



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNDL-S, FFL**
 MNDCT, MNRT, RPP
 MNSDB-DR

Introduction

This hearing dealt with applications from both parties for compensation under the *Act*.

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the tenant's security and pet deposits pursuant to section 38; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- a Monetary Order pursuant to section 67 of the *Act*;
- a return of the security and pet deposits pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

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

While the landlord confirmed receipt of the tenant's application for dispute and evidentiary package, the tenant stated she had received no documentation of any kind from the landlord and only received word of the landlord's application following a conversation with the Residential Tenancy Branch.

The landlord stated she provided a copy of the application for dispute and evidence to the tenant by way of Canada Post Registered Mail on October 1, 2020. The landlord noted the tracking number indicated this package was received on October 2, 2020. A copy of the Canada Post receipt and tracking number were provided at the hearing and demonstrated that they were received on October 2, 2020.

Section 71(2)(b) of the *Act* states, “the director may make any of the following order: that a document has been sufficiently served for the purposes of this Act on a date the director specifies.” While section 62(2) states, “The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act.” I find based on the evidence before me and submitted by the landlord, that the tenant was sufficiently served in accordance with section 88 & 89 of the *Act* on October 2, 2020.

Residential Tenancy Policy Guideline #12 notes that, “The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done...It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.” I find little evidence was presented by the tenant which rebuts the landlord’s testimony and Canada Post documentation supporting her claim that the documents were served via Canada Post Registered Mail on October 2, 2020.

Issue(s) to be Decided

Is either party entitled to a monetary award?

Can the landlord retain the tenant’s pet and security deposits? If not, should they be doubled?

Is either party entitled to a return of the filing fee?

Background and Evidence

The parties testified this tenancy began on August 1, 2020 and ended on August 31, 2020. This was a fixed-term tenancy which was set to expire on July 31, 2021. Rent was \$1,650.00 per month and deposits of \$825.00 (security) and \$175.00 (pet) were collected at the outset of the tenancy and continue to be held by the landlord.

The landlord is seeking a monetary award of \$2,750.00 representing unpaid rent for September 2020 and \$1,000.00 in damages, cleaning and other expenses associated to the property. The tenant is seeking a monetary award of \$4,900.00 representing a doubling of both her pet and security deposit, along with compensation for a lost cat.

The landlord said she was seeking unpaid rent for September 2020 because the tenant had broken their year long fixed-term tenancy after having vacated the property after

one month of occupation. Further, the landlord detailed damage to the rental unit which was purportedly done by the tenant's cat, the removal of garbage and debris, cleaning, and the replacement of locks in the unit after the tenant allegedly failed to return the keys to the home.

The tenant argued the landlord had failed to return her pet and security deposits following the conclusion of the tenancy and explained that following some confusion related to her move-out from the unit, her cat had gone missing. The tenant blamed the landlord for this and suspected the cat may have been trapped in the wall of the rental unit. Further, the tenant alleged the landlord had prevented her from accessing the rental unit in order to properly look for the cat.

The landlord supplied numerous invoices and quotes in support of her application and detailed the manner the tenant's cat had damaged the unit. The tenant denied any damage to the unit as a result of the presence of her cat and argued the landlord was trying to take advantage of her. The parties presented conflicting information related to the state of the rental unit following the conclusion of the tenancy, with the landlord arguing a fair amount of debris and cleaning was required following the tenant's departure, while the tenant argued it was left clean and free of damage. Further, the tenant acknowledged not returning the key to the unit but stated the landlord had failed to attend the agreed move out inspection and alleged this miscommunication led to the loss of the cat for which the tenant claims compensation.

Both parties presented a confusing and somewhat incoherent set of facts related to the conclusion of the tenancy but agreed the tenancy ended on August 31, 2020. The tenant testified that she returned to the property at 9:30pm on this date and was denied entry to the unit, further, she stated the locks had been changed and the landlord had denied her an opportunity to enter the unit to look for her missing cat. The landlord disputed this version of events, saying the tenant failed to attend the property at the agreed upon time to return the keys and explained the local police department were present at the home with the tenant and the cat on the evening of the 31st.

The property remained unoccupied for September 2020 with the landlord re-renting the suite for October 2020. The landlord said she took significant steps to re-rent the suite, fielding 22 inquiries and showing the home on six occasions. The tenant's forwarding address was sent to the landlord by way of Registered Mail on September 9, 2020 and was received by the landlord on September 14, 2020. An application for dispute was submitted by the landlord on September 25, 2020.

Analysis – Tenant's Application

The tenant has applied for double a return of her security and pet deposit which the landlord continues to hold and for compensation related to the loss of a cat.

Section 38 of the *Act* requires a landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and upon receipt of the tenant's forwarding address in writing. In this case, the tenant's forwarding address was sent to the landlord in writing via Canada Post on September 9, 2020 and received on September 14, 2020. A review of the landlord's application for dispute revealed she applied to withhold the tenant's deposit on September 25, 2020. If deposit is not returned and no application is submitted, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security or pet deposit.

I find the landlord has applied to retain the tenant's pet and security deposit within the 15-day timeline as prescribed by section 38 of the *Act* and therefore decline to consider the tenant's application for a doubling of the deposits.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove her entitlement to a monetary award.

After reviewing the evidence submitted and having considered the submissions from the tenant, I find the tenant has provided insufficient evidence demonstrating her right to a monetary award for a lost cat. I found the tenant to have vacated the property by her own volition and was under no immediate pressure to move from the property due to reasons which were beyond her control or because of the landlord's influence. I find little evidence in support of her arguments that she was locked out of the property and therefore denied a right to look for her cat. For these reasons the tenant's application for a monetary award is dismissed. I can find no nexus between the landlord's actions (or inactions) and the resulting missing cat.

Analysis – Landlord's Application

The landlord is seeking a monetary award of \$2,750.00 representing unpaid rent for September 2020 and \$1,000.00 in damages, cleaning and for a replacement lock.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

As noted above, section 7 states that when a person breaches their tenancy agreement, they must compensate the other party for this breach. I accept the landlord's testimony that *reasonable* efforts were made to re-rent the unit as quickly as possible by fielding 22 inquiries and showing it on six occasions. No evidence was presented at the hearing by the tenant disputing the landlord's submissions that the tenancy ended one-month into a twelve-month fixed term lease. I will therefore award the landlord a monetary award of \$1,650.00 for the unpaid rent of September 2020.

The second portion of the landlord's application concerns a monetary award of \$1,000.00 for damage, cleaning and the replacement of the locks. *Residential Tenancy Policy Guideline #1* notes, "The tenant must return all keys at the end of the tenancy." While I considered the testimony of the parties regarding the confusing manner by which the tenancy ended on August 31, 2020, I note Section 37(1) dictates, "Unless a landlord and tenant otherwise agree, the tenant must vacate rental unit by 1 p.m. on the day the tenancy ends." Absent of evidence supporting a different move-out time, I find the tenant had an obligation to return all keys when she departed the home. Further, I find the entirety of the landlord's application is supported by invoices demonstrating the costs and that her monetary claim meets the four-point test per *Policy Guideline #16*; A party to the tenancy agreement has failed to comply with the *Act*, loss or damage has resulted from this non-compliance, the party who suffered the damage can prove the amount of value of the damage and the party who suffered the damage has acted

reasonably to minimize that damage or loss. For these reasons, I award the entirety of the landlord's monetary award.

Using the offsetting provisions contained in section 72 *Act*, I allow the landlord to retain the tenant's pet and security deposit in partial satisfaction for the monetary award. As the landlord was successful in her application, she may recover the \$100.00 filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord may retain the tenant's pet and security deposit in its entirety.

The landlord is entitled to a monetary award as follows:

ITEMS	AMOUNT
Unpaid rent for September 2020	\$1,650.00
Damages, Cleaning and Lock Replacement	1,000.00
Less Return of Security & Pet Deposit	(-1,000.00)
Return of Filing Fee	100.00
TOTAL =	\$1,750.00

I grant the landlord a monetary award of \$1,750.00. Should the tenant fail to comply with the order, the order may be filed in the Provincial Court of British Columbia 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: January 19, 2021

Residential Tenancy Branch