



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDCT, DRI, AS, AAT, LRE, FFT*

Introduction

This hearing dealt with an application by the tenant pursuant to sections 43, 67, 70, 65, and 72 of the *Residential Tenancy Act*. The tenant applied for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- disputing a rent increase;
- an order that the landlord allow the tenant to sublet or assign the rental unit;
- an order allowing access to the rental unit by the tenant and the tenant's guests;
- an order limiting or setting conditions on the landlord's right to enter the rental unit; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant made this application on July 13, 2020 and a hearing was conducted on August 20, 2020. Prior to the hearing, the tenancy ended on July 31, 2020. The landlord did not attend the hearing on August 20, 2020, and the hearing continued in her absence. A decision dated August 24, 2020 was sent to both parties. On August 26, 2020, the landlord applied for a review consideration and in a decision dated September 01, 2020, the landlord was granted a review hearing.

The review hearing was set for this date, October 09, 2020. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

At the start of the hearing, the tenant testified that since he had vacated the rental unit, he wished to withdraw his applications for an order allowing the tenant to assign or sublet, for an order allowing access to the rental unit for the tenant and the tenant's guests, and for an order limiting or setting conditions on the landlord's right to enter the rental unit. Accordingly, this hearing only dealt with the tenant's application for a monetary order.

Issues to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and more specifically for breach of the tenancy agreement?
- Has the tenant established that rent was increased contrary to the Residential Tenancy Act and Regulations?
- Is the tenant entitled to the return of the security deposit?
- Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenant testified that this month-to-month tenancy began on November 1, 2016 and the tenant vacated the rental unit on July 9, 2020. Rent in the amount of \$650.00 per month was payable on the 1st day of each month and included utilities. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$650.00 which is still held in trust by the landlord. The rental unit was a suite in a semi-detached house, and the landlord resided upstairs. A copy of the tenancy agreement has been provided as evidence for this hearing.

On June 20, 2020, the tenant gave notice to end the tenancy effective July 31, 2020. The tenant agreed that he did not pay rent for July because he believed that the landlord owed him for overpayment of rent and for the return of the security deposit.

The tenant stated that in September 2018, the landlord raised the rent from \$650.00 to \$700.00 and this rate of increase is not in keeping with the legislated rate of increase. The landlord argued that the tenant moved into a bigger suite in the rental unit and agreed to pay the extra rent.

The tenant testified that in April 2020, the landlord requested another rent increase in the amount of \$100.00 taking the rent from \$700.00 up to \$800.00 per month. The tenant stated that he paid the higher rent for the months of April to June 2020 for fear of eviction.

The landlord stated that the tenant's girlfriend spent a lot of time in the rental unit and since the rent included utilities, she requested the tenant to pay an additional \$100.00. The tenant agreed that his girlfriend stayed over on weekends and estimated that she visited three to twelve times per month. The landlord stated that the arrangement was verbal, and the tenant agreed to pay rent in the amount of \$800.00 per month starting April 2020.

The tenant stated that the landlord enforced a "no guest" policy and charged him \$200.00 for his girlfriend to move in for two weeks. The landlord denied having received \$200.00 from the tenant and referred to text messages between herself and the tenant, that were filed into evidence.

The messages starting March 09, 2020, indicate that the tenant agreed to pay \$200.00 for his girlfriend to move in for two weeks. However further messages state that his girlfriend had changed her mind and did not move in. The landlord stated that the tenant did not pay \$200.00.

The tenant has provided a Monetary Order Worksheet setting out the following claims, totaling \$4,023.24.

1.	Return keys	\$14.96
2.	Mail forwarding	\$58.28
3.	Over payment of rent April -July 2020	\$450.00
4.	"No guests" policy	\$800.00
5.	Overpayment of security deposit	\$325.00
6.	Return of security deposit	\$325.00
7.	Prohibition to sublease	\$1,300.00
8.	Return of rent for illegal eviction	\$650.00
9.	Filing fee	\$100.00
	Total	\$4,023.24

During the hearing, the tenant stated that he is no longer claiming items #1, #2, and #7 as these items are no longer relevant, now that the tenancy has ended.

Analysis

1. Return Keys - \$14.96
2. Mail forwarding - \$58.28

The tenant has withdrawn the above claims.

3. Over payment of rent April – July 2020 - \$450.00

The landlord increased the rent from \$700.00 to \$800.00 in April 2020. The landlord stated that the tenant's girlfriend spent a lot of time in the rental unit and since the rent included utilities, she requested the tenant to pay an additional \$100.00. The landlord agreed that she did not serve the tenant a formal notice of a rent increase.

The landlord stated that the tenant insisted that she allow his girlfriend to stay overnight on a regular basis and after a few discussions and consultation with the occupant of the other suite, the parties came to an agreement. The tenant agreed to pay an additional \$100.00 per month for no more than 3 overnight visits by his girlfriend, per month and started doing so effective April 2020.

Based on the documents filed into evidence I find the landlord's testimony is credible and matches the conversations by text message between the parties. Based on these conversations, I also found that the landlord was very cooperative with the tenant and supported him with rental discounts in his times of need.

The landlord reduced rent at the start of tenancy, to give the tenant an opportunity to settle down and recover from his move from another Province to BC. The landlord also discounted rent while the tenant was away visiting his parents in February 2018 and then again while the tenant went on vacation in March 2019. The landlord did not charge the tenant any additional rent for the period his wife stayed in the rental unit in Summer of 2018.

Based on the above, I find that the tenant agreed to pay the additional rent because his girlfriend stayed over multiple times per month and because the rent included utilities. The landlord stated that the tenant agreed that the extra rent would cover increased utilities. I find that the tenant paid rent in this increased amount for the months of April to June 2020, without attempting to object or file an application for dispute resolution.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to dispute the rent increase in a timely fashion, or shortly after each of the occasions when it became due, pursuant to the doctrine of laches, I find that this aspect of the tenant's application must hereby be dismissed. Accordingly, the tenant's claim for \$450.00 is dismissed.

4. "No guests" policy \$800.00

Based on the fact that the utilities were included in the rent and that the tenant had his girlfriend visiting and staying over night multiple times a month, I find that the tenant breached the tenancy agreement by not adhering to a term in the tenancy agreement that allows the tenant to have guests "under reasonable circumstances". The tenant testified that his girlfriend visited and/or stayed overnight 3 to 12 times a month.

Based on the documents filed into evidence, I find that the tenant agreed to pay \$200.00 for his girlfriend to move in for 2 weeks but never did as the arrangement did not pan out.

The tenant also claims \$800.00 for the landlord's breach of the Act or the tenancy agreement for refusing the tenant to have guests. In order to be successful, the tenant must establish that the tenant suffered a loss, and that the tenant did what was reasonable to mitigate. The tenant has not provided any evidence of either, and therefore I dismiss this portion of the tenant's claim.

I further find that the landlord's guest policy was reasonable and that the tenant is not entitled to compensation. The tenant's claim for \$800.00 is dismissed.

5. Overpayment of security deposit - \$325.00

The rent at the start of the tenancy was \$650.00. The landlord was required to collect a deposit no greater than \$325.00. I order the landlord to return the excess deposit to the tenant.

6. Return of the security deposit - \$325.00

The tenant made this application on July 13, 2020 which was prior to the end date of the tenancy (July 31, 2020). Landlords who receive a notice of dispute resolution prior to the end of tenancy, may not make application for claims against the deposit because they may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the deposit.

In response to the tenant's claim, the landlord filed evidence to support her claim for damages against the security deposit. During the hearing, I offered to hear the landlord's claim, which would allow a resolution of the dispute without another application by the landlord. The tenant stated that he preferred that the landlord's claim against the deposit be heard at a later date. Therefore, in regard to the landlord's claims relating to loss that she may have suffered, I am not able to neither hear nor consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to make a separate application for dispute resolution and to resubmit her evidence.

It must be noted that on September 28, 2020, the tenant made a second application for the same claims as this application. I explained to the tenant the principles of *res judicata* and offered to hear both applications together during today's hearing. The tenant was adamant that he wanted to have his claim heard again in the hearing that is scheduled for January 14, 2021.

I find that the tenant's application initial application was premature, because it was made on July 13, 2020 and the tenancy ended on July 31, 2020. Therefore, I find that the 15-day timeframe to make a claim against the deposit, does not apply and I allow the landlord to make her claim against the security deposit. The landlord has the option of making her claim in time to be crossed with the tenant's application and heard on January 14, 2021. Accordingly, the return of the deposit will be dealt with on that date.

7. Prohibition to sublease - \$1,300.00

The tenant withdrew this portion of his application.

8. Return of rent for illegal eviction - \$650.00

The Residential Tenancy Act states that a tenancy ends only in certain ways, one of which is notice given by a tenant. In this case, on June 20, 2020, the tenant gave notice to vacate effective July 31, 2020. Therefore, I find that the tenant ended the tenancy of his own volition and was not illegally evicted. The tenant's claim of \$650.00 for an illegal eviction is dismissed.

9. Filing fee - \$100.00

The tenant has not proven most of his claim. However, he has proven that he is entitled to the return of the excess amount of the security deposit and therefore I award the tenant half the filing fee in the amount of \$50.00

The tenant has established a claim as follows:

1.	Return keys	\$0.00
2.	Mail forwarding	\$0.00
3.	Over payment of rent April - July 2020	\$0.00
4.	"no guests" policy	\$0.00
5.	Overpayment of security deposit	\$325.00
6.	Return of security deposit	\$0.00
7.	Prohibition to sublease	\$0.00
8.	Return of rent for illegal eviction	\$0.00
9.	Filing fee	\$50.00
	Total	\$375.00

Overall, the tenant has established a claim of \$375.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of \$375.00.

The landlord is at liberty to make her own application for damages against the security deposit.

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: October 15, 2020

Residential Tenancy Branch