



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord was represented at the hearing by agents, SL and DW ("landlord"). The tenant attended the hearing, represented by her counsel, RH. As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Is the landlord entitled to a compensation for the tenant ending the tenancy before the end date stated on the fixed term tenancy?

Is the landlord entitled to compensation from the tenant for fines levied by the strata corporation?

Is the landlord entitled to compensation for damages to the rental unit?

Can the landlord recover the filing fee?

Preliminary Issues

During the hearing, the landlord acknowledged she did not provide sufficient evidence to prove her claim for cleaning of the rental unit and sought to withdraw this portion of her application. The tenant took no issue with this and I dismissed this portion of the landlord's application.

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercise my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord provided the following testimony. The tenancy began in 2016 with the subject tenant and her boyfriend in 2016. At that time, a security deposit of \$1,325.00 was collected which the landlord continues to hold. Eventually, the boyfriend moved out and a new tenancy agreement was signed with this tenant and a copy of that tenancy agreement was provided as evidence. This fixed term tenancy began on July 1, 2018 and was set to end on June 30, 2020. Rent was set at \$3,200.00 per month payable on the first day of each month. The tenancy agreement was signed on May 17, 2018.

No condition inspection report was done with the tenant or her boyfriend at the commencement of the tenancy in 2016 or when the parties entered into a new tenancy agreement on May 17th. The landlord testified the rental unit was in excellent shape and the tenants were very happy with it when they moved in.

During the tenancy, the tenant was fined by the strata corporation on four separate occasions. Copies of the letters from the property management company notifying the landlord of the violations and subsequent notices of fines levied were provided by both parties. A total of \$1,700.00 in fines were levied against the landlord for bylaw violations incurred by the tenant.

On February 18, 2020, the tenant emailed the landlord a message indicating she is moving out on March 1, 2020. A copy of the email was provided as evidence by the tenant. The tenant cites harassment from the building concierge as the reason for ending the tenancy. In this email, the tenant states *she 'understands this will be breaking my lease and I hope you can understand this is not what I wanted but the circumstances of this situation is not ideal'*. In the email, the tenant states she found a strata council member willing to rent the unit for 1 month (March) and a responsible qualified couple willing to take over the unit for April, 2020 at \$3,600.00 per month.

The landlord testified they found new tenants for April 1, 2020, paying \$3,600.00 per month and did not dispute the tenant's assertion that this was the same couple referred to in the tenant's email of February 18th. The landlord testified they spoke to the strata council member referred to in the letter willing to take the tenancy for the month of March, however he required a tenancy of at least two months so that the repairs to his unit from a flood could be repaired.

When the tenant left, the new tenant advised the landlord that a drawer in the fridge was broken and required a replacement at a cost of \$114.10. The landlord testified they paid to replace the fridge drawer by reimbursing the tenant who purchased a new one. A photo of the broken fridge drawer was provided as evidence however no receipt was provided.

The tenant provided the following testimony. She was continually harassed by the concierge of the building regarding the alleged violations of the strata's bylaws. The concierge's harassment was unbearable and due to the harassment, she decided to leave the building that she enjoyed living in. The tenant's ex-boyfriend was contacted by the building concierge, causing additional stress for the tenant. The tenant submits that the landlords failed to provide her with quiet enjoyment of the rental unit for a failure to prevent the concierge from harassing her.

She had found a strata council member, "J" who was willing to move in for a single month in March 2020. This was subsequently refuted by the landlord who stated "J" required more than one month to remediate his flood damaged suite.

The current tenants are in fact the people referred to in the tenant's email to the landlord dated February 18th. They pay \$3,600.00 per month, \$400.00 more than the tenant was paying in rent. The tenant disputes the commencement date of the new tenants' tenancy agreement, indicating it is March 27, 2020 however no documents were referred to me to corroborate this assertion. The tenant's counsel submits that the landlord's failure to provide a copy of the next set of tenants' tenancy agreement is worthy of an adverse inference to be drawn for non-disclosure.

Analysis – landlord's claim for recovery of fines

My authority to resolve disputes between landlords and tenants is made under section 9.1 of the *Residential Tenancy Act*. As such, pursuant to section 62 of the *Act* I have the authority to determine (a) disputes in relation to which the director has accepted an

application for dispute resolution, and (b) any matters related to that dispute that arise under this Act or a tenancy agreement.

Section 91 of the *Residential Tenancy Act* states:

91 Common law applies

Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

The fines levied by the strata corporation against the owner of the rental unit were issued following decisions made by the strata council in accordance with the provisions of the *Strata Property Act*. Given that my authority only allows me to determine matters related to disputes that arise under this Act, I do not have the jurisdiction or the authority to determine the legitimacy of the fines levied against the landlord vis a vis the tenant. Pursuant to section 91 of the *Residential Tenancy Act*, I recognize section 131 of the *Strata Property Act* which states:

131 Landlord's and owner's responsibility for fines and costs incurred by tenant

(1) If the strata corporation fines a tenant or requires a tenant to pay the costs of remedying a contravention of the bylaws or rules, the strata corporation may collect the fine or costs from the tenant, that tenant's landlord and the owner, but may not collect an amount that, in total, is greater than the fine or costs.

(2) If the landlord or owner pays some or all of the fine or costs levied against the tenant, the tenant owes the landlord or owner the amount paid.

Section 67 of the *Residential Tenancy Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. I find that the landlord has sustained a loss by means of fines levied against the tenant during the tenancy in the amount of \$1,700.00. Pursuant to section 67 of the *Act*, the landlord is awarded **\$1,700.00.**

Analysis – landlord's claim for March rent

Pursuant to Residential Tenancy Branch Policy Guideline PG-5 [Duty to minimize loss], When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to: 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and 2. re-rent the unit as soon as possible.

I am satisfied by the landlord's testimony that "J", the strata council member found by the tenant willing to take over the tenancy for the month of March, 2020, couldn't accept the single month tenancy as he needed at least two months to repair his flood damaged suite. The landlord provided first hand testimony of the conversation she had with "J", while the tenant was unable to refute this. I find the landlord has fulfilled her duty to minimize her loss by meeting with "J" and trying to rent the unit out for the month of March.

Section 1 of the *Residential Tenancy Act* defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date.

Neither party may end a fixed term tenancy early, except under specific circumstances: for cause, by agreement of both parties, or an Early Termination for Family Violence or Long-Term Care.

Pursuant to section 44(1)(a)(i), a tenancy can end if a tenant gives notice to end the tenancy *in accordance* with section 45.

Section 45(2) states:

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.

PG-3 [Claims for Rent and Damages for Loss of Rent] states:

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.

The tenant gave notice on February 18th, ending the tenancy on March 1st. I find that the notice was given contrary to section 45(2)(b) since it had an effective date earlier than the date specified in the tenancy agreement as the end of the tenancy, June 30, 2020. For breaching the *Act* by ending the fixed term tenancy early, the tenant is

ordered to compensate the landlord for the month of lost rent for March 2020. The loss is established as \$3,200.00.

The landlord did not dispute that the new tenants' rent over the remainder of the original term (4 months, until June 30, 2020) is \$400.00 per month more than the rent paid by the original tenant. As stated in PG-3 these four months of increased amount of rent is set off against the original \$3,200.00 award against the tenant. ($\$400.00 \times 4 = \$1,600.00$). I reduce the landlord's monetary order by \$1,600.00.

Landlord's claim for broken fridge drawer

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The landlord has provided sufficient evidence to satisfy me the fridge drawer broke during the tenancy. Despite this, the only evidence to substantiate the value of the broken drawer is the email from the new tenant who says a new drawer costs \$4114.10. I find this email lacks any reference to any estimates from a retailer or part number referencing the cost of the new drawer. I find the landlord has failed to establish the third point of the four-point test (the value of the damage or loss) and this portion of the landlord's claim is dismissed.

Return of security deposit

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. (reproduced below)

23 Condition inspection: start of tenancy or new pet

1. The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
2. The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

- a. the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - b. a previous inspection was not completed under subsection (1).
3. The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
4. The landlord must complete a condition inspection report in accordance with the regulations.
5. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
6. The landlord must make the inspection and complete and sign the report without the tenant if
 - a. the landlord has complied with subsection (3), and
 - b. the tenant does not participate on either occasion.

Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable.

This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

In this case, section 38(6) of the *Act* requires that the tenant's security deposit of \$1,325.00 be doubled to \$2,650.00. The offsetting provisions of section 72 of the *Act* allows the landlord to draw on the security deposit if an arbitrator orders the tenant to pay any amount to the landlord. Pursuant to section 72 of the *Act*, the landlord is to deduct \$2,650.00 from the monetary order awarded.

As the landlord was partially successful in the claim, I award the landlord one half of the filing fee pursuant to section 72 of the *Act*.

The remainder of the landlord's application is dismissed without leave to reapply.

Item	Amount
Fines levied against the tenant	\$1,700.00
March 2020 rent	\$3,200.00
Less 4 x \$400.00 offset for increased rent from subsequent tenants	(\$1,600.00)
Less security deposit (doubled)	(\$2,650.00)
Filing fee	\$50.00
Total	\$700.00

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$700.00**. The tenant must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding and 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