



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL (landlord); MNSDB-DR (tenant)**

Introduction

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

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

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

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages, authorization to retain the security deposit and reimbursement of the filing fee?

Is the tenant entitled to the return of the security deposit and reimbursement of the filing fee?

Background and Evidence

The parties agreed they entered into a 1-year fixed term agreement starting March 1, 2019 and ending when the tenant vacated on October 12, 2019. Rent was \$1,250.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a pet damage deposit of \$200.00 and a security deposit of \$650.00, the total of which is \$850.00 and referred to as the "security deposit". The security deposit is held by the landlord without the authorization of the tenant. The parties agreed the tenant did not pay rent for the month of October 2019.

The landlord testified as follows. They made their best efforts to find a new tenant after the tenant left without notice. They advertised on websites and refreshed the ads periodically. Twice, tenants were committed to renting the unit, but "backed out at the last minute". The unit was rented again to a new occupant in the last part of November 2019 for \$300.00 less than the monthly rent paid by the tenant. The landlord did not submit any supporting documentary evidence with respect to their advertising efforts or the rental agreement with the new tenant. No ledger or similar evidence was submitted.

The landlord claimed compensation in the amount of \$1,250.00 for lost rent for the month of October 2020 as well as compensation for the reduced rent of \$300.00 for three months for December 2019, January 2020 and February 2020. They also claimed \$200.00 in outstanding utilities for which no supporting evidence was submitted.

The landlord stated the landlord spent ten hours cleaning the unit after the tenant left. The landlord testified the kitchen, appliances and bathroom needed to be thoroughly cleaned. The landlord requested reimbursement of the sum of \$300.00 for cleaning. The landlord did not submit any supporting documentary evidence such as photographs. The tenant denied any cleaning was necessary.

The landlord did not submit a condition inspection report on moving in or moving out. The landlord explained that the tenant suddenly vacated without notice and no inspection could be scheduled.

The tenant testified she sent an email to the male landlord on March 23, 2020 providing her forwarding address; she also sent a letter by regular mail shortly afterward, a photograph of the envelope being submitted as evidence although the mailing date is not apparent from the photo. The landlord provided no explanation of why the first email was not received.

The landlord denied receiving the email or the letter. During the hearing, the tenant resent the email to the male landlord at the email address she used, and he acknowledged receipt thereby confirming the email had been sent to the address customarily used by the landlord in communication with the tenant.

The landlord clarified the landlord's claim as follows:

ITEM	AMOUNT
Rent for October 2020	\$1,250.00
Loss of rent – 3 months	\$900.00
Outstanding utilities	\$200.00
Compensation cleaning time	\$300.00
Reimbursement of filing fee	\$100.00
TOTAL CLAIM LANDLORD	\$2,750.00

The landlord requested a monetary order in the amount of **\$2,750.00** and authorization to apply the security deposit to the award.

The tenant requested an award for doubling of the amount of the security deposit as follows:

ITEM	AMOUNT
Security deposit	\$850.00
Security deposit - doubled	\$850.00
TOTAL CLAIM TENANT	\$1,700.00

Analysis

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

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.

I found the tenant to be the more credible witness and where the parties testimony is in conflict, I give greater weight to the tenant's testimony.

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

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

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

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

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

. . .

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

Claim for rent for October 2019,

As acknowledged by the tenant, the tenant did not pay rent for the month of October 2019. She vacated when the landlord issued a Ten-Day Notice to Vacate for Unpaid Rent at the beginning of October 2019. As the amount of rent is not in issue, I accordingly grant an award to the landlord for \$1,250.00 for unpaid rent.

Each of the four tests are considered separately with respect to the landlord's claims for loss of rent for three months and for reimbursement for cleaning.

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

Cleaning and utilities

I have considered the testimony of both parties which is contradictory with respect to the condition in which the tenant left the unit and the landlord's claim for compensation for loss of rent for 3 months and utilities.

The landlord did not submit any documentary evidence in support of any of these claims.

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

The tenancy agreement required the tenant to pay utilities.

I find the landlord has not met the burden of proof that the tenant failed to leave the unit reasonably clean or that she failed to pay utilities. In the absence of any evidence, such as photographs or invoices, I find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to the first step on this aspect of the claim. As stated above, I give greater weight to the tenant's testimony.

Accordingly, I dismiss the landlord's claims for cleaning and outstanding utilities without leave to reapply.

Loss of rent for three months

Section 45 (2) considers how a tenant ends a fixed term tenancy, stating:

Tenant's notice

45(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.***

(emphasis added)

The tenant acknowledged she vacated the unit before the end of the term.

The tenant acknowledged she did not provide the notice required under section 45(2) and under the Agreement.

I find the landlord has met the burden of proof with respect to the first test regarding the tenant's obligation regarding ending the fixed term tenancy.

2. Did the loss or damage result from non-compliance?

Having found that the tenant failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

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

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

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

The landlord testified to receiving a reduction in rent for the remainder of the fixed term tenancy as a result of the tenant's early ending of the fixed term tenancy and the landlord's inability to locate a suitable replacement occupant. However, the landlord submitted no documentary evidence in support of claimed efforts to find a suitable new occupant such as copies of ads, the number of enquiries, the number of times the unit was viewed, or the amount of rent received from the new occupant.

I am not satisfied the landlord has established a connection between the tenant's breach and the loss. I am not satisfied that there has been a loss. I find the landlord has failed to meet the burden of proof with respect to this second step on a balance of probabilities.

3. Has applicant proven amount or value of damage or loss?

No tenancy agreement was submitted with respect to the new occupants. I find the landlord has failed to meet the burden of proof with respect to this step that the landlord incurred a loss of \$300.00 rent for three months.

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

For the reasons stated, I am unable to find that the landlord took reasonable steps to minimize the damage or loss in finding a replacement occupant for the unit in a cost and time efficient manner. I find the landlord has not met the burden of proof with respect to this step.

Conclusion

Taking into consideration the testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all four criteria in establishing entitlement to compensation for rent for the month of October 2019 in the amount of \$1,250 and *not* with respect to the remainder of the claims which are dismissed without leave to reapply.

I will now consider the tenant's claim for the return of the security deposit.

Security Deposit

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenants' 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 and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

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

I find the tenant provided their forwarding address in writing pursuant to section 38(1)(b) at the end of the tenancy in March 2019 more than 15 days before the landlord filed an application to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I find the tenant is entitled to a doubling of the security deposit under the *Act*. Accordingly, I grant the tenants a monetary award in the amount of **\$1,700.00** (2 x \$850.00).

As the landlord is only partially successful in the landlord's application, I do not award reimbursement of the filing fee.

My award to the tenant is summarized as follows:

ITEM	AMOUNT
Award tenant	\$1,700.00
(Award landlord)	(\$1,250.00)
Order Tenant	\$450.00

Summary

I grant the tenant a monetary award of **\$1,700.00**.

I grant the landlord a monetary award of **\$1,250.00**.

Further to the offsetting provisions of section 72, I grant the tenant a monetary award of \$450.00 for the difference in the awards.

Conclusion

I grant the tenant a monetary order of \$450.00 which must be served on the landlord. This order may be filed and enforced in the Courts of the Province of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 28, 2020

Residential Tenancy Branch