



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL, MNDCL, FFL (landlord)**
 MNSD, FFT (tenant)

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.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended with the agent FZ (“the tenant”). The landlord attended with the agent EL (“the landlord”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Preliminary Issue: Recording

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. All participants stated they were not recording the hearing.

Preliminary Issue: Email Addresses

The parties provided email addresses to which the Decision shall be sent.

Preliminary Issue: Joined Applications

At the outset, the parties requested that the landlord’s application and the tenant’s application (scheduled for a later time) be joined and heard together.

The Rules of Procedure state as follows:

2.10 Joining applications

Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;*
- b) whether all applications name the same landlord;*
- c) whether the remedies sought in each application are similar; or*
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.*

The parties stated that both applications related to the same tenancy agreement between them, concerned the same unit, dealt with the same issues upon the end of the tenancy, and involved the same considerations of fact.

Upon hearing the submissions and consent of the parties and the evidence, I ordered that the two applications be joined and heard at today's hearing to assure a process that was fair, efficient and consistent.

Agreement During Hearing

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During the hearing, the parties engaged in discussions regarding resolution of the dispute. No settlement was reached, and the hearing continued to conclusion.

Reference to Evidence

The parties submitted considerable evidence in a 77-minute hearing. Only key, relevant and admissible evidence is referenced in the Decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order and reimbursement of the filing fee?
Is the tenant entitled to the return of the security deposit?

Background and Evidence

This is an application by a landlord for the following: return of one month's rent paid in error to the tenant as compensation, compensation for one month's rent, compensation for damages to a refrigerator and reimbursement of the filing fee.

There is also an application by the tenant joined as set out earlier. The tenant requested return of the security deposit.

A copy of the tenancy agreement was submitted. The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Fixed term
Beginning Date	November 1, 2019
Fixed Term End Date	October 31, 2021
Vacancy Date	July 1, 2021
Rent payable on first of month	\$1,900.00
Security deposit	\$950.00

The parties agreed the tenant provided their forwarding address to the landlord at the end of the tenancy and the landlord brought this application within 15 days.

The tenant testified as follows with respect to the ending of the tenancy and submitted copies of all referenced emails (underlining added as emphasis):

1. On June 10, 2021, the landlord sent the tenants an email stating as follows:

[We, the landlord] are planning to sell the property soon. [...] We are giving you at least 2 months notice ahead of time, or might be longer depending on the sale offer situation.

2. The tenant interpreted the email as meaning they had to move out in two months.
3. On June 13, 2021, the tenant stated in an email to the landlord that they accepted they had to move and would be out by July 1, 2012. The email stated in part:

Sorry for the delay in answering you, but we were upset with the news, after all, you had suggested another year of the contract for us and we informed you that we wanted to continue here with monthly renewals, because we had no intention of leaving before our daughter finishes her studies at daycare, ie, maybe we will leave in September next year.

As you know our daughter is autistic and she does treatments, the choice to live here was because it is on the street of her daycare, easy access for professionals to come here for treatment done at home, her speech therapist is also nearby ... finally our whole life was programmed and based around the needs of our daughter.

Receiving this news has left us extremely surprised, because, I repeat, you had requested at least one more year of contract with us.

Since the news you gave us, we have been looking for a place to live. We will move out on July 1st, but since we will have unexpected expenses and according to the tenant's law, we need you to pay us the compensation we are due for one month's rent and the return of our security deposit. We prefer to move out on July 1st to have this money and rent another place and allocate all the expenses we will have. We are waiting for your position on the day of payment of our compensation if you prefer it can be paid on the day we give you the keys along with the security deposit.

4. The tenant received advice from the RTB about the landlord's rights and obligations which was based upon a Two Month Notice having been issued under the Act. The information provided was inaccurate as the landlord had not issued a Two Month Notice but had merely informed the tenant by email of their intentions.
5. By email dated June 14, 2021, the landlord stated they would pay the tenant one month's rent after they moved and return the security deposit. The email stated in part:

I understand it is difficult for you to accept the unforeseen situation like this. As I have mentioned before that we had financial difficulty [...]

According to the tenant's law, we will give you one month rent of \$1,900.00 and return the half month security deposit usually within 15 days of the end of the tenancy agreement, although you only gave us 17 days of notice for your move, we would accept it in order to help you. That means, I will give you a cheque of \$1,900.00 on Jun 30 or July 01 by 12

noon the latest after you moved, and e-transfer you the security deposit of \$950.00 on July 07, 2021. I hope the above arrangements are okay with you.

6. On June 16, 2021, the tenant sent an email to the landlord, stating, "Thank you for the information on how you will make the payments for us, we will really need this money."
7. On June 18, 2021, the landlord sent an email to the tenant stating in part as follows:

Please let me know once you have planned the date and time of your moving and clean up afterwards, so that we can arrange the keys returning and the cheque giving to you. [...]

Once again, we hope you understand that we have been always trying to accommodate the tenants need as much as we could. Just like this time, we could have charged you for another month's rent as we did not receive a month notice of your move out date. We accepted 17 days notice because we tried our best to help you.

8. The emails of June 14, 2021 and June 16, 2021 amount to a contract in which the parties agree to the terms of the ending of the tenancy.
9. The landlord paid the tenant \$1,900.00 by cheque dated July 1, 2021.
10. The landlord must return the security deposit to the tenant.
11. The condition inspection was conducted on July 3, 2021 in the presence of the landlord and the tenant. The tenant caused no damage for which the landlord has a viable claim for compensation.

The landlord testified as follows:

1. The landlord acknowledged the email communication as referenced above took place; they testified that they sent and received the referenced correspondence.

2. The landlord testified that they never issued a Two Month Notice in the RTB form, did not provide a Two Month Notice, and never intended to do so.
3. The sole purpose of the June 13, 2021 email was to request that the tenant contact the landlord's realtor and to alert them to a possible listing. The purpose was not to ask the tenant to leave.
4. The landlord received advice from the RTB about the landlord's rights and obligations which was based upon a Two Month Notice having been issued under the Act. The information provided was inaccurate as the landlord had not issued a Two Month Notice but had merely informed the tenant by email of their intentions.
5. The landlord misunderstood the landlord's rights and obligations through no fault of their own. The landlord erroneously believed they had an obligation to pay the tenant one month's rent as compensation. The landlord was not responsible for this mistaken belief. Based on this misinformation and mistaken belief, the landlord in good faith issued the cheque for \$1,950.00 to the tenant. The landlord realized later that they did not owe the tenant any compensation and the tenant should in fairness return the overpayment to the landlord.
6. The landlord similarly misunderstood the tenant's obligations to provide notice of their intention to move out. The tenant should have paid rent for the month of July 2021. The landlord is owed one month's rent in lieu of notice.
7. The emails of June 14, 2021 and June 16, 2021 quoted above do *not* amount to a contract in which the parties agree to the terms of the ending of the tenancy.
8. The tenant damaged the fridge door in the unit as reflected in the photographs and the condition inspection report; the tenant must compensate the landlord for this expense which the landlord testified was \$50.00.

The landlord requests compensation as follows:

ITEM	AMOUNT
Reimbursement of one month's rent paid in error as compensation	\$1,950.00
Compensation for rent for July 2021 owed by tenant	\$1,950.00

Damages to fridge door	\$50.00
Reimbursement of filing fee	\$100.00
TOTAL CLAIM LANDLORD	\$4,050.00

The tenant requested the return of the security deposit of \$900.00 and reimbursement of the filing fee.

Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or

loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant 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.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

How a Tenancy Ends

A tenancy may end by agreement between the parties.

The Act sets out how a tenancy ends, and states as follows:

44 (1) *A tenancy ends only if one or more of the following applies:*

[,,]

(c) the landlord and tenant agree in writing to end the tenancy; [...]

Findings

Damage – Refrigerator

I have considered the condition inspection report and the photos submitted by the landlord. I find the landlord has met the burden of proof on a balance of probabilities that fridge was in good condition when the tenant moved in as reflected in the report on

moving in, the tenant damaged the fridge door, the landlord incurred an expense of \$50.00 in repairs, the repair amount is reasonable, and the tenant must compensate the landlord in this amount. I therefore award the landlord the sum of \$50.00. I authorize the landlord to deduct this amount from the security deposit.

Balance of Landlord's Claims

I find as follows. With respect to the remainder of the landlord's claims, I find the parties agreed in the terms for the ending of the tenancy. This agreement is set out in the exchange of emails of June 14 and 16, 2021. That is, they agreed the tenancy would end on July 1, 2021, the tenant would not pay rent for July 2021, the landlord would pay the tenant \$1,950.00 and the landlord would return the tenant's security deposit after an inspection. In the correspondence, the landlord agreed to accept the short notice.

Therefore, I find the parties ended the tenancy by agreement as set out in section 44(1) on the above terms.

The landlord claimed the agreement was entered into based on inaccurate information which they acted upon in good faith. They suggested it is unfair that the tenant would take advantage of the landlord's misunderstanding.

I do not accept this argument. Both parties had opportunity to obtain accurate information on their rights and obligations. There is no suggestion of duress or manipulation on the part of the tenant. While the landlord regrets the agreement, I find they freely entered into the settlement.

I find the landlord is bound by the terms of the agreement with the tenant. I therefore find the tenant has not failed to comply with the Act, regulations, or the tenancy agreement. I find the landlord has not met the burden of proof with respect to this aspect of the landlord's claim. Therefore, I dismiss the remainder of the landlord's claims without leave to reapply.

As the tenant has been primarily successful in their application, I award the tenant reimbursement of the filing fee in the amount of \$100.00.

I direct the landlord return the balance of the security deposit, the filing fee, less the awarded compensation, to the tenant as follows:

ITEM	AMOUNT
Security deposit	\$950.00
(Damages to fridge door)	(\$50.00)
Reimbursement of filing fee	\$100.00
TOTAL AWARD TENANT	\$1,000.00

The tenant is granted a Monetary Order in the amount of \$1,000.00.

Conclusion

The tenant is granted a Monetary Order in the amount of \$1,000.00. This Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced in the Courts of the Province of British Columbia.

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: February 16, 2022

Residential Tenancy Branch