



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN LANDLORD PRO COPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD (tenant); MNDCL and FFL (Landlord)

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The agent BH attended for the landlord ("the landlord"). The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 27 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on January 25, 2020 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on January 30, 2020.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on January 30, 2020.

The landlord acknowledged receipt of the tenant's evidentiary package.

Preliminary Issue – tenant's claim

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the tenant has not attended, I order the tenant's application dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following uncontradicted testimony. The 1-year fixed term tenancy began on March 1, 2019 for monthly rent of \$1,950.00 payable on the first of the month. The tenant provided a security deposit of \$975.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The tenant notified the landlord by text on December 4, 2019 that he would vacate the unit at the end of December 2019. The tenant moved out on December 31, 2020.

A condition inspection was conducted on moving in which indicated that the unit was in good condition in all material aspects. On moving out, after many exchanged texts, the landlord testified that the tenant requested that the landlord conduct the move out inspection without the tenant being present. The landlord did so and copies of the condition inspection report on moving in and moving out were filed.

The tenant notified the landlord of his forwarding address in writing on January 7, 2020; a copy of the notification was submitted as evidence.

The landlord testified to his efforts to find a replacement tenant. He advertised on several websites, received calls and showed the unit to "5 or 6" people in January 2020. The landlord stated that it became evident that he would be unable to rent the unit for the asking rental of \$1,950.00. He accordingly reduced the rent by \$50.00 increments, finally renting the unit for \$1,800.00 on February 1, 2020 for a 1-year fixed term. The unit was vacant the month of January 2020.

When the tenant vacated, the landlord observed that cleaning, repairs to the drywall and replacement of some lightbulbs were required, all of which are noted on the condition inspection report and supported by many photographs. The landlord submitted a receipt for these items in the amount of \$337.00 for which he seeks compensation.

The landlord requested compensation for lost rent for the month of January 2020 and compensation for the reduced rent for the remainder of the term (\$150.00 a month x 4 months = \$600.00).

The landlord clarified his claim as follows:

ITEM	AMOUNT
Rent for January 2020	\$1,950.00
Loss of rent for February, March, April and May 2020, the remainder of the fixed term (\$150.00 x 4 = \$600.00)	\$600.00
Cleaning, repairs, lightbulbs	\$343.00
Reimbursement filing fee	\$100.00
TOTAL CLAIM BY LANDLORD	\$2,993.00

The landlord requested authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Total claim by landlord	\$2,993.00
(Security deposit)	(\$975.00)
TOTAL CLAIM	\$2,018.00

In summary, the landlord requested a monetary order of **\$2,018.00**.

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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

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

...

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Did respondent fail to comply with Act, regulations, or tenancy agreement?

Claim for rent

Section 44(1) of the Act lists fourteen categories under which a tenancy may be ended, and references section 45 of the Act. Section 45 of the Act deals with a tenant's notice to end a tenancy, and reads, in its entirety, as follows:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end **a fixed term tenancy** by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

In this dispute, the tenancy was a fixed term tenancy, so section 45(2) applies. The tenant gave notice by way of email to the landlord on December 4, 2019 and stated he would be moving out at the end of December 2019.

In other words, the tenant ended the tenancy on a date that was earlier than the date specified in the tenancy agreement as the end of the tenancy, which was May 31, 2020.

Thus, I conclude that the tenant breached section 45(2)(b) of the Act by ending the tenancy early.

Claim for cleaning, repairs, lightbulbs

Under section 37(2) of the Act, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Tenants are also generally responsible for replacing lightbulbs as set out in *Policy Guideline 1 – Landlord & Tenant - Responsibility for Residential Premises.*

In hearing the testimony of the landlord, supported by the condition inspection report and the photographs, I find the tenant failed in the tenant's obligation under section 37(2) and the Guideline with respect to cleaning, repairs and lightbulbs.

Did the loss or damage result from non-compliance?

Having found that the tenant breached the Act, I must next determine whether the landlord's loss resulted from that breach. This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

In this case, I find that but for the tenant's ending the tenancy as he did, that the landlord would not have suffered a loss of rent for January 2020 and would likely not have suffered a loss of the rent reduction for February, March, April and May 2020, that is, until the end of the fixed term.

With respect to the claim for cleaning, repairs and lightbulbs, I find that the landlord would not have incurred the expense of \$343.00 but for the tenant's breach of his obligations.

Has applicant proven amount or value of damage or loss?

The monthly rent was \$1,950.00. Five months remained on the fixed term tenancy. The landlord testified the unit was vacant the month of January 2020 and he incurred a loss of a full month's rent. The landlord also testified that the unit rented for \$1,800.00 monthly, at a loss of \$150.00 a month, commencing February 1, 2020.

I find that the landlord has proven the loss of rent for one month of \$1,950.00 and the loss of rent of \$150.00 for four subsequent months.

The landlord submitted a receipt for in excess of \$343.00 which is the amount claimed by the landlord for cleaning, repairs and lightbulbs. I find the landlord has established the cost of these items.

Has applicant done whatever is reasonable to minimize damage or loss?

The landlord testified that he made almost immediate efforts to find new tenants. He showed the unit "5 or 6 times" in January 2020, after the tenant vacated and the landlord conducted cleaning and repairs.

This number of showing are a sufficient number to establish that reasonable efforts were made to find a new tenant for February 1, 2020 at the same rent. The landlord stated that it is unreasonable to expect the landlord to find a new tenant for January 1 when the tenant gave notice on December 4. The landlord testified that he reduced the rent by \$50.00 increments until a tenant was located for \$1,800.00. That having been said, I find that reasonable efforts were made.

With respect to the claim for \$343.00 for cleaning, repairs and lightbulbs, I find the landlord made reasonable efforts to have these matters attended to in a cost and time efficient manner.

Conclusion

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 met the onus of proving all four criteria in establishing that he is entitled to compensation in the amount claimed.

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Rent for January 2020	\$1,950.00
Loss of rent for February, March, April and May 2020, the remainder of the fixed term (\$150.00 x 4 = \$600.00)	\$600.00
Cleaning, repairs, lightbulbs	\$343.00
Reimbursement filing fee	\$100.00
TOTAL AWARD LANDLORD	\$2,993.00

Finally, 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 successful, I grant his claim for reimbursement of the filing fee of \$100.00.

Further to section 72, the landlord is authorized to apply the security deposit to the award. The landlord is accordingly granted a monetary order of **\$2,018.00** as follows:

ITEM	AMOUNT
Total award – landlord (above)	\$2,993.00
(Security deposit)	(\$975.00)
TOTAL MONETARY ORDER	\$2,018.00

Conclusion

I hereby grant the landlord a monetary order in the amount of **\$2,018.00**, which must be served on the tenant. 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 *Residential Tenancy Act*.

Dated: June 11, 2020

Residential Tenancy Branch