



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained. The hearing lasted 48 minutes

Preliminary Issue – Settlement Discussions during Hearing

Section 63 of the *Act* states as follows:

Opportunity to settle dispute

63 (1) *The director may assist the parties, or offer the parties an opportunity, to settle their dispute.*

(2) *If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.*

During the hearing, I informed the parties of section 63 and we discussed terms for acceptable resolution of the dispute. I explained that I would not decide the matter during the hearing and that my Decision would be submitted in writing within thirty days of the hearing date if the parties did not reach a settlement.

For some time during the hearing, a possible settlement was discussed in detail and the parties negotiated.

However, before the settlement was finalized, the landlord became upset and stated the Arbitrator was “coercing” her into the settlement.

Several times, I explained the settlement process and clarified the meaning of issuing a Monetary Order for the return of the security deposit which was under discussion.

Nevertheless, the landlord became increasingly distraught and informed me several times that I was “forcing” and “coercing” her to pay money to the tenant to which he was not entitled. She became progressively more upset, spoke negatively of the tenant and his actions during the tenancy, and several times loudly interrupted the tenant and me.

During this part of the hearing, the landlord insisted she was sending money for the return of the security deposit by bank transfer to the tenant in the amount under discussion. I advised the tenant not to transfer money as the parties had not reached an agreement.

Until the end of the hearing, the landlord repeatedly told me I was pressuring her into an unfair settlement and continued to insist she was transferring the money pursuant to terms that I was forcing her to accept.

Having repeatedly explained the process to the landlord without effect, I ended the Arbitration without recording a settlement. I informed the parties that I would make a

Decision based on the relevant admissible evidence which would be in writing and sent to the parties within 30 days.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The parties submitted considerable conflicting testimony in a 58-minute hearing. Not all this evidence is referenced in my Decision, but only relevant, significant, and admissible facts are included.

The parties agreed the tenancy began on June 5, 2019 and ended when the tenant vacated on August 31, 2020. Rent was \$2,400.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,050.00 which the landlord holds without the tenant's authorization.

The tenant provided written notice by email to the landlord on July 31, 2020, a copy of which was submitted, stating he was moving out in August. The tenant paid rent for August 2020.

The tenant provided his forwarding address to the landlord by email dated September 1, 2020, a copy of which was submitted.

No condition inspection was conducted on moving in. The parties met on August 31, 2020 at an agreed time for a condition inspection on moving out. The landlord testified that the tenant left without the inspection and report being completed when the landlord stated she wanted compensation for damages. No report was submitted as evidence.

Loss of Rent

The landlord claimed the tenant left a dirty barbecue in the unit for some time during August 2020; this caused a bad smell that lingered after the tenant removed it when he vacated. The landlord claimed the smell prevented the unit from being rented and it remains unoccupied to date. Accordingly, the landlord claimed \$2,400.00 for loss of rent for one month.

The tenant acknowledged that he put the barbecue in the unit and stated that he removed it as soon as he could prior to moving out. The tenant stated that the elevator in the building was not working during the times he was moving items out during August 2020. The landlord acknowledged one of the elevators was being repaired but denied that the other was inoperative for a significant period. The tenant denied that the barbecue caused a smell which resulted in the tenant being unable to rent the unit after he left.

The tenant asserted that the reason the unit was not rented was because of the pandemic and because the landlord intended to sell and not rent.

Damage to Area Rug

The landlord claimed the tenant spilled coffee on an area rug which cost \$300.00 (USA) one year ago. The landlord did submit a receipt or supporting evidence for the purchase price. The landlord claimed she attempted to clean the rug to no avail. She requested reimbursement of the cost for replacement of the rug in the amount of \$212.79 for which she submitted a receipt. The tenant testified he did not know whether he spilled coffee on the rug or not and offered to pay for the replacement in the amount requested.

Loss of Keys and Fob

The landlord requested \$66.00 for the replacement of keys and fob. The tenant acknowledged he lost one key of a value of \$8.00 but denied the landlord's right to any other compensation under this heading and said he returned everything else. The tenant sent a text to the landlord acknowledging losing one key and stating he returned all others.

Strata fine

The landlord claimed the tenant used the elevator at intervals to move out. This sporadic use of the elevator caused the strata to fine the landlord \$150.00. The landlord did not support documentary evidence to establish the amount of the fine.

The tenant denied the landlord was entitled to compensation for such an expense as he made the best use possible of elevators which were non-functioning or under repair.

The undisputed claims of the landlord are as follows:

ITEM	AMOUNT
Replacement key	\$8.00
Area rug	\$212.79
TOTAL UNDISPUTED CLAIM OF LANDLORD	\$220.79

The disputed claims of the landlord are as follows:

ITEM	AMOUNT
Compensation one month rent	\$2,400.00
Strata fine	\$150.00
Keys and fob	\$58.00
TOTAL DISPUTED CLAIMS OF LANDLORD	\$2,608.00

The landlord requested reimbursement of the filing fee and authorization to apply the security deposit to the award.

Analysis

I have considered all the submissions and refer only to key, admissible facts. Only relevant findings are referenced.

Claim for Compensation and Damages

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party, the landlord, must establish that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

The landlord must meet the burden of proof with respect to each claim. Each of the landlord's claims are considered in turn.

I find the landlord has failed to establish that a strata fine in the amount claimed was imposed by the strata or related to the tenant's moving out. No copy of the fine was submitted. Even if one were imposed, I accept the tenant's testimony as credible that he used the elevator in a reasonable manner to vacate and that, as acknowledged by the landlord, the elevators were not both in good working order during August 2020.

Therefore, I find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to this aspect of her claim. This claim is accordingly dismissed without leave to reapply.

I find the landlord has also failed to establish that the expense claimed was incurred for replacement of the disputed keys and fob. In the absence of a receipt, I accept the tenant's testimony as credible and the most likely version of events that he returned all except one key.

Therefore, I find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to this aspect of her claim. This claim is accordingly dismissed without leave to reapply.

The landlord's remaining claim related to the alleged loss of rent due to the lingering smell of the tenant's barbecue after he moved out.

I find the tenant provided one month's notice in writing when he sent an email to the landlord at the end of July 2020 stating he would be moving out at the end of the month of August 2020. A copy of the email was submitted as evidence and the landlord acknowledged receipt.

I acknowledge the landlord's testimony that she has not rented the unit since the tenant vacated. I find it more likely than not that there are other factors which have led to the unit not being successfully rented again. In the absence of documentary evidence of her efforts to rent the unit, I am unable to determine that the landlord attempted to rent the unit and that her efforts amounted to meeting her duty to mitigate.

I have reviewed and weighed the testimony and evidence. I find the landlord has not met the burden of proof that the tenant violated the agreement by leaving a dirty and smelly barbecue in the unit such that the smell made it impossible for the landlord to rent the unit after he left. I do not accept the landlord's testimony as reasonable or credible that she was unable to rid the unit of the bad smell and therefore has been unable to rent the unit.

Therefore, I find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to this aspect of her claim. This claim is accordingly dismissed without leave to reapply.

Summary

I grant the landlord a Monetary Award in the amount of **\$220.79** being the amount to which the tenant consented. As the landlord has been partially successful in her application, I award \$25.00 for partial return of the filing fee.

I authorize the landlord to deduct this amount from the security deposit and to return the balance to the tenant as follows:

ITEM	AMOUNT
Area rug and key	\$220.79
Reimbursement filing fee in part	\$25.00
(Less security deposit)	(\$1,050.00)
SECURITY DEPOSIT RETURNED TO TENANT	(\$804.21)

I grant the tenant a Monetary Order in the amount of **\$804.21** for the return of the balance of the security deposit.

Conclusion

I grant the tenant a Monetary Order in the amount of **\$804.21**. This order must be served on the landlord. If the landlord fails to comply with this Order, the tenant may file the Order in the Provincial Court (Small Claims) to be 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 16, 2020

Residential Tenancy Branch