 31, 2020. Rent was \$2,050.00 per month due on the 30th or 31st day of each month. The Landlord testified that the Tenant paid a \$1,025.00 security deposit and \$515.00 pet damage deposit. The Landlord testified that the tenancy agreement is signed by both parties.

The Landlord testified that the Tenant vacated and left the keys for the rental unit on December 31, 2019.

The Landlord testified that she asked the Tenant for his forwarding address and he provided it by text message on January 01 or 02, 2020.

The Landlord testified that the Tenant agreed in writing at the end of the tenancy that she could keep the security and pet damage deposits. She testified that she asked the Tenant to pay rent three times and he eventually replied that he had left the rental unit and returned the keys and would pay January rent in full. The Landlord testified that she followed up with the Tenant who responded that he did not have money and would have to forfeit his security and pet damage deposits. The Landlord testified that the Tenant sent this by text message. The Landlord had not submitted this text message.

The Landlord referred to a December 13, 2019 email in evidence from the Tenant stating he would pay rent in full for January and "stay on until the end of that month".

The Landlord testified as follows in relation to move-in and move-out inspections.

A friend did a move-in inspection with the Tenant on April 06, 2019. The unit was empty at the time. A Condition Inspection Report (CIR) was completed and signed by both parties. The CIR was emailed to the Tenant or given to him in person within a month or two of the inspection.

She did a move-out inspection on January 12, 2020. The Tenant did not participate. The Tenant was not offered two opportunities to do the move-out inspection. The Landlord completed the CIR and signed it. A copy of the CIR was not given to the Tenant.

The Landlord did not submit a copy of the CIR as evidence.

Unpaid rent and rental posting

The Landlord testified as follows.

The tenancy agreement was for a ten month term. The agreement was that the Tenant would live in the rental unit until the Landlord could return to live at the rental unit. She received a text message from the Tenant December 13, 2019 stating he wanted out of the lease January 15, 2020. She told the Tenant she was not sure she would find a new tenant for January 15, 2020 and that he was responsible for January rent.

The Tenant did not pay January rent but said she could keep the security and pet damage deposits.

On December 17, 2019, she listed the unit for rent on two websites. She reduced the rent by \$100.00. She got a new tenant for February 01, 2020 and rented the unit to the new tenant for \$1,900.00 per month.

Showing cost and site inspection

The Landlord testified as follows.

She lives in another province. She has friends that help her with the rental unit. A friend attended the rental unit to show it to potential tenants on December 22, 2019. It took her friend three hours to do this. She paid her friend \$50.00 for her time.

The Tenant abandoned the rental unit. When she found out, she sent another friend to do a site inspection to make sure there was no damage to the rental unit and to see if the Tenant left the fobs and parking passes. The friend had to drive out to the rental unit and was at the rental unit for a few hours. She paid the friend \$50.00 for his time.

Return flight and rental car

The Landlord testified as follows.

She could not re-rent the unit without seeing it personally so made a trip to the rental unit location. She purchased the cheapest flight available. She attended the rental unit location for 36 hours for the sole purpose of dealing with the rental unit. She had to get a rental car to attend the rental unit.

She attended the rental unit and determined what was needed to address any issues in the rental unit. She did touch-up painting. She discovered the faucet was broken and lights were burnt out. She did the move-out inspection during this trip.

The only admissible documentary evidence submitted that is relevant to the claims being considered are the tenancy agreement and email referred to above.

Analysis

Security and pet damage deposits

Section 38 of the *Act* sets out what must be done with security and pet damage deposits at the end of a tenancy and states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection]...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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...

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

I am satisfied of the following based on the undisputed testimony of the Landlord. The Tenant participated in the move-in inspection. The Tenant was not offered two opportunities to do a move-out inspection. Therefore, I find the Tenant did not extinguish his rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished her rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage and the Landlord has claimed for unpaid rent.

I am satisfied of the following based on the undisputed testimony of the Landlord. The Tenant vacated the rental unit December 31, 2019. The Tenant provided his forwarding address January 01 or 02, 2020. I find the tenancy ended for the purposes of section 38(1) of the *Act* on December 31, 2019. The Application was filed January 02, 2020. I find the Landlord complied with section 38(1) of the *Act*.

I am satisfied of the following based on the undisputed testimony of the Landlord. The Tenant agreed at the end of the tenancy in a text message that she could keep the security and pet damage deposits towards unpaid rent for January. I find section 38(4)(a) of the *Act* applies. Further, I find the Tenant agreed to the pet damage deposit being used towards unpaid rent as required by section 38(7) of the *Act*. I find the Landlord is entitled to keep the security and pet damage deposits towards unpaid rent.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Unpaid rent, rental posting and showing cost

I am satisfied based on the undisputed testimony of the Landlord and one page of the written tenancy agreement that the tenancy agreement was for a fixed term starting in April of 2019 and ending March 31, 2020.

I am satisfied based on the undisputed testimony of the Landlord and email in evidence that the Tenant gave notice December 13, 2019 seeking to end the tenancy January 15, 2020. I am also satisfied the Tenant vacated the rental unit December 31, 2019.

I am satisfied the Tenant breached section 45(2) of the *Act* by ending the fixed term tenancy early.

I am satisfied based on the undisputed testimony of the Landlord that the Tenant did not pay January rent but said she could keep the security and pet damage deposits. I accept the Landlord's testimony that the deposits totalled \$1,540.00. I am satisfied

based on the undisputed testimony of the Landlord that the unit was not re-rented until February 01, 2020. I am satisfied the Landlord lost \$510.00 in rent for January due to the Tenant's breach.

I am satisfied based on the undisputed testimony of the Landlord that she listed the unit for rent December 17, 2019 and reduced the rent amount. I am satisfied the Landlord mitigated the loss resulting from the Tenant's breach by attempting to re-rent the unit immediately.

I am satisfied the Landlord is entitled to recover \$510.00 in unpaid rent for January.

I am also satisfied the Landlord had to take steps to re-rent the unit given the Tenant ended the fixed term tenancy early. I am satisfied the Landlord is entitled to recover the costs associated with re-renting the unit which flow from the Tenant ending the fixed term tenancy early.

I am satisfied the Landlord paid \$35.00 for a rental posting based on the Landlord's undisputed testimony and the expense sheet. I find this amount reasonable as it is a minimal amount. I am satisfied the Landlord is entitled to this amount.

I am satisfied the Landlord paid a friend \$50.00 to show the unit based on the Landlord's undisputed testimony. I find this amount reasonable and likely lower than what it would have cost for the Landlord to hire a company to deal with re-renting the unit. I also find the amount reasonable as I accept that it took the friend three hours to attend and show the unit. I am satisfied the Landlord is entitled to this amount.

Site inspection

I am satisfied of the following based on the undisputed testimony of the Landlord. She lives in another province. The Tenant ended the fixed term tenancy early. The Landlord had to send a friend to check on the unit once the Landlord learned the Tenant had vacated. The Landlord did send a friend to do this and it took a few hours. The Landlord paid her friend \$50.00 for his time.

As stated, the Tenant breached the *Act* by ending the fixed term tenancy early. I accept that this resulted in the Landlord, who was out of the province, having to get someone to attend the rental unit and check that everything was in order. I am satisfied this cost the Landlord \$50.00. I find this amount reasonable as, again, it is likely less than what it would have cost the Landlord to hire a company to provide such a service. I find the

amount reasonable given it took the Landlord's friend a few hours to check the rental unit. I am satisfied the Landlord is entitled to this amount.

Return flight and rental car

I am satisfied based on the undisputed testimony of the Landlord that she had to return to the rental unit to deal with issues such as painting, lights and the broken faucet before re-renting the unit. I am satisfied the Landlord would not have had to return to the rental unit to deal with issues prior to re-renting it if the Tenant had not breached the *Act* by ending the fixed term tenancy early. I am satisfied the cost associated with returning to the rental unit does flow from the Tenant's breach.

I am satisfied based on the expense sheet submitted that it cost the Landlord \$300.00 to return to the rental unit. I am satisfied based on the undisputed testimony of the Landlord that the trip back was for the sole purpose of dealing with the rental unit and that she did deal with the rental unit. In my view, it was open to the Landlord to hire a company to deal with the rental unit and I am satisfied the amount claimed is likely comparable to what hiring a company would have cost. I find the amount reasonable. I am satisfied the Landlord is entitled to this amount.

Filing fee

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

I have found the Landlord is entitled to the compensation claimed. However, as stated above, I have only considered the \$300.00 requested in the Application. Therefore, I award the Landlord \$300.00 for the following items:

- Rental posting
- Showing cost
- Site inspection
- Return flight to rental unit location
- Rental car from airport to rental unit

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Unpaid rent	\$2,050.00 - \$1,540.00 for the security and pet damage deposits = \$510.00
2	Rental posting	\$300.00
3	Showing cost	Included in above
4	Site inspection	Included in above
5	Return flight to rental unit location	Included in above
6	Rental car from airport to rental unit	Included in above
7	Filing fee	\$100.00
	TOTAL	\$910.00

The Landlord is entitled to \$910.00 and is issued a monetary order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$910.00 and is issued a monetary order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

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: May 11, 2020

Residential Tenancy Branch