# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Code CNR OLC MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on May 19, 2020 and amended on May 29, 2020 (the "Application"). The amendment changed the address for service of the Tenants and added claims related to the Landlord's alleged non-compliance with the Act, expanded on the Tenants' claim for money owed or compensation for damage or loss, and requested an administrative penalty.

The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing and were assisted by N.M., legal counsel. The Landlord attended the hearing on her own behalf and was accompanied by A.S., H.R., and R.S., witnesses. The Tenants, the Landlord, and the Landlord's witnesses provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Proceeding package and a subsequent amendment were served on the Landlord by email. The Landlord acknowledged receipt. Further, the Landlord testified the documentary evidence upon which she intended to rely was served on the Tenants by email. The Tenants acknowledged receipt. No issues were raised with respect to service or receipt of these packages during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Following the hearing on June 16, 2020, I issued an Interim Decision which included a cautionary note in response to the Landlord's behaviour on that date. It directed the parties "to wait until a speaker has finished speaking before responding…remain civil during the hearing and…address only the issue being dealt with at the time." The parties were reminded that "the reconvened hearing will address only the monetary claims set out in the Monetary Order Worksheet dated May 29, 2020 [but] will not revisit the nature of the agreement between the parties, which was addressed exhaustively during the hearing on June 16, 2020."

Rule of Procedure 6.10 stipulates the parties are not to behave inappropriately during a dispute resolution hearing. Throughout the 130-minute hearing, the Landlord frequently interrupted the Tenants, their counsel, and me. When asked specific questions related to the Tenants claims, the Landlord seemed unwilling to respond to the question asked and repeatedly provided responses related to the tenancy and her justification for changing the locks at the rental unit. Although cautioned on several occasions during the hearing, the Landlord continued to behave in this manner.

The Landlord's behaviour has not impacted this decision. As explained below, the burden of proof rests with the Tenants and I have found there was insufficient evidence before me to conclude the Tenants are entitled to all of the relief sought. However, in writing this note I direct the Landlord to act in accordance with Rule of Procedure 6.10 to ensure a fair, efficient, and consistent resolution of any future tenancy disputes.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement?
2. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

During the hearing, the parties agreed that the tenancy has ended. Therefore, the Tenants' request for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed and has not been considered further in this Decision.

For simplicity, and despite the protests of the Landlord during the hearing, I have referred to the arrangement between the parties as a tenancy throughout this decision. The parties disagreed with respect to a number of the terms of the agreement between them. The Tenants relied on a signed fixed-term tenancy agreement which described a tenancy that began on April 1, 2020 and was expected to continue to August 30, 2020. A copy of the tenancy agreement was submitted into evidence by the Tenants. Although its authenticity was not disputed by the Landlord, she also stated throughout the hearing that there was no tenancy. The Landlord's apparent contradictions in this regard are addressed in greater detail below. Despite what is indicated in the agreement, the parties agreed that each of the Tenants each rented a room in the rental property and shared common space, and that they paid a combined total of $1,760.00 per month.

The parties disagreed with respect to the payment of a security deposit. The Tenants testified they paid $880.00 to L.K. as agent for the Landlord. They relied on an email dated May 27, 2020, in which he confirms he acted in that capacity to collect the first month's rent and the security deposit. The Landlord testified that L.K. was never her agent and added that she never would have asked a 19-year-old student to do so. In any event, she testified she never received a security deposit from the Tenants. The parties agreed the Tenants paid a pet damage deposit of $200.00.

The parties agreed the Landlord changed the locks to the rental unit on May 21, 2020. The Landlord testified she did so at the recommendation of police after the Tenants stole the keys to the rental unit and allowed an unauthorized person to access the rental unit. The Tenants denied stealing keys or allowing an unauthorized person to enter the rental unit.

The Tenants seek a monetary order for money owed or compensation for damage or loss. The Tenants' request was set out on a Monetary Order Worksheet dated May 29, 2020.

First, the Tenants claimed $1,760.00 for rent paid on May 1, 2020. In support, the Tenants submitted screen shots of e-transfers on from each of the Tenants, dated May 1, 2020, each in the amount of $880.00. Both of the e-transfers were accepted by the Landlord. As noted above, the Tenants testified they were locked out of the rental unit without justification on May 21, 2020.

In reply, the Landlord denied rent was received as alleged. The Landlord also acknowledged locks were changed on May 21, 2020 because the Tenants had stolen the keys and had permitted an unauthorized person at access the rental unit.

Second, the Tenants claimed $1,438.01 for the cost of alternate accommodation due to being locked out of the rental unit on May 21, 2020. The Tenants testified they had to live elsewhere from May 21-31, 2020 because they did not have keys and felt unsafe. In support, the Tenants submitted a screen print of a payment for accommodation from May 21-24, 2020 in the amount of $538.01, and a screen print of text conversations confirming accommodation from May 25-31, 2020 in the amount of $900.00.

In reply, the Landlord denied the Tenants are entitled to the relief sought. The Landlord testified that H.R. waited at the property to provide the Tenants with new keys but that the Tenants did not show up. H.R. testified that she waited at the rental property but that the Tenants did not arrive while she was there. The Tenants testified that no prior arrangements were made with them to deliver keys to them.

Third, the Tenants claim $200.00 paid to a locksmith to gain access to the rental unit on May 21, 2020. The Tenants testified that when they arrived home the rental unit was locked, and their cat remained inside. The Tenants testified they paid the locksmith $150.00 by e-transfer and $50.00 in cash. A copy of an e-transfer to I.G. dated May 21, 2020 was submitted into evidence.

In reply, the Landlord noted that the Tenants did not provide an invoice for the locksmith. The Landlord also testified the unauthorized occupant was asked to take the cat from the rental unit when the locks were being changed but that it was placed in a bedroom instead.

Fourth, the Tenants claim $952.91 for moving and storage fees. An invoice dated May 24, 2020 was submitted into evidence. The Tenants testified they were forced to remove their belongings because the locks were changed. The Tenants also believed they had to vacate the rental unit because of an email from the Landlord dated May 16, 2020, in which the Landlord stated: “In consideration of all the events that have occurred due to [A.M.’s] conduct and behaviour, notice is given to both of you to vacate the home on or before May 31, 2020.” A copy of the email was submitted into evidence.

In reply, the Landlord denied the Tenants are entitled to moving and storage costs. Again, the Landlord testified the keys to the rental unit were stolen and that the Tenants chose to move out. The Landlord again denied receiving a security deposit from the Tenants.

Fifth, the Tenants claimed $118.22 for “unused” utilities. In support, the Tenants submitted a Fortis BC invoice in the amount of $61.20 with a billing date of May 27, 2020. The Fortis BC invoice included a balance from a previous invoice, but usage dates were not indicated. In addition, the Tenants submitted a BC Hydro invoice for the period from May 1-25, 2020 in the amount of $57.02. Both invoices confirmed that service was discontinued on May 25, 2020.

In reply, the Landlord denied the Tenants are entitled to recover utilities because the services were used by the Tenants until May 25, 2020.

Sixth, the Tenants claim $3,520.00 for rent for June and July 2020. On behalf of the Tenants, N.M. submitted that the written notice in the email of May 16, 2020 was, in effect, a notice to end tenancy for landlord's use of property because it suggested the Landlord's family would be moving into the rental unit.

In reply, the Landlord denied the Tenants are entitled to recover June and July rent, which was never paid.

Seventh, the Tenants claimed $880.00 for the return of the security deposit and $200.00 for the return of the pet damage deposit. As noted above, the Tenants testified the security deposit was paid to L.K., who claimed in an email dated May 27, 2020 to have collected the security deposit and the first month's rent on behalf of the Landlord. The Tenants testified they provided the Landlord with a forwarding address in writing by email on May 26, 2020, after the Application had been made.

In reply, the Landlord acknowledged receipt of the Tenants' email and confirmed she responded to it. The Landlord testified that L.K. was never her agent.

Finally, at the conclusion of the hearing, N.M. requested that an administrative penalty be issued against the Landlord. The Tenants also sought to recover the filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers the director 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 because 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 the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

This claim highlights the pitfalls of failing to fully understand the rights and obligations of parties who are subject to a tenancy agreement. While there was considerable disagreement between the parties, I find that a tenancy existed. Specifically, I find that a fixed-term tenancy began on April 1, 2020 and was expected to continue to August 30, 2020. I find the Tenants rented two rooms in the rental property for a total of $1,760.00 per month. In light of my application of Rule of Procedure 2.2, below, I decline to make any determination with respect to the security deposit. However, I do find the Tenants paid a pet damage deposit directly to the Landlord in the amount of $200.00, which the Landlord holds. Finally, I find the tenancy ended on May 24, 2020 when the Tenants removed their belongings from the rental unit before the end of the fixed term, pursuant to section 44(1)(d) of the *Act*.

With respect to the Tenants' claim for $1,760.00 for rent paid on May 1, 2020, I find there is insufficient evidence before me to grant the relief sought. The Tenants testified they retained a locksmith to provide access to the rental unit on May 21, 2020, the same day the locks were changed by the Landlord. I find there is no compelling reason to conclude that the Tenants could not have remained in the rental unit while issues of access were being resolved. Notwithstanding the challenges presented by the Landlord's actions, the Tenants were parties to a written, fixed-term tenancy agreement

that could have been submitted into evidence as part of an application for dispute resolution seeking to resolve the access and tenancy issues. Further, I find there is insufficient evidence before me to conclude the Landlord issued a notice to end tenancy that complied with section 52 of the *Act*. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for $1,438.01 for accommodation costs, I find there is insufficient evidence before me to grant the relief sought. While I accept the Tenants incurred the loss, I find the rental unit was available to them on May 21, 2020 when they retained a locksmith to provide access to the rental unit. I find there is no compelling reason to conclude that the Tenants could not have remained in the rental unit while issues of access were being resolved. The Tenants had a written, fixed-term tenancy agreement with the Landlord and had paid rent to May 31, 2020. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for $200.00 paid to a locksmith, I find the Tenants are entitled to the amount sought. I find that the Landlord, without sufficient justification and without notice to the Tenants, changed the locks to the rental unit on May 21, 2020. I do not accept the evidence of the Landlord who testified the Tenants stole the keys to the rental unit, or that the Landlord was justified in changing the locks because there was an unauthorized person in the rental unit. The parties were subject to a written, fixed-term tenancy agreement that provided the Tenants with various rights and obligations, including exclusive possession of the rental unit pursuant to section 28 of the *Act*. The Tenants are granted a monetary award in the amount of $200.00.

With respect to the Tenants' claim for $952.91 for moving and storage fees, I find there is insufficient evidence before me to grant the relief sought. While I accept the Tenants incurred this expense, I find there was no obligation on the Tenants to vacate the rental unit or move their belongings. As stated above, the Tenants could have remained in the rental unit until the access issues were resolved, or until the tenancy otherwise ended in accordance with the *Act*. The Tenants and the Landlord were parties to a written, fixed-term tenancy agreement that continued to August 30, 2020. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for $118.22 for "unused" utilities, I find there is insufficient evidence before me to grant the relief sought. While I accept the Tenants incurred this expense, I find there was no obligation on the Tenants to vacate the rental unit, move their belongings, or cancel these services. The Tenants could have remained in the rental unit until the access issues were resolved, or until the tenancy ended in accordance with the *Act*. The Tenants and the Landlord were parties to a written, fixed-

term tenancy agreement in effect until August 30, 2020. I also find there was insufficient particularization of the Fortis BC invoice to determine the amount of the Tenants' claim. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for $3,520.00 for rent for June and July 2020, I find there is insufficient evidence before me to grant the relief sought. As I have indicated above, I find the Tenants voluntarily vacated the rental unit on May 24, 2020. I accept that the Landlord asked them in an email dated May 16, 2020 to move out of the rental unit by May 31, 2020. I also accept that the Landlord changed the locks to the rental unit on May 21, 2020. However, despite these challenges, the Tenants had the option to remain in the rental unit and resolve any disputes regarding access to the rental unit using the dispute resolution process. I also note there was no dispute that the Tenants did not pay rent for this period. With respect to the submission that the Landlord's email dated May 16, 2020 was, in effect, a notice to end tenancy for landlord's use of property and entitled the Tenants to compensation, I disagree. Section 52 of the *Act* confirms that a notice to end tenancy, when given by the Landlord, must be in the approved form. In this case, the email dated May 16, 2020 was not in the approved form. As a result, it was ineffective to end the tenancy and did not give rise to a right to compensation under section 51 of the *Act*. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for $880.00 for the return of the security deposit and $200.00 for the return of the pet damage deposit. This claim was set out on the Monetary Order Worksheet submitted by the Tenants. However, Rule of Procedure 2.2 confirms that claims are limited to what is stated in the application. Therefore, I find this claim was not properly made and that this aspect of the Application is dismissed with leave to apply.

With respect to the Tenants' request for an administrative penalty to be levied against the Landlord, section 87.3 of the *Act* authorizes the director of the Residential Tenancy Branch to order a person to pay an administrative penalty if the director is satisfied on a balance of probabilities that the person has contravened a provision of the *Act* or the regulations, or failed to comply with a decision or order of the director. The purpose of an administrative penalty is to ensure compliance with the *Act* and to serve as a deterrent. However, the administrative penalty process is separate from the dispute resolution process. The purpose of the dispute resolution process is to facilitate the resolution of disputes between landlords and tenants. The administrative penalty process involves only the director and the person who may have contravened the *Act*, Regulation or an order or decision of the Director. As the Tenants' request was made

in the context of a dispute resolution proceeding, I decline to grant the Tenants' request that the Landlord be required to pay an administrative penalty.

Having been partially successful, I find the Tenants are entitled to recover the filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of $300.00, which is comprised of $200.00 for locksmith charges and $100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of $300.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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: July 20, 2020

Residential Tenancy Branch