



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit, pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or the tenancy agreement, pursuant to section 67 of the Act; and
- an authorization to recover the filing fee, pursuant to section 72 of the Act.

I left the teleconference connection open until 1:48 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness AB also attended. I also confirmed from the teleconference system that the tenant, his witness and I were the only ones who had called into this teleconference.

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on June 02, 2020. A second set of new evidence was served on June 19, 2020. I find the landlord was served in accordance with section 89(1)(c) of the *Act* (the tracking numbers are recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on June 07, 2020, in accordance with section 90(a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue - Jurisdiction

The tenant's application for compensation is for \$34,235.47. The tenant also applied for the return of the security deposit. The security deposit collected by the landlord is in the amount of \$450.00. Thus, the total amount of the tenant's application is of \$35,235.47 ($34,235.47 + 450 \times 2 + 100.00$).

Residential Tenancy Branch Policy Guideline 18 states:

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.

The tenant was advised at the hearing that his claim exceed \$35,000.00 and is therefore outside of the jurisdiction of the Residential Tenancy Branch. The tenant specifically waived the doubling of the security deposit to reduce his claim. Thus, the total amount of the application is of \$34,785.47.

I find I have jurisdiction.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return the security deposit?
2. a monetary order for compensation for loss under the Act, the regulation or tenancy agreement?
3. an order requiring the landlord to reimburse the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is his obligation to present the evidence to substantiate his application.

The tenant testified the periodic tenancy started on October 15, 2019. Monthly rent was \$900.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$450.00 was collected. The landlord still holds this amount in trust. The tenancy agreement was signed but the landlord did not provide a copy to the tenant.

The tenant affirmed on October 15, 2019 he rented a moving truck and moved in. A copy of the tenant's credit card statement indicates the payment of a rental moving truck on October 15, 2019. Witness AB affirmed he helped the tenant to move in on October 15, 2019.

The rental unit was a bachelor suite furnished only with a hot plate and a fridge. All the other items in the rental unit belonged to the tenant.

The tenant communicated with the landlord only by text message and phone calls. The landlord does not use email. The landlord usually called the tenant after receiving a text message. The tenant submitted into evidence several text messages he sent to the landlord from September 20, 2019 to February 07, 2020. The text messages are about a variety of residential tenancy matters, such as garbage collection, repairs of drying and washing machine and internet connection.

The landlord sent one text message to the tenant during the tenancy on December 04, 2019, replying to a request of maintenance.

The tenant asked for a rent reduction in February, as he was going to spend the months of February and March abroad. A text message on February 05, 2020 states: "[landlord] – you still haven't sent me the amount. I will have to guess myself and make you a draft."

The landlord then called the tenant and reduced rent in the month of March to \$750.00. The tenant submitted copy of a cheque issued to the landlord for the amount of

\$2,550.00 for the payment of January, February and March's rent. The tenant affirmed the cheque was cashed.

The tenant submitted copies of airline tickets indicating he was leaving Canada on February 09, 2020 and was supposed to be back on March 26, 2020. Because of Covid19 the tenant was only able to return to Canada on May 21, 2020 as he was under a strict lockdown overseas and had difficulties to make international phone calls.

The tenant did not pay rent for the months of April and May 2020.

When the tenant returned to Canada he found another tenant living in his rental unit. The tenant was able to enter the unit, but all his clothing, toiletries, shoes and personal items were removed from the rental unit. The tenant's bed, microwave, oven (cooking range) and computer were in the rental unit and the new tenant was using them.

The tenant contacted the landlord and she informed him the rental unit was re-rented, informed the name of the new tenant and that she would provide a temporary accommodation for the tenant. However, the landlord stopped contacting the tenant. The tenant tried to call the landlord 3 or 4 times per day, but his phone calls were not answered.

The tenant affirmed he lived from May 21, 2020 to May 28, 2020 in the cheapest temporary accommodation he found and paid \$517.50 for this accommodation (an invoice was submitted into evidence).

On May 28, 2020 the tenant provided a written copy of his forwarding address to the landlord by placing an envelope in the landlord's mailbox. A witnessed proof of service of tenant's forwarding address was submitted into evidence.

The tenant affirmed he did not receive any notice to end tenancy, his relationship with the landlord was friendly and the landlord had references for him in Canada that he submitted with his application to rent the unit and she could have contacted them while he was abroad.

The tenant submitted into evidence a copy of a grocery store receipt in the amount of \$247.97 (dated May 28, 2020) for groceries and toiletries, a detailed list of his personal items that were in the rental unit and a monetary order worksheet. The tenant affirmed that the first six items listed were in the rental unit and he was not allowed to recover

them. All the other items were missing. The total amount listed for the items is \$22,670.00

The tenant affirmed it was traumatizing for him to be evicted without notice, specially after returning from overseas. The tenant had to self-quarantine and this was more challenging because he did not have a place to live and lost the quiet enjoyment of his rental unit. The tenant applied for a compensation of 12 months of rent, in the total amount of \$10,800.00.

Witness AB affirmed he was aware the tenant's rental unit was re-rented. The witness agrees with all the testimony provided by the tenant.

Analysis

The tenant testimony was cohesive and convincing. Based on the tenant's and witness's testimony, text messages, cheque and moving truck proof of payment, I find the tenant had a periodic tenancy from October 15, 2019 to May 28, 2020, when he moved in to another rental unit and provided the landlord with a written copy of his forwarding address.

I am dividing the analysis of the tenant's claims in five topics.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenants' forwarding address in writing.

I find the landlord has not brought an application for dispute resolution claiming against the security deposit for any unpaid utilities or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's undisputed testimony that he gave the landlord written notice of their forwarding address on May 28, 2020 and that the landlord did not return the security deposit.

The landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

As the tenant specifically waived the doubling of the security deposit, I find the tenant is entitled to a monetary award of \$450.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

Temporary accommodation

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], 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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

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.

Based on the tenant's testimony and the lodging invoice, I find the tenant proved, on a balance of probabilities, that the tenancy ended in non-compliance with the Act and as a direct consequence he incurred in expenses in the amount of \$517.50 for temporary accommodation from May 21 to 28, 2020.

Residential Tenancy Branch Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

I find the tenant minimized his losses by choosing a temporary accommodation that cost \$73.92 per night.

As such, based on section 67 of the Act, I award the tenant compensation in the amount \$517.50 for the landlord's failure to comply with the Act and the tenancy agreement by ending the tenancy in non-compliance with the Act and expenses incurred by the tenant for temporary accommodation.

Groceries and toiletries

Based on the tenant's testimony and the grocery store receipt, I find the tenant proved, on a balance of probabilities, that he incurred in expenses in the amount of \$247.97 for grocery and toiletries shopping for his new rental unit, as he was not able to recover the groceries and toiletries that were in his rental unit.

However, I find this expense has not resulted from the landlord's non-compliance with the Act. It is not reasonable to assume the tenant would have groceries and toiletries in his rental unit to use after he returned home after being overseas from February 09 to May 21, 2020.

Residential Tenancy Branch Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"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.

As the landlord breached the Act, I award the tenant nominal damages in the amount of \$150.00.

Personal Items

Based on the tenant's testimony, I find the tenant disposed of his 39 personal items that were in the rental unit, which the tenant valued at \$22,670.00. The items that were still in the rental unit are under possession of the new tenant and the landlord did not take measures to return these items to the tenant.

Section 24 of the Regulation states:

24

(1)A landlord may consider that a tenant has abandoned personal property if
(a)the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b)subject to subsection (2), the tenant leaves the personal property on residential property

**(i)that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
(ii)from which the tenant has removed substantially all of his or her personal property.**

(2)The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a)the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b)the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3)If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4)Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

(emphasis added)

Although the tenant did not pay rent for April and May 2020, Ministerial Order 89, effective from March 30, 2020 to June 24, 2020, prohibited the landlord from issuing notices to end tenancy.

I find the tenant did not abandon his personal property, as he informed the landlord on February 05, 2020 he was going to be abroad from February 09 to March 26, 2020 and the tenancy did not end when the tenant was overseas. Furthermore, the tenant did not remove any of his personal property from the rental unit.

The landlord could not act in accordance with section 24 of the Regulations and consider the tenant abandoned the rental unit and his personal property.

As explained in Policy Guideline 16, the purpose of the compensation is to put the person who suffered the damage in the same position as if the damage had not occurred.

Further to that, Policy Guideline 05 states:

Betterment

The purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred. Sometimes repairing damage or replacing damaged

items puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred.

[...]

A person can replace damaged items with more expensive ones if they choose, but not at the expense of the party responsible for the damage. The person responsible for the damage is only responsible for compensating their landlord or tenant in an amount that covers the loss. The extra cost of the more extravagant, expensive or luxurious item is not the responsibility of the person who caused the damage.

The tenant indicated an 'approximate value' for each item but did not provide testimony about the condition of the items or how old they were.

Furthermore, I find it is not reasonable to assess \$1,690.00 for toiletries and the tenant did not minimize his losses by insuring his property.

As such, I find the total amount indicated by the tenant should be reduced by 70%.

Thus, based on section 67 of the Act, I award the tenant compensation in the amount \$6,801.00 (22,670.00-70%) for the landlord's failure to comply with the Act.

Compensation for end of tenancy

Section 44 of the Act specifies how a tenancy ends:

(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The tenant is asking for 12 months rent for the landlord's breach of the Act by terminating the tenancy in non-compliance with the Act in the total amount of \$10,800.00

I find the landlord is responsible for ending the tenancy in non-compliance with the Act.

The tenant affirmed it was traumatizing for him to have the tenancy ended without notice, specially after returning from overseas. The tenant had to self-quarantine and this was more challenging because he did not have a place to live.

I find the landlord's actions of removing the tenant's items, ending the tenancy in non-compliance with the act and re-renting the rental unit, were extremely serious and did not comply with section 44 of the Act. As such, based on section 67 of the Act, I award the tenant a compensation in the reasonable amount of \$5,000.00 for the ending of the tenancy in non-compliance with the Act.

As the tenant's application is successful, I award the tenant the return of the filling fee.

In summary:

ITEM	AMOUNT \$
Security deposit	450.00
Temporary accommodation	517.50
Groceries and toiletries	150.00
Personal Items	6,801.00
Compensation for ending the tenancy	5,000.00
Section 72 - Reimbursement of filing fee	100.00
TOTAL	13,018.50

Conclusion

I grant the tenant a monetary order pursuant to sections 38, 67 and 72 of the Act, in the amount of \$13,018.50.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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 *Residential Tenancy Act*.

Dated: July 10, 2020

Residential Tenancy Branch