Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: MNDCT, MNSD, RPP, FFT
Landlord's Application: MNDL-S, MNDCL-S, FFL

Introduction

An Application for Dispute Resolution was filed by the tenant and the landlord. The files were not initially joined by the Residential Tenancy Branch in scheduling the proceedings. The applications were subsequently joined, as explained further below.

The tenant applied for: return of his personal property; return of the security deposit; and, monetary compensation for damages and or losses under Act, regulations, or the tenancy agreement. The tenant's proceeding commenced on December 3, 2020 with me and an Interim Decision was issued on December 3, 2020. The Interim Decision should be read in conjunction with this decision.

The landlord applied for monetary compensation for damage to the rental unit, other damages or loss under the Act, regulations, or tenancy agreement; and, authorization to retain the tenant's security deposit. The landlord's proceeding commenced on January 11, 2021 with a different Arbitrator. The Arbitrator presiding over the January 11, 2021 proceeding ordered the landlord's application to be joined to the tenant's application. An Interim Decision was issued on January 13, 2021 and should be read in conjunction with this decision.

The joined applications were heard together by me on February 19, 2021 with me.

Both parties appeared for all hearing dates along with their interpreters.

Preliminary and procedural matters

1) Use of interpreters and translation

Both parties were assisted by their own interpreters during the hearing. It should be noted that questions I posed to the parties had to be translated from English to Mandarin and the parties' responses were translated from Mandarin to English. In writing this decision, my reference to testimony or statements of the parties is based on the translation provided to me by the interpreters.

Some documents relied upon in this proceeding were written in English, such as the tenancy agreement and the landlords notice to the tenant that the tenancy agreement would not be renewed upon expiry of the fixed term. There were also messages exchanged between the parties using WeChat near the end of the tenancy which were not in English. The tenant had the messages he intended to rely upon translated to English by a certified court interpreter. The landlord also included WeChat messages and a translation for one of the messages but it was not certified. The tenant did not take issue with the translation provided by the landlord. Accordingly, I have accepted the translations as presented to me.

2) Landlord's application

The Arbitrator presiding over the January 11, 2021 hearing recorded in her decision that the matters raised by the parties appeared related in ordering the proceeding to be joined but went on to point out:

> "I have not made any findings of fact or law with respect to the application or service during this proceeding."

Since the Arbitrator presiding over the January 11, 20201 did not make any findings as to the landlord's application, including service, it was upon me to confirm service and setting out the claim was sufficient and met the requirements set out in the Act and the Rules of Procedure.

The landlord testified that he sent his Application for Dispute Resolution and supporting evidence to the tenant via registered mail in September 2020 or October 2020. The tenant confirmed receipt of the registered mail.

I noted that the tenant had uploaded evidence under the landlord's file number; however, the tenant testified that he did not send a package of rebuttal evidence to the landlord. The landlord confirmed that he did not receive a package of rebuttal evidence from the tenant.

I noted that the landlord's package was devoid of a Monetary Order worksheet or other detailed calculation in support of his claim of $5,040.01 that appears on the Landlord's Application for Dispute Resolution. The landlord stated that he did not prepare a detailed calculation and that I would have to add the invoices that were included in his evidence package together to determine the sum he was claiming against the tenant. I turned to the tenant and asked whether he was able to determine how the landlord had arrived at his claim of $5,040.01 based on the evidence served upon him. The tenant stated he does not understand how the landlord arrived at the sum claimed against him.

I note that the landlord included several utility bills in his evidence package and several of the utility bills included a balance forward from previous periods. In addition, each of the utility bills provide a discounted amount if the bill is paid by a particular date and a different amount if the amount is paid after a particular date. There is no indication on the bills or elsewhere in the landlord's submissions that would indicate whether the landlord is claiming the discounted amount or the full amount indicated on each of the utility bills. As such, I reject the landlord's position that determining his claim is simply a matter of adding all of the invoices together.

Section 59 of the Act provides that an applicant is required to include "full particulars of the dispute that is to be the subject of the dispute resolution proceedings". Rules 2.5 and 3.1 of the Rules of Procedure provide that a monetary claim is to be accompanied by a detailed calculation. The Rules of Procedure were developed with a view to ensure a fair proceeding and in keeping with the principles of natural justice which include the respondent's right to understand the claim being made against them.

I find the landlord failed to provide sufficiently clear claim that includes a detailed calculation and I declined to further consider the landlord's claim against the tenant. The landlord's monetary claim(s) against the tenant are dismissed with leave to reapply.

3) Tenant's amendment

After the December 3, 2020 hearing was adjourned, the tenant submitted an Amendment to an Application for Dispute Resolution seeking to increase his monetary claim against the landlord. The hearing for the tenant's claim had already commenced

and as seen in the Interim Decision issued on December 3, 2020 I did not authorize the tenant to amend the claim or submit additional materials during the period of adjournment. Therefore, I did not permit the tenant's claim to be amended.

It would appear that the tenant's attempt to amend his claim against the landlord pertains to alleged damage to possessions that had remained in the rental unit after the tenancy ended. By way of this proceeding I have made orders with respect to return of his property. Should the tenant be of the position he is entitled to compensation from the landlord, the tenant may do so by filing another Application for Dispute Resolution.

Having dismissed the landlord's claim, with leave to reapply, I proceed to make a decision for the tenant's claims, as originally filed.

Issue(s) to be Decided

- Is it necessary and appropriate to issue orders for return of the tenant's personal property?
- Is the tenant entitled to monetary compensation from the landlord, as claimed?
- Should the security deposit be returned to the tenant and if so, should the security deposit be doubled?
- Award of the filing fee.

Background and Evidence

The parties provided consistent evidence that the parties executed three tenancy agreements with respect to the rental unit with the first agreement set to commence on October 20, 2017; the second agreement set to commence on October 20, 2018; and, the third agreement set to commence on October 20, 2019 with a fixed term set to expire on October 20, 2020.

The tenant paid a security deposit of $1350.00 and the landlord continues to hold the security deposit.

Pursuant to the third tenancy agreement, the tenant was required to pay rent of $2750.00 per month. The tenancy agreement does not indicate which day of the month the rent was due; however, the tenant provided the landlord with post-dated cheques dated for the 22nd day of every month. The tenant provided a copy of cheques to show the payment of rent on the 22nd day of the month. The landlord testified that the rent was due on the 20th day of every month.

Return of tenant's property

It was undisputed that the tenant had removed the majority of his possessions from the rental unit by August 17, 2020 but some items were still remaining in the rental unit when the landlord changed the locks to the rental unit on August 17, 2020.

In the Interim Decision dated December 3, 2020, I recorded the items the tenant sought to have returned and the landlord confirmed to be at the property and I issued orders to both parties with respect to the retrieval of the possessions by December 31, 2020.

At the hearing of February 19, 2021, I heard that the tenant arranged for his wife and several other people to retrieve most of the possessions from the rental unit in December 2020 but the piano and the lock box were not removed from the rental unit. The parties provided differing reasons as to why the piano and the lock box were not removed from the property by December 31, 2020.

I asked the tenant whether he intended to retrieve the piano and lock box or was he abandoning these two items. The tenant expressly stated he was not abandoning them. The landlord also stated that he wants the tenant to remove the last of his possessions from the rental unit and confirmed the items are still at the rental unit but the landlord does not want them there much longer.

The landlord also stated that the tenant failed to return the garage remotes by December 31, 2020 as I had ordered on December 3, 2020. The tenant confirmed that was accurate and that he will return the garage remotes to the landlord.

I explored options for the tenant to retrieve the piano and lock box from the rental unit and return the garage remotes to the landlord. Upon those discussions, it was agreed and **I ordered the following**:

a) The tenant will arrange to have movers attend the rental unit for purposes of retrieving the piano and lock box no later than February 28, 2021.
b) Upon making arrangements to remove the his possessions, the tenant will notify the landlord of the date and time the movers will arrive at the rental unit, via text message using the cell phone number recorded on the cover page of this decision, with at least 24 hours in advance.

c) The landlord will ensure he, or his agent, is at the rental unit at the date and time specified by the tenant above so as to provide access to the rental unit to the tenant's movers to pick up his possessions from the rental unit.
d) Should the tenant fail to retrieve the piano and lock box by February 28, 2021 the landlord is at liberty to consider the tenant to have abandoned the possessions and the landlord may proceed to deal with the items in accordance with the abandoned property rules provided in the Residential Tenancy Regulations.
e) The tenant must also return the two garage remote controls to the landlord no later than February 28, 2021. Should the tenant fail to return the garage remotes to the landlord, the landlord is at liberty to replace the remotes and make a monetary claim against the tenant to recover the loss.

Tenant's Monetary claim

1) Return of rent paid after landlord changed locks -- $275.00

The tenant submitted that he had paid rent to August 20, 2020 and had removed the majority of his possessions from the rental unit on August 16 and 17, 2020 but the landlord changed the locks to the rental unit on August 17, 2020 which deprived the tenant of the ability to retrieve possessions when he returned on August 18, 2020. The tenant also submitted that the landlord entered the rental unit on August 17, 2020 and took pictures, including of his daughter's bathroom, which the tenant considered to be an invasion of privacy.

The landlord acknowledged that he changed the locks on the rental unit on August 17, 2020. The landlord stated that the tenant had notified him that he had moved out and was ready to hand over the rental unit. The landlord stated that the tenant would not return the keys unless the landlord returned the security deposit. The landlord submitted, by way of a written submission, that he invited the tenant to participate in a move-out inspection and the landlord went to the property to meet the tenant at 3:00 p.m. but the tenant did not show up. The landlord provided a WeChat message dated August 17, 2020 at 5:24 p.m. that the landlord appears to have translated without the benefit of a certified translator.

The landlord explained that when the landlord went to the property on August 17, 2020, he found the laundry room door on the exterior of the house open. The landlord stated he does not have a copy of the keys to the rental unit so he proceeded to change the locks so as to secure the house.

The tenant denied that the laundry room door was left open. The tenant stated the landlord did not notify him that he was going to change the locks and this was discovered when they returned to the property on August 18, 2020 to retrieve their children's toys and at that time they found they could not enter with their key or with the garage remote. A phone call to the landlord's wife resulted in the landlord's wife confirming that the landlord had changed the locks.

2) Compensation equivalent to one month's rent -- $2750.00

The tenant testified that he seeks compensation equivalent to one month's rent because the landlord informed him, in writing, that the landlord would not be renewing the tenancy agreement when it expired and the tenant would have to vacate the rental unit by October 19, 2020. The tenant stated that the parties had a phone conversation and the landlord asked him to move out as soon as possible. A realtor's sign was posted in the front yard on August 10, 2020. The tenant was able to secure alternative living accommodation through a friend and began moving out August 16, 2020. The tenant explained that he did not know at the time that it was his right to not move out.

The tenant stated that the landlord's wife offered to pay the tenant compensation equivalent to two month's rent but the tenant was agreeable to one month's rent. The tenant stated this offer was made after he filed his Application for Dispute Resolution.

The landlord acknowledged he gave the tenant a written notice that he would not be renewing the lease when it expired; however, he did not ask the tenant to move out early. The landlord was of the position the tenant moved on his own volition after finding new living accommodation.

The landlord stated he was unaware of any offer his wife made to the tenant after the tenant commenced his claim and stated his wife is not fully aware of all of the details.

3) Return of security deposit -- $1350.00

The tenant seeks return of the security deposit. The tenant did not authorize the landlord to retain it. The tenant testified that he gave his forwarding address to the landlord when he served his previous Application for Dispute Resolution (file number referenced on the cover page of this decision).

The landlord acknowledged he continues to hold the tenant's security deposit and he made a claim against it under his own Application for Dispute Resolution. The landlord

stated he received a forwarding address from the tenant was when he received the tenant's previous Application for Dispute Resolution.

The Notice of Dispute Resolution Proceeding generated for the previous dispute resolution proceeding included the tenant's new address for service and was sent to the landlord via registered mail on August 26, 2020, as seen in the previous dispute resolution decision and corroborated by a registered mail receipt.

4) Utilities for period after tenant locked out -- $106.92 + $35.14 + $20.18

The tenant submitted that he paid for hydro and gas utilities for the rental unit after the landlord locked him out on August 17, 2020 and he seeks recovery of such costs.

The landlord was agreeable to compensating the tenant for the utilities paid by the tenant after August 17, 2020; however, the landlord stated the tenant did not provide him with copies of the utility bills.

I noted that I had three utility bills submitted by the tenant (one hydro bill and two gas bills) and the landlord stated he was agreeable to paying his portion if I were to describe the utility bills to him. I described the amount of the bills and the consumption period for the bills and the landlord agreed to pay the utilities for the period after August 17, 2020.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

- That the other party violated the Act, regulations, or tenancy agreement;
- That the violation caused the party making the application to incur damages or loss as a result of the violation;
- The value of the loss; and,
- That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of every before me, I provide the following findings and reasons.

1) Return of rent after landlord changed the locks to the rental uni.

Under section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit. Quiet enjoyment which includes reasonable privacy and exclusive possession of the rental unit subject only to the landlord's restricted right to enter the rental unit as provided under section 29 of the Act.

Section 31 also places prohibitions on changing locks. With respect to a landlord changing the locks, section 31(1) and (1.1) of the Act provides:

> **31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.
>
> (1.1) A landlord must not change locks or other means of access to a rental unit unless
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> (a) the tenant agrees to the change, and
>
> (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

[My emphasis underlined]

It is undisputed that the landlord changed the locks to the rental unit on August 17, 2020 but the tenant had not yet removed all of his possessions from the unit, cleaned the unit, or otherwise given up possession to the landlord.

Since the three tenancy agreements started on October 20 and the first tenancy agreement shows a rent payable date of the 20th day of every month, I accept the landlord's position that rent was payable on the 20th of every month to be more likely even though the tenant provided the landlord with post dated cheques dated for the 22nd of the month.

I find it is evident by the tenant removing the majority of his possessions on August 17, 2020 and his communications with the landlord that he was preparing to hand over the property that August 2020 was to be the last month of tenancy. The tenant was of the position the tenancy would have ended August 20, 2020; whereas, the landlord was of the position it should have ended on August 19, 2020. Having found rent was payable on the 20th of the month, and considering a rental month ends the day before rent is due, I find the landlord's position that the tenancy was to end on the 19th to be accurate.

As such, I find the tenancy was set to end on August 19, 2020 as August 20, 2020 would have been the first day of the next rental month.

The landlord attempted to justify changing the locks on August 17, 2020 by claiming the laundry room door was left open and he did not have a copy of the keys to the rental unit; however, the tenant denied the door was left open and upon review of the "WeChat" messages exchanged between the parties on August 17, 2020 and August 18, 2020 I note the landlord makes no mention of changing the locks because the laundry room door was open. It is also apparent from the WeChat message that the landlord also took pictures of the inside of the rental unit which is a violation of the tenant's right to privacy during the tenancy.

In light of the above, I find the landlord unlawfully changed the locks to the rental unit, which amounts to prematurely taking possession of the rental unit and violated the tenant's right to privacy. Therefore, I find the tenant entitled to compensation for the two days remaining in the tenancy for which the landlord prematurely took possession and locked the tenant out.

I calculate the tenants award to be $2750.00 x 2/31 days = $177.42 and I award that amount to the tenant.

2) Compensation equivalent to on month's rent

It is clear from the unopposed evidence before me that the tenancy ended early, before the fixed term was set to expire and the tenancy ended without a Notice to End Tenancy in the approved form being issued by the landlord.

A Notice to End Tenancy given by the landlord must be in the approved form and for one of the reasons permitted under the Act. Upon review of the written notices the landlord gave to the tenant, I find they are not in the approved form and the reason provided (to put the house for sale) does not meet one of the reasons provided for ending a tenancy under the Act. The landlord is within his right to notify the tenant he was not going to renew the fixed term tenancy for another fixed term; however, that would result in the tenancy continuing on a month to month basis because the tenancy agreement did not require the tenant to vacate the rental unit upon expiry of the fixed term, as provided under section 44(3) of the Act. Section 44(3) of the Act provides:

> (3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant

> have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The landlord's notice was inaccurate in that the tenant was not required to vacate the rental unit by the expiry date of the fixed term. However, receiving an inaccurate and ineffective notice from the landlord does not entitle the tenant to compensation equivalent to a month's rent. Rather, the tenant was not required to do anything upon receipt of the landlord's notices and could have legally continued to occupy the rental unit on a month to month basis. It appears the tenant did not familiarize himself with the Act and his rights to continue the tenancy on a month to month basis upon expiry of the fixed term. As unfortunate as that may be, I find the tenant's decision to not familiarize himself with the Act and proceed to vacate the rental unit in August 2020 was own decision for which he must bear the consequence, if any. I

In the tenant's written submission, the tenant appears to take issue with a realtor's for sale sign being placed in the front yard on August 10, 2020; however, there is nothing in the Act that prevents a landlord from selling or listing for sale a property. A property may be sold with a tenant in place and the new owner inherits the existing tenancy unless the tenancy is legally ended with a proper Notice to End Tenancy in the approved form.

Finally, the tenant stated the landlord's wife offered him compensation after he filed his claim; however, this sounds like a settlement discussion to me but I am unsatisfied that it is a binding agreement in the absence of the landlord's agreement to compensate the tenant.

Given the above, I find I am unsatisfied the tenant is entitled to compensation equivalent to a month's rent under the Act and I dismiss the tenant's request for such.

3) Return of security deposit

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

It is undisputed that the landlord continues to hold the tenant's security deposit and the tenant did not authorize the landlord to retain the security deposit. Both parties provided consistent statements that the landlord was given the tenant's forwarding address when the tenant's previous Application for Dispute Resolution was served upon the landlord. The tenant's previous Application for Dispute Resolution was sent to the landlord on August 26, 2020 and a search of the tracking number (recorded on the cover sheet of this decision) shows the registered mail was delivered on August 28, 2020. Therefore, I find the landlord to be in receipt of the tenant's forwarding address on August 28, 2020.

The landlord made a claim against the tenant's security deposit on September 18, 2020, but that is more than 15 days after receiving the tenant's forwarding address and a landlord loses the right to make a claim against the security deposit if the claim is not made within 15 days of receiving the forwarding address or the date the tenancy ended, whichever date is later.

The landlord submitted that the tenant did not show up for the move-out inspection; however, I find the landlord's submissions inconsistent as to when the move-out inspection was to take place. In the landlord's written submission he states he showed up at 3:00 p.m. on August 17, 2020 for purposes of the move-out inspection with the tenant. However, a WeChat message translated by the landlord reveals the tenant saying, at 5:24 p.m. on August 17, 2020:

Translation

August 17, 2020 5:24pm

Hi , I just spoke with your wife on the phone, let me know once you have the deposit and signing document ready, I can meet with you at the house, you can inspect the house, sign the document and return my deposit. I will return you the key. That way it would be more convenient for you to put the house for sale. I have time today, if not today, it will have to be Friday afternoon.

[Reproduced as written with name of landlord omitted for privacy]

The landlord submitted that he posted a notice on the door of the rental unit to propose a final opportunity to conduct a move-out inspection; however, that was not included in the evidence before me. Nor, was I provided any evidence to demonstrate the landlord prepared a move-in inspection report.

In light of the above, I find there is insufficient evidence to conclude the tenant extinguished his right to return of the security deposit as I am unsatisfied the landlord prepared a move-in inspection report with the tenant and the landlord gave the tenant two opportunities to participate in a move-out inspection.

All of the above considered, I find the tenant entitled to an order for return of double the security deposit under section 38(6) of the Act and I award the tenant $2700.00.

4) Utilities incurred after August 17, 2020

The tenant did not cancel the utility accounts for hydro and gas at the rental unit when the tenancy ended and he incurred utility costs that were consumed after the landlord locked him out. The landlord was agreeable to compensating the tenant for such utilities based on utility bills the tenant had presented to me for this proceeding.

The tenant presented a BC Hydro bill showing a total charge of $46.10 for the period of July 16, 2020 through September 15, 2020. I pro-rate the bill to estimate the hydro costs for August 17, 2020 through September 15, 2020 to be: $46.10 x 29/61 days = $21.92 and I award the tenant recovery of this amount for this hydro bill.

The tenant presented a gas bill in the sum of $35.14; however, this bill is for consumption between July 14, 2020 and August 13, 2020 which is a period of time the tenant was in possession of the rental unit. Therefore, I find the landlord is not obligated to pay the tenant for this gas bill and I dismiss the tenant's request for recovery of this gas bill from the landlord.

The tenant presented a gas bill in the sum of $20.18 for gas consumed for the period of August 13, 2020 through to September 11, 2020. I pro-rate the bill to estimate the gas costs for August 17, 2020 through September 11, 2020 to be: $20.18 x 25/29 days = $17.40 and I award the tenant recovery of this amount for this gas bill.

5) Filing fee and Monetary Order

The tenant's claim had merit and I award the tenant recovery of the $100.00 filing fee he paid for his Application for Dispute Resolution.

In keeping with all of my findings and awards above, I provide the tenant a Monetary Order to serve and enforce upon the landlord calculated as follows:

Return of rent for August 17 – 19, 2020	$ 177.42
Double security deposit	2700.00
Hydro costs for August 17 – Sept 15, 2020	21.92
Gas costs for August 17 – Sept 11, 2020	17.40
Filing fee	100.00
Monetary Order for tenant	$3016.74

Conclusion

I have issued orders to both parties by way of this final decision and the Interim Decision of December 3, 2020 with respect to return of the tenant's personal property.

I have provided the tenant a Monetary Order in the sum of $3016.74 to serve and enforce upon the landlord.

The landlord's monetary claims against the tenant were dismissed with leave to reapply.

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: March 04, 2020

Residential Tenancy Branch