



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNDL-S, MNDCL-S, FFL
For the tenant: MNSDS-DR, FFT

Introduction

This hearing dealt with a cross application. The landlord's application pursuant to the Residential Tenancy Act (the Act) is for:

- an authorization to retain the tenant's security deposit (the deposit), under Section 38;
- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

The tenant's application pursuant to the Act is for:

- an order for the landlord to return the deposit, pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Landlord's Claim for Loss of Rental Income

At the outset of the hearing the tenant affirmed he is not aware if the landlord's application includes a claim for loss of rental income.

The notice of hearing issued for the landlord's application states:

Dispute Information

The following information has been provided to the Residential Tenancy Branch and describes the claims made against the respondent(s)

01 - I want compensation for damage caused by the tenant, their pets or guests to the unit, site or property - holding pet or security deposit

\$975.00

Applicant's dispute description

Damage deposit didn't cover my rent loss. The damages were severe and needed time to find the right person to agree to repair the floor in COVID-19 pandemic situation that took 10 days and I lost renting out my fully mortgaged condo. **So I was not able to rent and I lost rent to the amount of \$1950** and also on top of that I paid strata fee \$300 to the building AGM as it doesn't stop!

Supporting Evidence

[...]

August_New_Tenant

Description: Finally, I got a tenant for August. **It shows that my apartment left vacant for July due to [tenant] late notice of end of tenancy.**

02 - I want compensation for my monetary loss or other money owed - holding security or pet deposit

\$975.00

Applicant's dispute description

Damage deposit was hold to compensate partial damage.

(emphasis added)

Based on the notice of hearing, I find the landlord clearly stated in her application that she is making a claim in the total amount of \$1,950.00 for both damages caused by the tenant in the rental unit and loss of rental income for one month and the tenant was aware of both claims.

Issues to be Decided

Is the landlord entitled to:

1. a monetary award for compensation for damages caused by the tenant and loss of rental income?
2. an authorization to retain the tenant's deposit?
3. an authorization to recover the filing fee for this application?

Is the tenant entitled to:

1. an order for the landlord to return the deposit?

2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their applications.

Both parties agreed the periodic tenancy started on June 05, 2020 and ended on June 30, 2020. Monthly rent was \$1,950.00, due on the last day of the prior month. At the outset of the tenancy the landlord collected a security deposit of \$975.00. The landlord holds the deposit in trust. The tenancy agreement was submitted into evidence.

The tenant affirmed he gave notice to end periodic tenancy on June 23, 2020. The landlord stated the rental unit was re-rented on August 01, 2020 and she is applying to obtain a monetary order for loss of rental income for the month of July 2020.

A copy of the inspection report (the report) signed by both parties was submitted into evidence. Both parties agreed the move-in inspection happened on June 05, 2020 and the move-out inspection happened on June 30, 2020.

The report indicates the tenant authorized the landlord to retain the amount of \$975.00 from the deposit for “cleaning and replacing sheets, pans, wine glasses and floor wooden laminate”.

A forwarding address located outside British Columbia was provided in the report. The tenant affirmed he served a new forwarding address located in British Columbia to the landlord via registered mail sent on July 02, 2020 (the tracking number is on the cover page of this decision).

The tenant affirmed when he signed the move-out inspection report the fields “condition at End of Tenancy” and “End of Tenancy” were not completed. At a later point in the hearing the tenant said he does not recall printing his name to these fields or “putting these words there” and he is not sure if he signed these fields or not. Although the move-out report contains the tenant’s signature, he affirmed he did not agree to the landlord retaining his deposit. The tenant affirmed he verbally authorized the landlord to retain \$200.00 for cleaning.

The tenant stated he is a careful person, he should have taken a photograph of the report when he signed it and he did not do so because he trusted the landlord.

The landlord testified she did not add information to the report after the tenant signed it.

The landlord stated she spent \$525.00 to repair damages caused by the tenant to the laminate floor, \$240.00 for cleaning and \$75.63 to replace a frying pan, clothing iron and bed sheets. Three receipts for these expenses were submitted into evidence.

Analysis

Section 7 of the Act states:

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.

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.

Landlord's claim for damages and authorization to retain the deposit

Both parties offered conflicting testimony regarding whether the tenant signed the report authorizing the landlord to retain the deposit for damages in the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have carefully reviewed the testimony offered by both parties. The landlord's testimony about when the report was completed was cohesive and convincing. At first the tenant stated he signed the report authorizing the landlord to retain the deposit. At a later point the tenant affirmed he only authorized the landlord to retain \$200.00. The tenant's testimony was vague and not convincing. Thus, I find on a balance of probabilities it is more likely than not that the tenant signed the report authorizing the landlord to retain the deposit for damages caused by the tenant.

The three receipts submitted into evidence by the landlord sum \$840.63. As the tenant authorized the landlord to retain the deposit in the amount of \$975.00, I find the landlord recovered all her losses for damages caused by the tenant by retaining the deposit.

The landlord's application for an authorization to retain the deposit and for a monetary award for damages caused by the tenant is moot, as the tenant signed the report authorizing the landlord to retain the deposit.

Landlord's claim for loss of rental income

Section 45(1) of the Act sets out how a tenant may end a periodic tenancy:

- (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.

As the tenant provided notice on June 23, 2020 to end the tenancy on June 30, 2020, the tenant did not provide the landlord with at least one month between the time the landlord received the notice and the end date of the tenancy, in contravention of

section 45(1) of the Act. Therefore, I find the tenant failed to give notice to end tenancy in compliance with the Act.

I find that due to the tenant's failure to give proper notice, the landlord has incurred a loss of rent in the amount of \$1,950.00 (rent for the month of July 2020). The landlord's application is for a total amount of \$1,950.00 00 for damages caused by the tenant in the rental unit and loss of rental income. As the tenant authorized the landlord to retain the deposit for compensation for the damages, I find the landlord is entitled to a monetary award in the amount of \$975.00 for loss of rental income for the month of July 2020.

Tenant's claim for the return of the deposit

Based on the report and the landlord's testimony and in accordance with the findings above, I find the tenant authorized the landlord to retain the deposit in the amount of \$975.00.

Thus, the tenant is not entitled to an order for the return of the deposit. I dismiss the tenant's application for the return of the deposit.

Filing Fee and Summary

As the landlord was successful in her application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for her application.

The tenant must bear the cost of his filing fee, as the tenant was not successful in his application.

In summary:

Loss of rental income (July 2020)	\$975.00
Filing fee	\$100.00
Total monetary award to the landlord	\$1.075.00

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$1,075.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant 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 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: December 07, 2020

Residential Tenancy Branch