



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 24, 2020 (the “Application”). The Landlord applied as follows:

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

This matter came before me for a hearing June 16, 2020 but did not complete. The matter was adjourned and completed June 19, 2020.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties had a previous hearing on File Number 1. The Arbitrator ordered return of the \$1,000.00 security deposit. I told the Landlord at the hearing that a decision on the security deposit has been made and he is to comply with that decision. I told the parties I would not re-consider the security deposit issue. The request to keep the security deposit is dismissed without leave to re-apply.

The Landlord submitted evidence prior to the hearing. The Tenant submitted the prior decision on File Number 1. I addressed service of the hearing package and Landlord's evidence. The Tenant confirmed receipt of the hearing package. The Tenant confirmed

receipt of some evidence but not the photos of damage. The Landlord testified that he served everything on the Tenant in hardcopy and on a USB.

Pursuant to rule 3.5 of the Rules of Procedure (the “Rules”), the Landlord has to demonstrate that the Tenant was served with all evidence as required by the *Residential Tenancy Act* (the “Act”) and Rules.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus.

Here, the Landlord testified that all evidence was served on the Tenant. The Tenant testified that he did not receive photos of damage to the rental unit. The Landlord did not submit further evidence of service to support his testimony that all evidence was served on the Tenant. Therefore, the Landlord has failed to demonstrate that the photos of damage were served on the Tenant as required by rule 3.14 of the Rules.

Pursuant to rule 3.17 of the Rules, I exclude the photos of damage to the rental unit. I find it would be unfair to consider the photos when I am not satisfied they were served on the Tenant as I am not satisfied the Tenant has had an opportunity to review and respond to the photos.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all admissible documentary evidence submitted. 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 damage to the rental unit?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Cost of time spent seeing police, court system	10 hours at \$80.00 per hour
2	Loss of sleep due to stress from threats	\$80.00 per hour for a total of \$1,650.00
3	Gas for driving to and from the rental unit to get supplies/take stuff out	9 hours x 2 days for a total of \$850.00
4	Cleaning	3 days of 5 hours of cleaning, \$300.00 per 3 hours of cleaning
5	Drywall repairs in rooms, living room and hallway	\$450.00 per room
6	Plumbing for clogged shower	\$300.00
7	Patio deep clean	2 days of 4 hours of work, \$50.00 per hour for a total of \$400.00
8	Cost of moving truck, gas, insurance	\$145.00
9	Time spent finding a new tenant – posting, interviews, showings	\$80.00 x 12 hours for a total of \$960.00
10	Getting the Tenant's stuff to and from people	4 hours, \$320.00
11	September rent	\$2,000.00
12	Cost of new fobs, keys, locks	\$60.60
13	Strata fines	\$695.00

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 01, 2018 and was for a fixed term ending October 01, 2019. Rent was \$2,000.00 per month due on the first day of each month. The Tenant paid a \$1,000.00 security deposit.

The prior Arbitrator on File Number 1 found that the tenancy ended September 01, 2019 based on text messages from the Tenant to the Landlord. The prior Arbitrator stated:

I find that on a balance of probabilities, the tenant ended the tenancy by abandoning it on September 1st, a month before the end of the original fixed term of October 1st.

The parties agreed that a formal move-in inspection was not done and no Condition Inspection Report ("CIR") was completed. The Landlord testified that a formal inspection was not discussed with the Tenant.

The Landlord testified that a CIR was not completed on move-out because the Tenant left before the tenancy was over and he could not get a hold of the Tenant. The Landlord testified that he did not do an inspection on his own. The Tenant agreed that no move-out inspection was done and denied that the Landlord tried to reach him.

The parties testified as follows in relation to the specific monetary claims.

#1 Cost of time spent seeing police, court system

The Landlord sought compensation for the time it took to file the Application. The Landlord testified that he thought the claim had to be made in Small Claims Court and spent time waiting at Small Claims Court. The Landlord testified that he had to take time off work to attend Small Claims Court because of their hours.

The Tenant disputed this claim and submitted that the Landlord should have known the process to file the Application and could have obtained this information online.

#2 Loss of sleep due to stress from threats

The Landlord testified that the Tenant threatened him which caused him to be afraid for his safety. The Landlord testified that the threats were made September 10th, 11th, 19th and 30th over voicemail. The Landlord played one of the voicemails during the hearing. The person in the voicemail does not identify themselves. The Landlord testified that the threats caused him to miss work. The Landlord advised that the amount sought is based on loss of wages as well as compensation for feeling stressed and losing sleep.

When asked what the breach of the *Act, Residential Tenancy Regulation* (the "*Regulations*") or tenancy agreement by the Tenant was, the Landlord stated that the breach was the Tenant ending the tenancy early. I understood the Landlord to submit that the threats arose out of, or were as a result of, this occurrence.

The Tenant denied threatening the Landlord over voicemail and did not agree that the person in the voicemail played during the hearing was him. The Tenant also submitted that the Landlord should have provided evidence that he took time off work if he did so.

#3 Gas for driving to and from the rental unit to get supplies/take stuff out

The Landlord testified that this item is for gas for the U-Haul he had to rent to remove belongings and garbage the Tenant left in the rental unit. The Landlord testified that he had to drive to the dump twice. The Landlord also testified that this item relates to gas for his vehicle for driving to rent the U-Haul as well as picking up supplies to do repairs at the rental unit.

The Landlord referred to a U-Haul contract in evidence to show the cost for gas. The Landlord said he did not submit a receipt for gas for his vehicle.

The Tenant testified as follows. He does not know if the Landlord rented a U-Haul for his belongings. In the previous hearing, the Landlord said he moved the Tenant's belongings to his mother's and storage. There is no evidence the Landlord used a U-Haul for the Tenant's belongings. The Landlord does not have photos of the Tenant's belongings. The Landlord changed the locks with all of the Tenant's belongings in the rental unit.

In reply, the Landlord referred to a text from the Tenant referred to in the prior decision where the Tenant indicates his belongings have been removed from the rental unit. The Landlord testified that he had a right to deem the Tenant's belongings as abandoned. The Landlord testified that he did not take photos of the Tenant's belongings in the rental unit at the end of the tenancy.

Given the Landlord's reply, I raised an issue about the following statement at page 4 of the prior decision in the "Background and Evidence" section:

The landlord did not conduct a written inventory of the tenant's goods; however, he photographed each item. The landlord did not provide the photos as evidence in these proceedings.

I asked the Landlord about the change in his testimony from the previous hearing. The Landlord said the statement in the previous hearing was a miscommunication. The Landlord then said something to the effect of he did not take photos but had the Tenant's possessions of value and therefore could have taken photos.

#4 Cleaning

The Landlord confirmed he is seeking \$100.00 per hour for cleaning the rental unit. The Landlord testified as follows. It took three days to clean the rental unit. Cleaning took five hours each day. He based the amount sought on a cleaning website. It took five hours just to clean and deal with the clogged shower. His friend who is a plumber had to come and unclog the shower. The patio was filthy with stains and cigarette butts. He had to rent a carpet cleaner and clean the carpets. He had to clean the kitchen.

The Tenant questioned how the Landlord arrived at the compensation amount sought. The Tenant testified as follows. The Landlord changed the locks. The Tenant did not have a chance to clean the rental unit. He does not know what the Landlord is referring to in relation to the patio or carpet. He told the Landlord the shower was clogging, and the Landlord did not address this. He would have cleaned the rental unit, but the Landlord changed the locks.

#5 Drywall repairs in rooms, living room and hallway

The Landlord testified as follows. There were holes and damage to the walls throughout the rental unit. The walls in two bedrooms and the living room of the rental unit needed to be mudded and painted at the end of the tenancy. Every wall in these rooms had holes in them that needed to be filled and painted. He and his brother did the repairs. The cost claimed is for labour and materials. Receipts from the dollar store and painting store have been submitted. The labour charge is \$80.00 per hour for two people. It took ten hours to do the work.

The Tenant testified as follows. There was no inspection done at the start of the tenancy. The holes and damage are probably the Landlord's. The Landlord could have damaged the walls while taking his belongings out of the rental unit. Other than this, there was no damage.

#6 Plumbing for clogged shower

The Landlord testified that he paid his friend who is a plumber \$300.00 to fix the clogged shower. The Landlord also testified about purchasing Drano and a claw to assist in unclogging the shower.

The Landlord did not submit evidence showing he paid his friend \$300.00. The Landlord testified that the Drano and claw are on the dollar store receipt submitted.

The Tenant testified that they never did an inspection, so he does not know if the clogged shower was caused “afterwards”.

#7 Patio deep clean

The Landlord testified as follows. He cleaned the patio with a pressure washer. He had to contact people in units below because the cleaning affected them. He also cleaned the patio of the unit below because of how dirty the patio of the rental unit was.

The Tenant questioned why it took eight hours to clean a 70 square foot patio. The Tenant also questioned the Landlord’s testimony about needing to notify people in units below about the cleaning. The Tenant further testified as follows. There was no inspection done. He cannot tell what the Landlord did “after”. He kept the patio clean.

#8 Cost of moving truck, gas, insurance

The Landlord testified that this item is the breakdown of the rental truck costs. The Landlord confirmed this item relates to the Tenant’s belongings being left in the rental unit. The Landlord referred to the U-Haul documentation in evidence to show the cost.

The Tenant testified that he offered to take his belongings out of the rental unit and that he could not do more than this.

#9 Time spent finding a new tenant – posting, interviews, showings

The Landlord sought compensation for this item because the Tenant did not give notice of moving out and left a month before the end of the tenancy. The Landlord testified that it was a challenge to re-rent the unit because of the state of the rental unit at the end of the tenancy. The Landlord testified that the rental unit was vacant for September and October. He testified that he posted the unit for rent September 4th or 5th on a rental website for the same rent amount. The Landlord testified that he received notice the Tenant had vacated September 2nd or 3rd.

The Tenant testified as follows. He sent the Landlord the text about his stuff being out. He never said he was not going to pay rent. He was going to pay rent and do an inspection with the Landlord. He had only taken his clothes out of the rental unit. He was going to move his stuff out over the month of September. The Landlord changed the locks. He had no access to the rental unit after September 2nd. The Landlord

posted the unit on a rental website as fully furnished and available September 17th for rent of \$1,750.00.

The Landlord denied that the rental advertisement referred to by the Tenant was posted by him.

#10 Getting the Tenant's stuff to and from people

The Landlord testified as follows. The Tenant abandoned the rental unit and his belongings. The Landlord allowed his family to come to the rental unit and take the Tenant's belongings on September 5th, 7th or 8th. He then had to get the belongings back when the Tenant asked for them back. He is seeking compensation for the time it took him to get the Tenant's belongings back from his family.

The Tenant submitted that the Landlord originally said he threw the Tenant's belongings away and is now saying he gave the belongings to family.

#11 September rent

The Landlord testified as follows. The Tenant sent a text September 02, 2019 telling the Landlord to talk to his sister and everything was out. To the Landlord, this meant the Tenant had moved out. The Tenant did not pay rent for September.

The Tenant testified that he never intended to not pay rent for September and again testified that the Landlord changed the locks. The Tenant denied that he should have to pay September rent because the previous Arbitrator found he had been "kicked out" September 01, 2019.

The Landlord referred to a text submitted in which he says the Tenant said he was not paying September rent.

#12 Cost of new fobs, keys, locks

The Landlord testified that he had to replace fobs, keys and locks because the Tenant did not return the fobs or keys. The Landlord testified that he asked the Tenant to return these, but the Tenant did not do so. The Landlord said the receipt for these was submitted.

The Tenant testified that the Landlord changed the locks without his knowledge. The Tenant said he does not know when the Landlord asked for the fobs and keys back. The Tenant testified that he got rid of the fobs and keys because the Landlord changed the locks so he assumed the Landlord did not want these back.

#13 Strata fines

The Landlord sought to recover strata fines issued during the tenancy. The Landlord testified that the fines were for parties and the Tenant's family damaging the amenities room. The Landlord testified that he did not have the Tenant sign a Form K with the tenancy agreement and did not give the Tenant a copy of the strata bylaws at the start of the tenancy. The Landlord testified that the Tenant should have known loud parties would disrupt neighbours.

The Tenant testified as follows. He did not know about noise bylaws. He never received complaints, so he had no idea what was going on. Complaints can be appealed or disputed. He did not have loud parties during the tenancy. He listened to music but not past 9:00 p.m.

In reply, the Landlord testified that the fines were sent to the Tenant.

Analysis

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.

As stated above, when one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I note at the outset that I have concerns about the reliability and credibility of both the Landlord and Tenant.

In relation to the Landlord, I find he told the Arbitrator during the previous hearing that he took photos of each item of the Tenant's belongings left in the rental unit at the end of the tenancy. The prior decision states this at page 4. At this hearing, the Landlord testified that he did not take photos of the Tenant's belongings. I am not satisfied there was a miscommunication as the issue of whether photos were taken or not is a straightforward issue. The Landlord attempted to explain the discrepancy by stating that he had the Tenant's belongings so could have taken photos. This does not explain why he told the prior Arbitrator that he took photos as this is a different statement. I have concerns about the reliability and credibility of the Landlord given this.

In relation to the Tenant, at the first hearing, he testified that he told the Landlord about the clogged shower and the Landlord did not do anything about it. At the second hearing, the Tenant suggested that the Landlord could have caused the clogged shower after the end of the tenancy as there was no inspection done. I find these two positions contradictory. This raises some concerns about the Tenant's position on the items claimed.

However, I emphasize that this is the Landlord's Application and the Landlord has the onus to prove the claim. The Tenant does not have the onus to prove the Landlord is not entitled to the compensation sought. Where the Tenant has disputed the claim, I

have considered the testimony of the Landlord and whether there is further evidence to support the testimony.

#1 Cost of time spent seeing police, court system

In my view, parties are not usually entitled to the costs associated with filing Applications for Dispute Resolution. I would only consider awarding this in very rare circumstances. This is not one of those circumstances. There is nothing about the Application, circumstances or alleged breaches by the Tenant that cause me to find this is a rare circumstance where such costs should be awarded.

Further, I am not satisfied the loss claimed is due to the Tenant. The Landlord is claiming for time spent at Small Claims Court. Filing the Application did not necessitate the Landlord attending Small Claims Court. The Tenant is not responsible for compensating the Landlord for time spent at Small Claims Court when this was not a necessary part of filing the Application.

#2 Loss of sleep due to stress from threats

I am not satisfied the Landlord is entitled to compensation for this item. The breach alleged by the Landlord is the Tenant ending the fixed term tenancy early. Although this is a breach, I am not satisfied it is sufficiently connected to the Tenant allegedly threatening the Landlord. In my view, any threats made by the Tenant between September 10th and September 30th, which is after the tenancy ended, are not a basis for compensation under the *Act*.

#3 Gas for driving to and from the rental unit to get supplies/take stuff out

The Landlord sought compensation for gas for his vehicle and a U-Haul.

The Landlord did not submit receipts showing the cost of gas for his vehicle. The Landlord has failed to prove the amount or value of the loss claimed and therefore has failed to prove he is entitled to compensation for gas for his vehicle.

In relation to gas for the U-Haul, I am satisfied a sofa, a television and clothes were left in the rental unit at the end of the tenancy as the Arbitrator found this in the previous decision (page 8).

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Leaving items in a rental unit is a breach of section 37 of the *Act*. I am satisfied the Tenant breached section 37 of the *Act* by leaving at least a sofa, television and clothes in the rental unit.

Given a sofa was left in the rental unit, I am satisfied the Landlord was justified in renting a U-Haul to remove the sofa and other items. I am not satisfied a sofa could have been removed with an average vehicle. The U-Haul documentation shows the Landlord rented the U-Haul September 8th and 9th. These dates accord with the end of the tenancy and I am satisfied the U-Haul was used to remove items from the rental unit given this.

The U-Haul documentation shows the Landlord paid \$71.95 for the rental. There is no further documentary evidence submitted showing additional costs for the rental. I award the Landlord the \$71.95 shown in the U-Haul documentation.

I acknowledge that the Tenant's position continues to be that the Landlord changed the locks without his knowledge. However, the prior Arbitrator found that the Tenant abandoned the rental unit and I am bound by that decision.

#4 Cleaning

Pursuant to section 37 of the *Act*, the Tenant was required to leave the rental unit reasonably clean at the end of the tenancy. I am satisfied the Tenant did not leave the rental unit reasonably clean given the Tenant left items in the rental unit. Further, the Tenant acknowledged he did not clean the rental unit and testified that this was because the Landlord changed the locks and the Tenant did not have a chance to clean. As stated, the prior Arbitrator found the Tenant abandoned the rental unit and I am bound by that decision. Therefore, I am not satisfied the Tenant did not have a chance to clean the rental unit prior to leaving the rental unit. I am satisfied the Tenant breached section 37 of the *Act* by leaving items in the rental unit and not cleaning the rental unit.

I am satisfied the Landlord had to remove items from the rental unit and clean the rental unit given I am satisfied the Tenant did not do these things.

However, I am not satisfied the Landlord has proven the amount or value of the damage or loss claimed in relation to cleaning.

The Landlord has not submitted compelling evidence of the state of the rental unit at the end of the tenancy such that I can be satisfied of the extent of cleaning required. The Landlord did not do a CIR to show the state of the rental unit. The Landlord did not submit witness statements about the state of the rental unit. The Landlord did not submit receipts showing he rented a carpet cleaner. The Landlord did submit photos of the rental unit. The photos relating to damage have been excluded. The Landlord did not submit photos showing the rental unit required cleaning, other than a photo of the shower. I understood the Tenant to state that he did not receive this photo and therefore I have not relied on it. However, in any event, the Landlord did not submit photos of the patio, carpet or kitchen.

Given the lack of compelling evidence to show the extent of cleaning required, I am not satisfied the rental unit required 15 hours of cleaning.

Further, the average cleaning person charges \$20.00 to \$25.00 per hour for cleaning. The Landlord is therefore not entitled to \$100.00 per hour for cleaning as this is an unreasonable amount and the cleaning could have been done for much less per hour.

Policy Guideline 16 states:

“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. (emphasis added)

Here, I am satisfied the Tenant breached the Act. The Landlord has failed to prove the breach resulted in the amount of damage or loss claimed. Therefore, I award the Landlord nominal damages of \$125.00. I have awarded this amount in part because I am satisfied it is reasonable that cleaning the rental unit would have cost at least this much given the Tenant left items in the rental unit and did not clean the rental unit. However, I cannot be satisfied that it is reasonable that cleaning cost more than this in the absence of further evidence to support this.

#5 Drywall repairs in rooms, living room and hallway

In relation to damage to the walls of the rental unit, the Landlord must prove that it is the Tenant who caused the damage and that the damage was not there at the start of the tenancy. The Landlord has failed to prove this. The Landlord did not do a move-in inspection or CIR and therefore I do not have this evidence before me showing the state of the rental unit at the start of the tenancy. The Landlord did not submit witness statements or photos to prove the state of the rental unit at the start of the tenancy. In the circumstances, I am not satisfied as to the state of the rental unit at the start of the tenancy and cannot be satisfied that damage to the walls at the end of the tenancy was caused by the Tenant. The Tenant did not acknowledge causing damage to the walls. In the circumstances, I am not satisfied the Tenant breached section 37 of the *Act* in relation to damage to the walls. In the absence of a finding of a breach, the Landlord is not entitled to the compensation sought.

#6 Plumbing for clogged shower

I am satisfied the shower was clogged at the end of the tenancy as the Tenant acknowledged the shower was clogging during the tenancy. The Tenant testified that he contacted the Landlord about this and the Landlord did not address the issue. I am not satisfied the Tenant did contact the Landlord about a clogged shower as I would expect to see some written communication about this. There is no such written communication before me. I am satisfied the Tenant caused the shower clog as I am satisfied the Tenant did not contact the Landlord about it, which I find the Tenant would have done if the issue was present at the start of the tenancy.

In the circumstances, I am satisfied the Tenant clogged the shower during the tenancy and left it clogged at the end of the tenancy. I am satisfied the Tenant breached section 37 of the *Act* in this regard.

I am satisfied the Landlord had to fix the clogged shower.

However, I am not satisfied the Landlord has proven the amount or value of the damage or loss claimed.

I am not satisfied the Landlord paid a friend \$300.00 to fix the shower. I would expect to see some documentary evidence of payment from a landlord to a plumber, whether it is a friend or not, when such costs arise out of a tenancy.

The Landlord has not submitted admissible or compelling documentation showing the extent of the clog or that a plumber was required to fix the clog.

The only related cost I can see on the receipts submitted is for “Auger, Drain” for \$25.75. I am satisfied this is a cost associated to the clogged shower.

I am also satisfied the Landlord is entitled to some compensation for the time it would reasonably take to fix the clog. Given the lack of evidence, I am not satisfied the clog was such that it reasonably required more than an hour to fix.

In the circumstances, I award the Landlord \$55.00 for the time and materials to fix the shower.

#7 Patio deep clean

The Tenant disputed that the patio was dirty at the end of the tenancy. The Landlord has not submitted any evidence to support his testimony about the state of the patio at the end of the tenancy such as photos, witness statements or a CIR. The Landlord did not submit evidence of corresponding with neighbours. In the circumstances, I am not satisfied the patio was dirty at the end of the tenancy. I note that I am not satisfied based on the findings that the Tenant left items in the rental unit and did not clean the rental unit that the patio was left dirty as this is outside and a separate portion of the rental unit. I am not satisfied the Tenant breached section 37 of the *Act* in relation to the patio. I am not satisfied the Landlord has proven he is entitled to the compensation sought.

#8 Cost of moving truck, gas, insurance

I have addressed this above and awarded the Landlord the cost of the U-Haul as shown in the documentation provided.

#9 Time spent finding a new tenant – posting, interviews, showings

The prior Arbitrator found the Tenant abandoned the rental unit and I am bound by this finding. There is no issue that this was a fixed term tenancy agreement. To end the tenancy, the Tenant had to comply with section 45(2) of the *Act* which states:

(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.

I am satisfied the Tenant did not comply with section 45(2) of the *Act* given the prior decision that the Tenant abandoned the rental unit September 01, 2019.

I am satisfied the Landlord had to make efforts to re-rent the unit earlier than he otherwise would have had the Tenant not abandoned the rental unit. If the Tenant had not abandoned the rental unit, the tenancy would have continued until at least October 01, 2019. I am satisfied the Landlord had to try and re-rent the unit for September because of the Tenant's breach.

The Landlord submitted no documentary evidence to support his testimony about this item. He did not submit rental advertisements. He did not submit evidence of corresponding with potential tenants. He did not submit evidence of interviews or showings. However, the Tenant did not dispute that the Landlord tried to re-rent the unit and in fact testified about a rental advertisement. The Landlord disagreed that he posted the advertisement referred to by the Tenant; however, the point is the Tenant did not take the position that the Landlord did not try to re-rent the unit. In the circumstances, I am satisfied the Landlord did take steps to try and re-rent the unit. I am satisfied this took some time as this is common sense. However, given the lack of compelling evidence provided, I am not satisfied as to how much time and effort the Landlord put into re-renting the unit.

I note that the Landlord referred to the state of the rental unit as an issue in relation to this item. However, the Landlord is claiming for time spent finding a new tenant. The Landlord did not clarify how the state of the rental unit relates to this.

In the circumstances, I am satisfied the Tenant breached the *Act* and that the Landlord suffered loss because of this. However, I am not satisfied the Landlord spent 12 hours making efforts to re-rent the unit given the lack of compelling evidence on this point. Nor am I satisfied that \$80.00 per hour is a reasonable amount. Considering the above, I award the Landlord \$480.00 which is half the amount requested. I award this amount

as I am satisfied it balances the fact that the Landlord took time to re-rent the unit with the fact that the Landlord failed to provide compelling evidence of how much time or why the amount sought is reasonable.

#10 Getting the Tenant's stuff to and from people

I decline to award the Landlord compensation for the time he spent allowing his family to take the Tenant's possessions and the time he spent getting them back when the Tenant requested them back.

As stated in the previous decision, the Landlord breached section 25 of the *Regulations* in relation to how he handled the Tenant's belongings at the end of the tenancy. Section 25(1) of the *Regulations* sets out what the Landlord was required to do with the Tenant's belongings. Section 25(2) of the *Regulations* sets out exceptions to section 25(1)(a) of the *Regulations*. The Landlord has failed to prove section 25(2) of the *Regulations* applies as the Landlord has failed to prove the amount, nature or value of the items left in the rental unit as the Landlord did not do a CIR, did not provide witness statements about this, did not take photos of the belongings and did not do a written inventory of the belongings. In the circumstances, I am satisfied the Landlord was required to comply with section 25(1) of the *Regulations*.

Pursuant to section 25(1) of the *Regulations*, the Landlord was required to store the Tenant's belongings for 60 days. Therefore, the Landlord was not entitled to allow his family to attend the rental unit between September 5th and 8th and take the Tenant's belongings. I find the Landlord breached the *Regulations* by doing this. The Landlord is not entitled to compensation for the time he spent doing something in breach of the *Regulations*.

#11 September rent

This was a fixed term tenancy. The Tenant was only permitted to end the tenancy in accordance with section 45(2) of the *Act*. The Tenant abandoned the rental unit September 01, 2019 and therefore failed to comply with section 45(2) of the *Act*.

I am satisfied the Landlord lost September rent because of the Tenant's breach. Had the Tenant complied with section 45(2) of the *Act*, the Landlord would have received September rent.

I am satisfied the Landlord did not re-rent the unit for September given the text communications between the parties throughout the first week of September. I did not understand the Tenant to take the position that the Landlord did re-rent the unit for September.

I am satisfied the Landlord mitigated his loss by trying to re-rent the unit in September. Again, the Landlord submitted no documentary evidence of this. However, the Tenant did not dispute this and in fact took the position that the Landlord did post the unit for rent for September. I am also satisfied that re-renting the unit was delayed because the Tenant had left items in the rental unit and not cleaned the rental unit.

In all of the circumstances, I am satisfied the Landlord is entitled to September rent.

I note that the Tenant submitted that he should not have to pay September rent because the prior Arbitrator found the Tenant had been “kicked out” September 01, 2019. This is not what the prior Arbitrator found. The prior Arbitrator found the Tenant abandoned the rental unit September 01, 2019. I acknowledge that the Tenant disagrees with this; however, the decision has been made and I am bound by it.

A tenant cannot abandon a rental unit without giving proper notice under section 45 of the *Act* and then claim they are not obligated to pay rent because the tenancy has ended. The abandonment, which is a breach of section 45 of the *Act*, caused the Landlord to lose rent he otherwise would have received. The Tenant is responsible for this loss as it resulted from the Tenant’s non-compliance with section 45 of the *Act*.

#12 Cost of new fobs, keys, locks

The prior Arbitrator found the Tenant abandoned the rental unit September 01, 2019. I am satisfied the Tenant had not given the keys to the rental unit back by this date given the text messages in evidence. I am satisfied the Tenant breached section 37(2) of the *Act* in this regard which states:

(2) When a tenant vacates a rental unit, the tenant must

...

- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I am satisfied the Landlord had to replace the fobs, keys and locks. The strata documentation shows an \$80.00 charge for fobs and there is a receipt in evidence for \$13.40 for a key. The Landlord is seeking \$60.60 for this item and I am satisfied the Landlord is entitled to this amount.

#13 Strata fines

The Tenant took the position that he was not made aware of the strata fines during the tenancy such that he did not know noise was an issue. The Tenant raised the point that these fines can be appealed or disputed. The Landlord testified that he sent the fines to the Tenant. The only evidence submitted to support this is one text message sent on September 01, 2019 stating there are three \$50.00 fines the Tenant needs to pay.

The Landlord submitted strata fine notices. It is clear from these that there is an opportunity to dispute them. I am not satisfied these were forwarded to the Tenant during the tenancy when the issues arose. I would expect to see some written communication if these were forwarded to the Tenant during the tenancy. No such communication is before me, other than the one text message sent at the end of the tenancy.

I am not satisfied the Landlord was entitled to wait until the end of the tenancy to advise the Tenant of the strata fines. I find the Landlord failed to mitigate the loss claimed. By failing to provide the strata fine notices to the Tenant when the issues arose, the Landlord took away the opportunity for the Tenant to respond to the allegations and to change the behaviour that was resulting in the fines. I am not satisfied the Landlord is now entitled to compensation for the fines.

Filing fee

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

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Cost of time spent seeing police, court system	-
2	Loss of sleep due to stress from threats	-

3	Gas for driving to and from the rental unit to get supplies/take stuff out	\$71.95
4	Cleaning	\$125.00
5	Drywall repairs in rooms, living room and hallway	-
6	Plumbing for clogged shower	\$55.00
7	Patio deep clean	-
8	Cost of moving truck, gas, insurance	(above)
9	Time spent finding a new tenant – posting, interviews, showings	\$480.00
10	Getting the Tenant's stuff to and from people	-
11	September rent	\$2,000.00
12	Cost of new fobs, keys, locks	\$60.60
13	Strata fines	-
	TOTAL	\$2,792.55

The Landlord is issued a Monetary Order for \$2,792.55 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$2,792.55 and is issued a Monetary Order for 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: July 16, 2020

Residential Tenancy Branch