



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, 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 and authorization to retain a security deposit pursuant to sections 38 and 67;
- 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.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged being served with the landlord's Application for Dispute Resolution package and stated he had no issues with timely service of documents. The tenant did not provide any documentary evidence for this hearing. I am satisfied the Application for Dispute Resolution was duly served in accordance with section 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages, and unpaid rent, as sought?
Can the landlord recover the filing fee?

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 exercised 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 gave the following testimony. The month to month tenancy began on February 1, 2020 with rent set at \$1,100.00 per month payable on the first day of each month. A security deposit of \$550.00 was collected, which the landlord continues to hold.

The landlord did not perform a condition inspection report with the tenant at the commencement of the tenancy, as the rental unit was brand new, with no pre-existing damage. The landlord is not seeking compensation for damage resulting from the tenancy, just for cleaning and ridding the unit of bad odors after the tenancy ended.

The landlord testified that the rental unit is located directly beside his own, with both entry doors located side by side on the ground floor. In May 2020, the landlord noticed bad odors coming from the tenant's unit and requested an inspection of the unit on June 2nd. During the inspection, the landlord brought a restoration company with him. A copy of the restoration company's written report, including photos was provided as evidence by the landlord. The project manager made the following notation:

At this point I would consider all contents and furniture within the residence as biohazardous material. Visual mold growth is found on most surfaces. As well as a strong odor throughout the unit.

I would recommend all contents/debris be removed of and disposed of as contaminated waste by qualified worker. All remaining surfaces (walls, floors, cabinets, fixtures, appliances) be cleaned and disinfected and at that point would provide an inspection and estimate to remove/replace any non salvageable materials.

The restoration company quoted the landlord \$2,445.14 to remove debris, clean, disinfect, deodorize and sanitize the rental unit.

The landlord applied to the Residential Tenancy Branch for an early end to the tenancy pursuant to section 56 of the Act, however that application was dismissed. The landlord did not have a copy of the decision available for this hearing and he was unable to provide me with a file number.

On July 7th, the landlord and the tenant signed a mutual agreement to end the tenancy, effective 12:00 p.m. on July 31, 2020. The landlord provided a copy of the agreement and a photo of the tenant holding the agreement into evidence.

On July 29th, the landlord had the restoration company return to provide another report due to concerns of odor and potential damage. The project manager notes:

The occupant has since removed all debris and completed a general cleanup of the unit. This has taken care of the visual aspect of the concern (also has exposed damages to walls and floors that were not present at time of rental) but the odor within the unit remains. There is a heavy mold/mildew odor throughout the unit and more so in the kitchen/bathroom. I would recommend a full clean and disinfect of all horizontal and vertical surfaces to eliminate hard surfaces as causes of the odor.

No photos of the unit were taken on July 29th.

The landlord testified that on the final day of the tenancy, the tenant was still occupying the rental unit. The police were called, and the tenant left the rental unit with the assistance of the police. The landlord allowed the tenant to store whatever goods he hadn't yet moved out of the unit into his garage and this was supervised by the police. The landlord states the tenant told him whatever was left in the space could be taken to the dump. The tenant's parents came and took away the remainder of the tenant's goods on August 29th.

The landlord testified that during the tenancy, he assisted the tenant by taking the tenant's debris to the dump on July 13th. The landlord had to take a second run to the dump on August 5th to remove more of the tenant's garbage. The landlord had to purchase a mop and baking soda to try and get rid of the bad odors in the rental unit. When that didn't work, he hired an ozone machine and then finally an industrial sanitizer to alleviate the bad smells. Lastly, the landlord purchased a new lock for the unit. Invoices for each item was provided as evidence, as well as photos of the tenant's unit taken the day after the tenant left, on August 1, 2020.

The landlord submits that it took 33 hours of his own time to clean, sanitize and deodorize the rental unit. The landlord provided testimony regarding the steps he took to make the rental unit habitable once again. He estimates that a fair hourly charge for

the cleaning would be \$25.00 per hour. The landlord seeks \$825.00 in total for his labour.

Lastly, the landlord was unable to find a new tenant until September 1st because the condition of the rental unit was so foul while the tenant occupied it and because it took at least a half a month to bring the unit back to rentable condition. The landlord seeks to recover a month's rent from the tenant for August, 2020.

The tenant gave his testimony next. During his testimony, the tenant advised me that the landlord owes him compensation for disposing of his possessions after the tenancy ended. The tenant repeatedly tried to have this issue adjudicated upon during this hearing, however I explained to the tenant that he is required to file his own Application for Dispute Resolution if he wants to seek an order for compensation. The tenant repeatedly tried to argue that he was "told" he could have his issues adjudicated upon and much of the tenant's testimony time was taken up addressing the tenant's insistence that I hear the matter during this hearing.

The tenant testified that after the landlord was unsuccessful in obtaining an early end to the tenancy, the landlord came to him and told the tenant that he "has to" sign a mutual agreement to end tenancy. The tenant testified he was afraid not to sign it.

The tenant testified that after he signed the mutual agreement to end the tenancy, he called the Residential Tenancy Branch and was "told" that he was allowed to stay. The tenant stated he called the Residential Tenancy Branch 4 different times and on each occasion, he was given the same response. No written material was provided as evidence from the tenant.

Based on his understanding that he didn't have to leave, the tenant was surprised that the landlord attended the unit to get him to leave on July 31st. During the last month in July, the landlord "freaked out" at him for mopping the floors, leaving the tenant confused as to what he was supposed to do. The landlord got angry and aggressive at him. The mess in the rental unit was being cleaned up and would have been in a better state had he been told he actually had to move out on the 31st. When the police arrived on the last day of the tenancy, they told him moving out would be for his own safety.

Analysis

First, I find the tenancy ended on July 31, 2020 when the landlord and the tenant agreed in writing to end the tenancy, pursuant to section 44(1)(c) of the Act. Despite the tenant's argument that he was "told" it hadn't ended, I don't find it probable a casual

observer, much less an information officer of the Residential Tenancy Branch would tell a person who has signed a mutual agreement to end tenancy that it does not actually end it.

Section 7 of the Act states: 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.

Section 67 of the 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.

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 compelling and convincing evidence to show the rental unit was left in a “damaged” condition after the tenant vacated it. Black’s Law Dictionary, sixth edition, defines damage as: *loss, injury or deterioration, caused by the negligence, design or accident of one person to another, in respect to the latter’s person or property.*

While the photographs of the unit, taken after the tenant left, corroborate the landlord’s testimony that the unit suffered from foul smells; it is impossible for the landlord to provide direct evidence of this. To make this finding, I turn to the reports provided by the landlord’s restoration company and to the testimony of the parties. The July 29th report makes reference to a moldy/mildew odor still remaining in the unit after many of the tenant’s possessions were gone. During testimony, the landlord made multiple references to the foul odors coming from the unit; however the tenant made no reference to how the unit smelled at all. I find that on a balance of probabilities, the landlord has provided sufficient evidence to satisfy me that the facts occurred as claimed and that the unit was left in an unclean, foul smelling and unsanitary state at the end of the tenancy.

Section 32(2) of the Act states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. I find the tenant has not fulfilled this obligation and is therefore in breach of this section of the Act.

The landlord has provided invoices to document the value of the compensation for damages sought. Each one is listed on the landlord's document entitled, *Studio Expenses* and will be reviewed in turn.

- Labour

Based on the photographs provided and the landlord's testimony regarding the steps he took to clean, deodorize and sanitize the unit, I am satisfied with the landlord's submission that it took 33 hours to perform the work. The average wage for a house cleaner in British Columbia varies between \$16.00 and \$18.00 per hour. I award the landlord 33 hours at \$17.00 per hour for a total of **\$561.00** for labour pursuant to section 67 of the Act.

- Dump runs

Based on the photographs of the unit taken on June 2nd and July 29th, I am satisfied the tenant accumulated enough debris and detritus requiring the 2 dump runs. The landlord's testimony that the first run was done to assist the tenant and that the landlord was not paid back for this assistance was not disputed by the tenant during the hearing. The landlord is awarded **\$50.00** for the 2 dump runs.

- Mop, lock

The mop purchased by the landlord will likely be retained by the landlord as his possession, suitable for using again in the future, making it a capital expense for the landlord. This will not be awarded as a damages cost.

The landlord did not provide any testimony regarding the purchase of a lock and a landlord is required to change the locks to a rental unit at the start of a new tenancy in accordance with section 25 of the Act. This cost will not be awarded to the landlord.

- Baking Soda, Ozone machine and sanitization

I am satisfied the landlord took the least expensive steps to rid the rental unit of bad odors at the end of the tenancy. Starting first from baking soda, moving next to the ozone treatment, then finally renting the sanitization machine. I find the landlord took the steps to try and mitigate the damages as cost effectively as possible and I award the landlord the costs he paid to do so. The landlord is awarded the sum of **\$301.66** pursuant to section 67.

Lastly the landlord seeks to recover a month's lost rent for August. Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] states:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I find that the premises were unrentable due to the odors caused by the tenant and the unclean state of the rental unit at the end of the tenancy. I further find the landlord cleaned, deodorized and sanitized the rental unit as quickly as he could, starting in the beginning of August; minimizing the time the unit remained vacant. I find it reasonable that the landlord was unable to find a tenant willing to commence a tenancy until the beginning of the month and that the tenancy with the new tenant for September 1st represents the earliest tenancy the landlord could enter into. I award the landlord one month's rent in the amount of **\$1,100.00** pursuant to section 67 of the Act.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$550.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Labour	\$561.00
Dump runs	\$50.00
Baking Soda, Ozone machine and sanitization	\$301.66
Lost rent for August	\$1,100.00
Filing fee	\$100.00
Less security deposit	(\$550.00)
Total	\$1,562.66

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$1,562.66**.

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 09, 2020