Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act of $32,956.07; a monetary order for the cost of emergency repairs of $200.00; a monetary order for the return of the security deposit of $1,843.93; and to recover the $100.00 cost of her Application filing fee.

The following attended on behalf of the Tenant and provided affirmed testimony or support:

- the Tenant,
- her counsel, J.L. ("Counsel"),
- a translator, T.Y., ("Translator"),
- her friend, C.W., and
- her sister, Y.Q.

The following attended on behalf of the Landlord and provided affirmed testimony or support:

- the Landlord,
- her son, A.D.,
- her friend, J.L., and
- a former tenant, X.W.

The matter was heard over the course of three hearings, as the proceeding was slower than usual, given the need for the Interpreter to translate my statements and questions and the testimony of other Parties for the Tenant and sometimes for her friend C.W.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the

testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The first adjournment was because the Parties had not served each other properly. I Ordered them to email each other their respective evidentiary submissions by the end of the year, although, the Tenant's counsel said he would do it that day. I also directed that each Party responded to the other that the evidence was received, as I said I would be asking about this in the reconvened hearing. I ordered that there will be no new evidence accepted, nor any new cross applications joined to this hearing. Given the Parties' testimony at the reconvened hearing, I was satisfied that service was affected before the reconvened hearing. I, therefore, proceeded with the hearing and considered both Parties' testimony and documentary submissions.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to recovery of her $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on July 1, 2018 and was scheduled to run to June 30, 2019, and then to operate on a month-to-month basis. They agreed that the residential property is a single-family dwelling with three bedrooms and three bathrooms. They agreed that the Tenant paid the Landlord a monthly rent of $2,700.00, which was paid in advance of the tenancy starting and in cash. The Parties

agreed that the Tenant paid the Landlord a security deposit of $2,700.00, and no pet damage deposit.

The tenancy ended on December 14, 2018. The Tenant did not indicate whether she gave the Landlord her forwarding address in writing or not. She said her only contact with the Landlord was through the Landlord's friend, J.L., and via lawyers. The Tenant said that the Landlord did not return the security deposit, nor the Tenant's pre-paid rent for the months the Tenant no longer lived in the rental unit – January through June 2021. The Landlord did not comment on why she kept these funds, other than to say that it was a fixed-term tenancy agreement.

#1 Claim for Misrepresentation about the Premises → $32,956.07

The Tenant said that she brought this claim, because the Landlord misrepresented the quality and/or kind of accommodation offered to the Tenant when her representative signed the tenancy agreement on behalf of the Tenant. The Tenant seeks recovery of a year of rent payments for this misrepresentation.

I asked the Tenant what was so wrong with the rental unit that she believed she should be refunded a year's rent; the Translator interpreted the Tenant's response, as follows:

> At the time when she decided to rent, she was not given enough opportunity to inspect the unit, so, she found a lot of problems with the unit when they entered.

In answer to what level of inspection she conducted of the rental unit before signing the tenancy agreement, the Tenant said:

> At that time, a friend recommended the unit to me. I was in a hurry at that time. [The Landlord] was still living there with her family. She said she was still living there, and there would be a lot of private stuff that it would be inconvenient to see. I assumed that I would have an opportunity for inspection. Prior to taking the tenancy, my sister would inspect on my behalf. Whenever my sister went there, [the Landlord] would make excuses, so my sister wouldn't inspect until July 1. When my sister went into the unit, it was in a mess. We contacted [the Landlord] who said she will get the repairs done, but she never did it. When I arrived in September, I asked to have them repaired, but she never made any repairs.

The Tenant's friend, C.W. said (the Translator interpreted her responses, as well):

> I'm a friend of [the Tenant]. Since she doesn't have a car, I drove her there. May 19 was when we first viewed the unit. We didn't have a chance - only allowed in the living room. Time to get to know each other.
>
> At that time, we didn't agree to the rent, so we didn't sign any agreement. We each had exchanges, then agreed to rent. On May 21 we signed the agreement. At that time, they agreed to rent of $2,700.00, but [the Landlord] asked for payment for the full year. [The Tenant] agreed to this condition. On June 20 – we signed a formal agreement. On day of signing, I requested for [the Landlord] to receive money by transfer from bank. But [the Landlord] would receive cash only, because she did not want a bank record to be left.
>
> On second day after signing agreement, [the Tenant] had to go back to China for business. That's why [the Tenant] authorized me with power of attorney to sign formal agreement on her behalf. We agreed to sign agreement on June 14 in Chinese only, but [the Landlord] didn't provide a list of all the furniture. At that time, her family was still in the unit. I asked her to provide a list of all the items before she gave us the unit. After the agreement was signed, I left Canada on June 19 to Tehran and the U.S. Therefore, I was not there at the time of handover, so she didn't ask me to inspect the unit. After [the Tenant] and her sister moved in - found something inappropriate and she complained to me. [The Landlord] already told her that [the Tenant] had inspected the place; that's why I was very angry – [the Landlord] was telling lies.

In her Statutory Declaration dated April 2, 2020 ("Stat Dec"), the Tenant said:

> 24. At first, I wanted to pay the $2,700.00 deposit by way of cheque, so I have a record of payment. However, [the Landlord] told me that she did not want to pay taxes, so she insisted that I pay cash.

The Landlord said:

> Before renting the house out, we have continuously lived there from 2013 – 2018. The house was in good condition. [The Tenant] was stating her feeling and not objective fact. In mid-September, we received complaints from [the Tenant's sister], and within the hour we contacted J.Y. to check on the house. We wanted to reduce the losses on both sides by negotiating, but they would not accept our offers.

When asked about the Tenant's opportunity to view the rental unit prior to signing the tenancy agreement, the Landlord said:

> On May 19, [the Tenant's sister, and C.W., and Ms. W.], visited the house and inspected it for about two hours there. They claimed we didn't reach an agreement. They came to the house again and she brought her son. The house, the basement, upstairs, the garage, only my mother and I were living there, so no private sections of the house. They had an opportunity to look around the house with no restrictions.
>
> A few more days later, [C.W.] and another person, and [Ms. W.] came for a third visit. [The Tenant] was in China, and [C.W. and Ms. W.] visited the house and were making plans on which room to use.

In her written submissions, the Landlord said the following about the Tenant's opportunity to inspect the residential property prior to signing the tenancy agreement.

> 4. Before entering into the lease, the Tenant herself visited and inspected the leased property at [residential property address] (the "Property") twice in mid-May 2018. Each time the Tenant stayed at the Property for about two hours. The Tenant's authorized agent, [C.W.], visited and inspected the Property four times in total before signing the lease of the Property (the "Lease"): the first two times together with the Tenant, the third time on May 21, 2018, and the fourth time on June 14, 2018. The Tenant and her agent were satisfied with the condition of the Property and strongly expressed her interest to rent it. The Lease provides that the tenancy starts from July 1, 2018.

In her Stat Dec, the Tenant said the following about her sister's attempt to arrange a pre move-in inspection of the condition of the rental unit.

> 29. I was in China at that time, but I became a little concerned about [the Landlord's] procrastination and excuses. On June 22, 2018, while I was in China, I called [the Landlord] via the social media app [WC].
>
> 30. During our 17 minutes and 35 seconds call, I again insisted that an inspection must be completed because [the Landlord] promised that to me. During the call, [the Landlord] and I agreed that [the Landlord] would meet with my sister, [Y.Q.], on June 29, 2018 at the Property to do the inspection together.

31. Attached as **Exhibit "D"** is a true copy of our [WC] chat records which shows our voice call on June 22, 2018 and certified English translation.

32. After my call with [the Landlord], my sister bought a plane ticket for her flight from China to Canada.

33. My sister flew to Canada on June 29, 2018 as scheduled. She began calling and texting (via [WC] app) [the Landlord] immediately after she landed. [The Landlord] ignored her calls and texts.

34. Therefore, in the afternoon on June 29, 2018, my sister went to the Property and knocked on the door. [The Landlord] was at home, but she again said she was very busy and asked my sister to leave and make an appointment with her before attending the Property.

35. My sister made an appointment with [the Landlord] to do the house inspection in the afternoon on June 30, 2018, but in the afternoon on June 30, 2018 [the Landlord] ignored all of my sister's calls and texts.

36. At about 9:00 am on July 1, 2018 Vancouver Time (which is about 00:00am on July 2, 2018 Beijing Time as shown in Exhibit E), [the Landlord] finally replied my sister on [WC] and texted my sister saying [the Landlord] was already at the airport and about to leave for China.

37. Attached as **Exhibit "E"** is a true copy of [WC] chat records between [the Landlord] and my sister for July 1, 2018 and July 2, 2018 and certified English translation.

38. Before [the Landlord's WC] text to sister, at about 7:21 am in the morning, [X.W.] called my sister on the [WC] app and told my sister that she was with [the Landlord] and [the Landlord] was at the airport and will leave Canada soon. [X.W.] told my sister to not call [the Landlord] anymore as [the Landlord] was angry.

The Tenant said:

> A lot of items [in the rental unit] were out of order, such as the dishwasher and rinse cover were both out of order. Also, the garburator was broken. Also, some floors were broken, and carpet was used to cover the broken floor. Also, the stairs leading to basement were broken. We've repeatedly asked the other party to make repairs, but they refused.

The Tenant submitted photographs of the rental unit she said were taken on July 1, 2018, at the start of the tenancy. These photographs show:

- A dirty dishwasher with the baskets inside in disarray;
- A dresser drawer that does not fit the unit properly;
- A door with multiple scratches/gouges;
- Water marks on ceilings;
- A broken lower shelf on a coffee table;
- Broken stairs to the basement;
- Miscellaneous debris in a cupboard under a sink;
- A messy cupboard with jumbled receipts, and other personal items.

The Tenant continued:

> On October 16th, I returned from a trip and found the locks broken - the doors to both front and back yard. And I reported to police and messaged [the Landlord]. I told them that the doors and windows were broken, and anybody could enter the unit.

This is addressed further in the next category.

I asked the Tenant to summarize why I should give her 12 months of rent for a tenancy that lasted from July 1 through December 2018 – or six months. Counsel said:

> We're alleging that we were required to prepay one year of rent, which is an unconscionable term of the lease agreement entered into between the Parties. [The Tenant] was induced by misrepresentation – see her statutory declaration about the tidiness, state of maintenance and repairs, and to carry out a formal pre move-in inspection. Those were misrepresentations, and the photos and videos show the state of the property. The photos show the lack of repair and of the damaged appliances - the quality of premise is not what was promised. So, this contract is not enforceable. The value from residing there is minimal. Our first position that the value is so low, it's totally not what she expected.
>
> In the alternative, if not awarded 12 months rent, we ask for the remainder of the term back, because of Landlord's lack of repairs. The Tenant was forced out. She's entitled to the balance of the term that she should not have paid in the first place back.

Counsel referenced sections of the Act that he said are relevant to the Tenant's claims. He said:

> Section 6(3) says that a term is not enforceable if it is inconsistent with the Act or if it is unconscionable. There are many terms of that contact, especially the one-year lump sum payment for rent is unconscionable.
>
> Section 12 states that all provisions in standard agreement apply to all tenancy situations, even if a verbal contract. For instance, quiet enjoy under section 28 in agreement would apply. The Landlord obviously breached that term.
>
> Section 23 of the Act says that the Landlord and Tenant must inspect the condition of the rental unit on the date that the tenant is entitled to possession and control. And the contractual obligation is also set out in the lease. As shown in photos and videos – tabs 22 – 27 – the Landlord failed to allow the Parties to do an inspection, and the state of repairs were terrible.

I asked the Tenant why she signed the lease, if she did not have a sufficient opportunity to see the rental unit. Counsel said:

> She had two chances to stay in the living room and was not allowed to see other rooms and bathroom in detail. They are set out in her Statutory Declaration. There was a promise to do an inspection together. But on the first day of the tenancy, the Landlord was already at the airport - she already left for China. My client is stuck, because she had already paid a year's rent ahead of time.

As the Tenant did not answer my question, I asked again, and (through the Translator) she said:

> She was busy with her business in China and had entrusted [C.W.] to negotiate the lease and sign it for her. And [C.W.] was told that the Landlord was moving and busy, and they would find another time to get together to do an official inspection, but that never happened.

#2 Lock Repair Reimbursement → $200.00

The Tenant said:

> I forgot the exact time, but that morning, we left and when we returned with three people in the car, two gates to garden were open, the locks were opened by someone, and the lock of the door was also open. The locks were determined

> before we left; no one could have changed the password. As far as I know, only three people know the password to this lock [the Landlord], my sister, and myself. I reported to police and the police came. The police asked to contact the Landlord and said someone on her side forced into our house.

In answer to how she knew it was the Landlord, the Tenant said: “I only said the Landlord knew the password.” And in answer to why should the Landlord pay for the locks, the Tenant said: “Because this is her property.”

In the hearing, J.L. said that the incident with the locks occurred on October 16, 2018, and that the Tenant had the locks repaired pursuant to an invoice she submitted that was dated November 1, 2018.

In her Stat Dec, the Tenant said:

> 67. On November 7, 2018, after having almost no sleep for 2 weeks in this unsafe Property, I texted to [J.L.] … and gave him an ultimatum to repair the locks. He did not make arrangements to repair same. Therefore, I hired a contractor on my own and got it fixed. I paid the contractor $200.00 for the repair of the locks.
>
> 68. [J.L.] also made some promises to repair some of the deficiencies in the Property but eventually he did not repair any of them.

The Landlord said: “I’m not sure if heard correctly. She said the locks were not broken. After she changed locks, she refused to give us the new keys, until end of the lease.”

The Tenant said:

> It is completely wrong to say locks not broken. We had photos. The repairman has opened the lock and the electricity circuit was cut open inside the lock. The people who broke in knew the password; they also carried professional tools, otherwise they wouldn’t have known how to open the electricity circuit and the cover. I only learned of this after the person who repaired it came. He said the tools were very professional. I suspect that someone from the household did this, because no one else could have known the password.

The Landlord said: “I deny any allegations the Tenant made about people from my household entering the house. I don’t know relevance of this point, so don’t have any

other comments."

Counsel pointed to the Tenant's photographs of the door lock, which included photos of the cover removed and wires that were clearly cut inside the lock mechanism. There were also photographs of a wooden gate, with part of the closing mechanism removed and on the ground. Other photographs show the gate door hinges loosened at the top and bottom. The Tenant also included a photo of a police officer's business card.

When I asked the Tenant about the likelihood of the people who have the password, also having professional tools for accessing locking mechanisms, she said: "I do not understand – it was a special screw driver."

Counsel said that the Landlord took no steps to repair the locks and broken gates, and the Tenant had to have these repaired, herself. He said:

> We will refer to sections in the Act in closing statements. The Landlord has an obligation to provide a safe living environment, and can't allow the Tenant's right to quiet enjoyment of the premises to be interfered with like that.

Counsel said that the Tenant notified the Landlord of this matter via a chat application. Counsel said:

> To summarize then, the Landlord appointed [J.L.] to deal with this matter and the Tenant dealt with [J.L.] through text messages and quite a bit of negotiations back and forth. Neither the Landlord, nor her authorized agent took any steps to replace a secure lock for the premises. [The Tenant] was living in fear for those many nights to take steps. The Landlord breached sections in the Act – sections for quiet enjoyment.

#3 Return of part or all of security deposit → $1,843.93

The Tenant said that the Landlord failed to return her $2,700.00 security deposit. I asked the Tenant about the amount she claimed for the return of her $2,700.00 security deposit, and she spoke of the difficulties she incurred, given the inability to lock the doors. She also spoke of someone having put meat in the garbage cans to attract bears, although I did not see the relevance of these comments to this question.

The Landlord said that the Tenant did not answer my questions; and therefore, she had no comments on this matter.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

#1 Claim for Misrepresentation about the Premises → $32,956.07

The Tenant mentioned different grievances under this heading. First, she said the Landlord did not give her sufficient opportunity to see the rental unit before moving in. The Tenant's second grievance is that the Landlord required her to pay a year's rent in advance in cash, which the Tenant said was unconscionable. The Tenant's third complaint is that the rental unit was not sufficiently clean or in a state of appropriate repair for occupation at the start of the tenancy. The Tenant also argued that the Landlord should have returned the pre-paid rent for the portion of the term after the Tenant had moved out.

I find that the first two claims or grievances are not misrepresentations, but rather, I note that the Tenant's representative signed the tenancy agreement on the Tenant's behalf despite these concerns not having been addressed by the Landlord. The Tenant did not answer my question in the hearing when I asked her why she had her representative sign the tenancy agreement, without having had a sufficient opportunity to see the residential property before signing. I find that Counsel's statement that the Tenant was busy in China is not a sufficient answer to this question. Contract law does not allow a person to sign an agreement and then complain about the terms, because the person was too busy to read them before signing, if that was the Tenant's issue. If the Tenant was relying on the Parties' negotiations or discussions that were not committed to

writing in the tenancy agreement, then I find that this reliance contradicts the parol evidence rule.

The parol evidence rule is a common law rule in contract that prevents a party to a written contract from presenting extrinsic evidence (usually oral) supplementary to a pre-existing written instrument. The purpose of the parol evidence rule is to prevent a party from introducing evidence of prior oral agreements that occurred before or while the agreement was being reduced to its final form in order to alter the terms of the written contract. Accordingly, I find that the Tenant's first two claims or grievances were within her control to agree to or not. If the Landlord did not allow the Tenant or her representative(s) to view the residential property comprehensively, then the Tenant should not have signed the tenancy agreement. If the Tenant did not want to pre-pay the rent a year in advance, then she should not have agreed to do so. The Tenant could have looked elsewhere for rental housing, rather than signing a tenancy agreement without knowing as much as she needed to about the residential property. The evidence before me was that the Tenant did not start living in the rental unit until September 2018. Therefore, if she was unable to finalize the details of this tenancy in May or June 2018, she had time to look elsewhere for accommodation before needing to move there in September.

I appreciate that the housing market in British Columbia is expensive and the vacancy rate for rentals is low; however, the Tenant did not give evidence that she looked elsewhere for an alterative to this rental unit. I find that if the terms of the Landlord's tenancy agreement were unfavourable to the Tenant, she was not required to rent this property. As such, I dismiss the Tenant's first two claims or grievances in this regard, without leave to reapply.

In terms of the condition of the rental unit at the start of the tenancy, I find that the Landlord was obliged by the Act to maintain this property properly. Section 32 of the Act requires a landlord to maintain a rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant.

I find that a rental unit which cost the Tenant $2,700.00 a month should have had a functioning dishwasher, garburator, and basement stairs. Further, I find that repairs to other broken or malfunctioning contents of the residential property were also required. I find on a balance of probabilities that the Landlord did little or nothing to prepare the

rental unit for this Tenant, and did nothing to remedy this lack of preparation with cleaning and repairs.

As set out in Policy Guideline #16 ("PG #16"), "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 claiming compensation to provide evidence to establish that compensation is due." [emphasis added]

I find that the Tenant has demonstrated on a balance of probabilities that the Landlord breached section 32 of the Act (step 1 of the Test) by not maintaining the residential property in a state of repair having regard to the character and cost of the rental unit.

The second step is that the violation caused the Tenant to suffer damage or loss as a result of this breach. However, the Tenant did not indicate the impact on her of the condition in which the residential property was left by the Landlord for the start of the tenancy. Counsel argued that "the value from residing there is minimal". However, the only appliances that the Tenant said did not work were the dishwasher and the garburator (I am unclear as to what the Tenant was referring with a "rinse cover" not working). As such, the rental unit offered the Tenant shelter where she could sleep, bathe, prepare food, and do laundry. She did not specify how the noted deficiencies rendered the unit as giving only minimal value in living there. I find that the Tenant did not provide sufficient evidence to establish the second step of the Test.

In terms of the third step, I find that the Tenant did not provide sufficient evidence that she paid someone to clean and/or repair the rental unit, or that she invested significant time to clean it or do repairs herself, such that compensation was in order. I find that the Tenant did not provide a sufficient explanation or evidence as to the value of her losses in this set of circumstances, and that she, therefore, failed to prove the third step of the Test. As a party is required to prove all four steps on a balance of probabilities, I find that the Tenant has not met her burden of proof on a balance of probabilities.

In terms of the Tenant's request for the return of the pre-paid rent for January through June 2021, I turn to section 45 of the Act, which addresses the rules surrounding when a tenant may end a tenancy.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) 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. [emphasis added]

Policy Guideline #30, “Fixed Term Tenancies”, states the following:

> **C. ENDING A FIXED TERM TENANCY**
>
> During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties, or under section F below (Early Termination for Family or Household Violence or Long-Term Care).
>
> A landlord may end the tenancy if the tenant fails to pay the rent when due by serving a Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30) on the tenant. Alternatively, a landlord may end the tenancy for cause by serving a One Month Notice to End Tenancy for Cause (form RTB-33) on the tenant.
>
> A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.
>
> **. . .**
>
> The tenant may not, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.
>
> A tenant may not use the one month notice provisions of the Legislation to end the tenancy prior to the end of the fixed term except for breach of a material term by the landlord or under section F below (Early Termination for Family or Household Violence or Long-Term Care). Any other one month notice will take effect not sooner than the end of the fixed term.
>
> A tenant who wants to end the tenancy at the end of the fixed term, must give one month’s written notice. For example, if the fixed term expires on June 30th, the tenant must ensure the landlord receives the tenant’s notice to end the tenancy by May 31st. .
>
> [emphasis added]

The Tenant did not explain how the Landlord breached a material term of the tenancy agreement, which allowed her to end the fixed-term tenancy early. As such, I find that

the Tenant was not allowed to end the tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy.

However, Policy Guideline #5, "Duty to Minimize Loss" states:

> ***Loss of Rental Income***
>
> When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:
>
> 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
> 2. re-rent the unit as soon as possible.
>
> For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.
>
> If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

At the start of the second reconvened hearing, I asked the Landlord if she had re-rented the residential property after the Tenant vacated the unit. The Landlord said that the Parties had a fixed-term tenancy and that the Tenant was required to pay to the end of the term.

As such, I find that neither Party complied with her requirements in this regard. The Tenant did not provide sufficient evidence that the Landlord breached a material term of the tenancy agreement, which would have allowed her to end the fixed-term tenancy; however, there is insufficient evidence before me that the Landlord complied with her obligation to minimize her loss in this regard. I find it more likely than not that the Landlord could have minimized her losses, if she had sought to re-rent the residential property after the Tenant moved out. As both Parties are out of compliance in this regard, I find it appropriate to award the Tenant a lower amount than she seeks, based on the likelihood that the Landlord should have been able to re-rent the residential property by at least April of 2021. I, therefore, award the Tenant with recovery of pre-

paid rent for April through June 2021 or **$8,100.00** for this claim, pursuant to sections 7 and 67 of the Act.

#2 Lock Repair Reimbursement → $200.00

Policy Guideline #1 ("PG #1"), "Landlord & Tenant – Responsibility for Residential Premises" states the following under the **Security** heading:

> 6. The landlord is responsible for providing and maintaining adequate locks or locking devices on all exterior doors and windows of a residential premises provided however that where such locks or locking devices are damaged by the actions of the tenant or a person permitted on the premises by the tenant, then the tenant shall be responsible for the cost of repairs.

I find that there is no evidence before me to suggest that the Tenant was responsible for the broken locking mechanisms on the doors or the gate(s) of the residential property. Similarly, I find there is insufficient evidence to find that the Landlord is responsible for the damage to the locks and gates. Still, pursuant to PG #1, a landlord is responsible for maintaining adequate locks or locking devices of the exterior doors to the residential property.

I find that the Tenant paid for the residential property locks to be repaired for $200.00. I find that the Landlord was responsible for arranging this repair, and therefore, I award the Tenant **$200.00** from the Landlord for this claim, pursuant to sections 32 and 67 of the Act, and PG #1.

#3 Return of part or all of security deposit → $1,843.93

The Tenant did not tell me why she was claiming less than her full security deposit back in this claim; however, I note that the Tenant's whole claim comes to exactly $35,000.00 (aside from the $100.00 Application filing fee), the maximum a person can claim under the Act. Regardless, this is the amount the Tenant claimed for this matter.

The tenancy ended on December 14, 2018; however, the Tenant did not indicate whether she gave the Landlord her forwarding address in writing. She said her only contact was with the Landlord's friend [J.L.]. Section 38(1) of the Act states the following about the connection between these two dates:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the

later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Tenant was required to give the Landlord her forwarding address and to request the return of her security deposit in writing. As there is insufficient evidence before me that the Tenant made this request in writing, I find that the Tenant is premature in making this claim, and I dismiss it with leave to reapply.

I find that the Tenant has made this request through the dispute resolution process, and **the Landlord is alerted to this request as of the date of this Decision**.

Accordingly, the **Landlord has 15 days from the date of this Decision** to return the Tenant's security deposit or to apply for dispute resolution through the RTB. Should the Landlord not return the Tenant's security deposit in full or apply for dispute resolution within this time frame, the Tenant may re-apply for dispute resolution and claim **double the return of the security deposit**, pursuant to section 38(6), which states:

38 (6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Summary

The Tenant is awarded **$8,100.00** for her claim for the return of rent she had pre-paid for months in which she was no longer living at the residential property. The Tenant is awarded recovery of **$200.00** for reimbursement of the door lock repairs.

For the Tenant's third claim, the **return of the security deposit**, the Landlord is advised of the Tenant's forwarding address in the Tenant's Application and of her request for the return of the security deposit. **The Landlord is Ordered** to either (a) return the security deposit to the Tenant in full or (b) apply to the RTB for dispute resolution, retaining the security deposit, within 15 days of the date of this Decision. If the Landlord does not take one of these actions within 15 days of the date of this Decision, she faces the consequences of section 38(6), which authorizes a tenant to apply for recovery of double the amount of the security deposit.

Given her relative success in this Application, I also award the Tenant with recovery of the **$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act. I grant the Tenant a Monetary Order of **$8,400.00** from the Landlord, pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in her claims in the amount of $8,300.00, as the Tenant provided sufficient evidence to support this amount of an award. She is also awarded recovery of the $100.00 Application filing fee.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **$8,400.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 21, 2021

Residential Tenancy Branch