



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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.

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.

Considerable documents and photographs were submitted by the parties. I have only considered and referenced in the Decision relevant evidence submitted and served in compliance with the Rules of Procedure to which I was referred.

Preliminary Issue – Inappropriate Behaviour by the Landlords during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

During the 80-minute hearing, the landlord interrupted, spoke at the same time, and argued with, the tenant and me. I cautioned the landlord several times about interrupting. Although the landlord provided continuous testimony for the first 30 minutes of the hearing, the landlord stated that she believed I “favoured” the tenant and that I was not “listening” to her. She repetitively stated her positions on her claims and became upset. The hearing took longer than necessary because of the landlord's repeated interruptions and allegations of unfairness.

Issue(s) to be Decided

Is the landlord entitled to 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.

Background and Evidence

The fixed term tenancy began on August 22, 2019 and was scheduled to end on June 1, 2020. Monthly rental of \$1,350.00 was payable on the 21st of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$675.00 and a pet deposit of \$300.00. Together, the deposits total \$975.00 and are referred to as the “security deposit”. The security deposit is held by the landlord without the authorization of the tenant.

The landlord submitted a copy of the tenancy agreement which included a direction that

the tenant will vacate on June 1, 2020 as the unit was “pre-rented”. A term of the agreement was that visitors were limited to three days a month.

The unit was a townhouse and the parties were adjacent neighbours.

A condition inspection was not conducted on moving in or out.

The tenant vacated the unit on May 3, 2020.

The tenant agreed to pay the landlord \$231.37 for outstanding utilities being the amount claimed by the landlord for hydro and gas.

The landlord claimed two months’ rent based on a clause in the agreement to the effect the landlord could continue the tenancy unless such notice was provided. The landlord claimed the tenant left the unit requiring cleaning and minor repairs for which the landlord estimated her time; she claimed reimbursement of \$100.00 and \$300.00 respectively. The landlord also claimed two months of outstanding rent, \$25.00 for the unpaid agreed-upon internet fee, and reimbursement of \$22.15 for missing sink stoppers.

The landlord testified to the time, expenses and outstanding rent; she requested the following monetary award as follows:

ITEM	AMOUNT
Rent outstanding April 21, 2020	\$1,350.00
Rent outstanding May 21, 2020	\$1,350.00
Utilities - agreed	\$231.37
Repairs to walls	\$300.00
Cleaning	\$100.00
internet	\$25.00
Sink Stoppers	\$22.15
TOTAL CLAIM LANDLORD	\$3,378.52

Each claim is discussed.

Outstanding rent

The parties agreed the fixed term tenancy had an end date of June 1, 2020, the tenant provided notice on April 21, 2020 that she was leaving, and the tenant vacated on May 3, 2020 without paying the rent due on April 21, 2020.

The landlord testified she rented the unit to new occupants on June 6, 2020. The landlord asserted that the tenant was required under the lease to provide two months' notice; hence the tenant owes rent due April 21, 2020 and May 21, 2020.

As well, the landlord claimed that by providing notice on April 21, 2020, the date the rent was payable, the tenant was one day late, and the notice was only effective for the period ending June 21, 2020.

In response, the tenant testified the landlord made it impossible for her to continue living in the unit and the landlord had breached a material term of the tenancy making it imperative she move out on April 21, 2020 or as soon as feasible thereafter. The tenant said the landlord had destroyed the tenant's right to quiet enjoyment of the unit.

The tenant testified as follows. In early 2020, the tenant's son came to live in the unit; he had been injured in a car accident. Her boyfriend also came to live with her. The landlord strenuously and repeatedly objected to the two additional occupants and sent multiple written communications to the tenant demanding they leave. The tenant learned that the landlord had advertised the unit for rent without the tenant's consent.

The landlord also complained many times to the tenant about the noise in the unit. The tenant explained that she was a truck driver, was working 12-16 hours a day during the pandemic, and the noise in the unit was the normal sound of people living there.

The tenant testified the landlord sometimes appeared intoxicated and became aggressive. For example, she stated that on one occasion her son and boyfriend were using power tools to make flower boxes in the back yard of the unit. The landlord demanded they stop while she was "hanging over the fence, yelling" and seemed inebriated. The tenant said the landlord was often hungover and angry; living near here was a "real roller coaster".

The tenant testified that the landlord approached the tenant often when the tenant was

leaving her unit to get in her car. The tenant stated she was so anxious about these frequent encounters that she would “peek outside” for the landlord before stepping out of the unit and then dash to her car to avoid a confrontation. The tenant said she was under a lot of stress with the pandemic, wanted to avoid physical contact with the landlord, and wanted to live peacefully. Nevertheless, the landlord continued to physically encounter the tenant and requested to view the inside of the unit despite the restrictions.

The tenant testified as follows. The landlord periodically pushed the tenant; the tenant submitted a video file of an argument which ended when the landlord pushed the tenant onto the ground. The tenant repeatedly asked her to stop bothering her and complaining, especially as the tenant could not reasonably move during the pandemic. The tenant said she lost all right to privacy.

The tenant testified that the landlord became angry and verbally abusive on several occasions; the landlord called the police without justification to complain about the tenant “five or six times”. On April 21, 2020, the tenant felt she “couldn’t take any more” and told the landlord she was leaving. The tenant said that the landlord became very upset, “yelled at her” and pushed her, while telling her she had to pay rent.

The tenant testified that the landlord then called the police who conducted enquiries and told the tenant the landlord was the assailant. The landlord also called the police about the tenant on April 28, 2020, again without justification, as the tenant would not pay rent. The tenant has never been charged with any offence.

The tenant stated that the day she moved out, she intended to keep the address of her new home confidential so the “harassment” would stop. The landlord followed her; the tenant called the police who prevented the landlord from following the tenant to her new home. The tenant has not provided her forwarding address to the landlord.

The landlord acknowledged that she called the police on the tenant on April 21, and April 28, 2020, but denied all the remainder of the tenant’s allegations or that she phoned the police “5 or 6 times” as alleged. The landlord denied the tenant’s assertions about appearing inebriated, approaching the tenant many times, or making unreasonable demands of any kind. The landlord denied advertising the tenant’s unit for rent while the tenant was in occupancy. The landlord blamed the tenant for having two unauthorized occupants in her unit who made noise, “had parties”, and disturbed her repeatedly. The landlord held the tenant responsible for the breakdown in the relationship.

Repairs to walls

The landlord submitted many photographs, some of which showed marks on the walls and baseboards. The landlord testified she did the repair work herself and estimated her time of a value of \$300.00. The landlord submitted no receipts or pictures showing the work was completed.

The tenant acknowledged responsibility for one “ding” and agreed to pay the landlord \$40.00. The tenant denied all responsibility for any other damage. The tenant said there were no photographs of the unit when she moved in and no condition inspection report supporting the landlord’s claim for damages.

Cleaning

The landlord submitted many photographs of the unit after the tenant vacated. The landlord asserted that the photos showed that cleaning was needed and the tenant left the unit dirty. The landlord testified she did the cleaning herself and estimated her time of a value of \$100.00. The landlord submitted no receipts or other supporting evidence.

The tenant denied that the unit needed any cleaning and stated that she left it reasonably clean. The tenant testified she had the unit professionally cleaned when she vacated.

Internet

The parties agreed the landlord controlled the provision of internet to the unit and the tenant had agreed to compensate the landlord \$25.00 a month for the service. The tenant acknowledged she did not pay the \$25.00 for the last month of the tenancy stating that the landlord kept “shutting off” the internet to “punish her”. The landlord agreed she shut off the internet but asserted it was only for one 3-day period. The landlord requested an award of \$25.00.

Sink stoppers

The landlord asserted the tenant took two sink stoppers when she left, which the tenant denied. The landlord did not submit supporting documentary evidence that the sink stoppers were in the unit during the tenancy.

In summary, the landlord requested a monetary order of **\$3,378.52**, reimbursement of the filing fee and authorization to apply the security deposit to the award.

The tenant clarified her position as follows. She agreed to pay the landlord for the time she occupied the home, the repair and the utilities as follows:

ITEM	AMOUNT
Rent – April 21 – May 3, 2020 (12 days x \$45.00 @ day)	\$540.00
Utilities	\$231.37
Repair	\$40.00
TOTAL	\$811.37

Analysis

While I have turned my mind to the documentary evidence and the testimony introduced in the 80-minute hearing, not all details of the submissions and arguments are reproduced here. The relevant, admissible and important aspects of the claims and my findings are set out below.

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.

Credibility and Weight of Testimony/Evidence

In assessing the weight of the testimony and evidence, I found the tenant credible and sincere. I found the tenant's testimony, which was supported in all key aspects by documentary evidence, to be the more persuasive, calm and forthright.

I found the landlord to be less persuasive about the key facts of the situation. I considered her claims largely unsupported by the facts as I understood them. I found the landlord lacked reasonable comprehension of the effect on the tenant's loss of quiet enjoyment of the landlord's conduct. For example, I accept the tenant's testimony that the landlord called the police without justification several times; in her testimony, the landlord minimized these actions and appeared unconcerned about the effect on the tenant.

As a result of my assessment of the credibility of the parties, I gave greater weight to the tenant's account; where the evidence of the parties' conflict, I prefer the tenant's version of events. I do not give significant weight to the landlord's testimony.

Fixed-Term Tenancy

Section 44(1) of the Act lists fourteen categories under which a tenancy may be ended, and references section 45 of the Act. Section 45 of the Act deals with a tenant's notice to end a tenancy, and reads, in its entirety, as follows:

(1) A tenant may end a periodic 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, and

(b) 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.

*(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

Breach of a material term

Guidance to the interpretation of section 44(3) (above) is found in *RTB Policy Guideline #8* which reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

Loss of Quiet Enjoyment

Section 22 of the Act deals with the tenant's right to quiet enjoyment. The section states as follows:

22. A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) **freedom from unreasonable disturbance;***
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

[emphasis added]

I have considered *The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* which states as follows:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach

of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

In reviewing the testimony and evidence, I find the tenant has met the burden of proof on a balance of probabilities that they suffered a loss of quiet enjoyment of the premises. I have balanced the tenant's right to quiet enjoyment with the landlord's right and responsibility to address the extra visitors in the tenant's unit, her complaints about noise, and rental arrears.

I find the landlord has failed in the landlord's obligation to ensure that the tenant's entitlement to quiet enjoyment was protected. I accept the tenant's version of events in which she recounted the continual distressing communication by the landlord, the effect on the tenant who was working long hours during the pandemic, and the upsetting visits by the police at the unjustified request of the landlord. I find the tenant repeatedly informed the landlord she was upset about the landlord's conduct and that the landlord ignored her requests to leave her alone. I accept the tenant's testimony that the landlord's disturbing actions were "increasing".

I find the landlord failed adequately address the problems within a reasonable time. I find that the landlord failed to take reasonable steps for correction.

Loss of Quiet Enjoyment as a Breach of a Material Term

The tenant claimed that the landlord denied them of their right to quiet enjoyment to such an extent that they could not live in the unit. As I found above, when notified of their loss of quiet enjoyment, the landlord failed to take steps to correct the issues and

then refused the tenant's request to vacate early, demanding two months' rent.

As noted in RTB Policy Guideline #8 – Unconscionable and Material Terms, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement.

To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement. It falls to the person relying on the term, in this case the tenants, to present evidence and argument supporting the proposition that the term was a material term.

The question of whether a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. The same term may be material in one agreement and not material in another. Applications are decided on a case-by-case basis. Simply because the parties have stated in the agreement that one or more terms are material, is not decisive. The Arbitrator will look at the true intention of the parties in determining whether the clause is material.

In considering the facts of this case, the testimony and the evidence, I find the tenant has met the burden of proof under section 44(3). I find that there was a material breach of the requirement that the landlord provide quiet enjoyment to the tenant. I find that there were multiple problems as credibly articulated by the tenant and referenced above. I find that the tenant requested the landlord in writing through texts as well as verbally to remedy the various situations, that the tenant stated their intention to leave after the pandemic, and that the landlord failed to address the problems, even failing to acknowledge problems existed. I find the loss of quiet enjoyment was a breach of a material term which made it impossible for the tenancy to continue.

I find the tenant acted reasonably; they notified the landlord of the issues amounting to loss of quiet enjoyment; they attempted unsuccessfully to vacate in a timely manner. When all efforts to reach a solution with the landlord failed, they vacated the unit.

In summary, I find the loss of quiet enjoyment to the extent described by the tenant and supported by the documentary evidence to amount to breach of a material term.

As a result of this finding, I find the landlord has no claim for damages or compensation from the early ending of the fixed term agreement except to the extent offered by the

tenant.

Claims for Damages

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.

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.

The landlord's claims are addressed below.

Cleaning expenses

Under section 37(2) of the Act, the tenant must leave a rental unit *reasonably clean*.

I have viewed the photographs of the unit taken when the tenant vacated and submitted by the landlord. I find the photographs establish that the tenant met their obligation to leave the unit reasonably clean.

I find the landlord has failed to meet the burden of proof on a balance of probabilities and I dismiss this aspect of the landlord's claim without leave to reapply.

Repairs

Under section 67, the tenant must leave the unit undamaged, reasonable wear and tear excepted. I have viewed the photographs of the unit taken when the tenant vacated and submitted by the landlord. The photographs show some damage. However, I am unable to attribute the damage to the actions of the tenant because of the failure to submit evidence of the condition of the unit at the beginning of the tenancy.

I find the landlord has failed to meet the burden of proof on a balance of probabilities and I dismiss this aspect of the landlord's claim without leave to reapply except for the amount of \$40.00 acknowledged by the tenant; I grant the landlord a monetary award in this amount.

Sink stoppers

I find the landlord has not met the burden of proof that there were sink stoppers in the unit which were removed by the tenant. I dismiss this aspect of the landlord's claim without leave to reapply.

Security deposit

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit.

However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties. The tenancy ended on May 3, 2020. The tenant did not provide a written forwarding address and obtained the assistance of the police to stop the landlord from following the tenant to her new home.

The tenant did not give the landlord written permission in writing to retain any amount from their security deposit. The landlord did not return the deposit to the tenant.

The landlord made an application on April 22, 2020 for dispute resolution to claim against the deposit for damages.

However, I find that the landlord extinguished their right to claim against the tenant's security deposit for damages, as per sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports for this tenancy.

Section 19 of the *Residential Tenancy Regulation* ("*Regulation*") requires that condition inspection reports must be in writing. Section 20 of the *Regulation* requires detailed, specific information to be included in the condition inspection reports.

I find that the photographs that the landlords claimed were part of the condition inspections, do not meet the above requirements in sections 19 and 20 of the *Regulation*. Both parties agreed that no written condition inspection reports were completed for this tenancy and none were provided for this hearing.

Residential Tenancy Policy Guideline 17 states the following, in part:

1. *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 accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of their security deposit of \$975.00, totalling \$1,950.00.

Summary

Considering the testimony and evidence, my award to the landlord is:

ITEM	AMOUNT
Rent April 21 –May 3, 2020 (12 days x \$45.00 @ day)–agreed by tenant	\$540.00
Utilities – agreed by tenant	\$231.37
Repairs to walls – agreed by tenant	\$40.00
TOTAL AWARD LANDLORD	\$811.37

As the landlord has not been substantially successful in the landlord's claim, I do not grant reimbursement of the filing fee.

I dismiss the remainder of the landlord's claims without leave to reapply.

I award the tenant the following:

ITEM	AMOUNT
Security deposit	\$975.00
Security deposit doubled	\$975.00
TOTAL AWARD TENANT	\$1,950.00

Pursuant to the off-setting provisions of section 72, I grant the tenant a monetary award as follows:

ITEM	AMOUNT
Award tenant	\$1,950.00
(Less award landlord)	(\$811.37)
TOTAL AWARD TENANT	\$1,138.63

I grant the tenant a monetary award against the landlord in the amount of **\$1,138.63**

Conclusion

I grant the tenant a monetary order in the amount of **\$1,138.63** which may be filed and enforced in the Courts of the Province of British Columbia. This Order must be served on the tenants.

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: September 1, 2020

Residential Tenancy Branch