Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, PSF, CNC, LRE, LAT, OLC, FFT, CNR (Tenant)
MNDCL-S, MNDL-S, MNRL-S, FFL (Landlord)

Introduction

The tenant applied for various relief under the Residential Tenancy Act ("Act"). Six of the tenant's claims are for issues that are now moot, because the tenancy ended after the tenant filed their application for dispute resolution but before this hearing. As such, those claims are dismissed without leave to reapply. However, the tenant's claims for compensation, along with their claim to recover the application filing fee, are considered.

The tenant presented her case before me on October 21, 2021. As the landlord has applied for compensation against the tenant, his hearing was scheduled for, and heard on, February 28, 2022. As the parties' applications deal with matters arising out of the same tenancy, the applications were crossed. Both the tenant's application and the landlord's application are dealt with in this single decision.

The tenants applied to dispute a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47(4) of the *Residential Tenancy Act* ("Act"). In addition, they applied to recover the cost of the filing fee, pursuant to section 72 of the Act.

The tenant, her interpreter, and the landlord attended the hearing on October 21, 2021. The parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Whether either party is entitled to any compensation.

Background and Evidence

Relevant oral and documentary evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The Tenant's Case

The tenancy began on September 4, 2018 and ended on July 1, 2021. Monthly rent was $1,666.00. The tenant paid a security deposit of $750.00 and a pet damage deposit of $750.00. There is a written tenancy agreement in evidence. (The pet damage deposit does not appear on the tenancy agreement.)

The tenant seeks $22,880.00 in compensation from the landlord, comprising the following (reproduced from the tenant's Monetary Order Worksheet):

1. $5,000.00 for "Prepaid 3 months rent, unable to live due to malicious eviction.";
2. $1,500.00 for "one month damage deposit";
3. $10,000.00 for "unfaithful notice and negative effects";
4. $182.76 for "extra data plan" for FIDO mobile;
5. $199.36 for "internet traffic for basement";
6. $1,248.00 for a tutoring fee;
7. $450.00 for "Be forced to removal";
8. $300.00 estimate for a damaged mattress;
9. $2,800.00 for "Overcharged rent from 2019.9-2021.8";
10. $1,200.00 for "Estimate[d] increase rent in the future"; and,
11. $100.00 for the Residential Tenancy Branch filing fee.

The tenant prepaid rent in the amount of $10,000.00 from March 1 to August 31, 2021. They paid in cash on February 26 and the landlord issued a receipt. They seek the return of two months' rent for July and August.

The tenant claimed that due to the landlord deliberately limiting the tenant's Wi-Fi access and data traffic, the tenant's daughter was unable to complete an online class and had to hire the services of a tutor. According to the tenant the landlord cut off the internet (which was included in the rent, as per the tenancy agreement) on June 2 and June 11, 2021. There is some evidence showing that Wi-Fi connectivity was affected on those dates, and that there might be an issue with the server.

There was a water leak during the tenancy and the water “came down from the vent on the roof [and] damaged my mattress.” There is in evidence no receipt for the mattress. The tenant estimates the age of the mattress to be about four years old.

The tenant testified to a litany of behavior of the landlord which cause a lot of “negative effects,” unnecessary noise, disturbances, loss of quiet enjoyment, intentional actions and bad faith, and emotional distress. This included unlawful entries by the landlord into the rental unit.

Regarding the moving fee, the tenant testified that she incurred this cost because she “had to move out because [I] had no choice but to move out.” She had hoped to remain in the rental unit until her daughter graduated from school. The tenant testified that the original rent was $1,500.00, but that she was overcharged for the rent from September 2019 until August 2021.

For the last claim (#10 on the above-noted list of claims), the tenant testified that this was “a mix of both” actual losses mixed with potential losses. It included compensation sought for inconvenience and for having to live further away than intended.

The Landlord’s Response

The disputes the tenant’s claims and denies all allegations. The landlord often referred to the tenant as being the aggressive party and malicious in her intent. Moreover, the landlord argued that the tenant is capable of lying to distort the facts and that her credibility ought to be questioned. She has “zero credibility” and she is “trying to portray me as a villain.” Everything the tenant says is “all false.”

He testified that the tenant moved out on July 1, 2021 without any notice to end tenancy being given by the tenant. (It is noted that, by this date, the tenancy had become a periodic, or month-to-month, tenancy.) The tenant did not pay any rent for July or August. On August 10 the landlord took back the rental unit under the auspices of it being abandoned. Moreover, he argued that he never required rent in advance.

While the landlord went through the tenant’s claims mostly in order, and spoke to each claim, the landlord’s argument, and submissions on them consisted of what I would call a blanket dispute and denial of the claims in their entirety. The claims were variously described as “baseless and unwarranted,” “greedy,” “false and unrelated,” and “completely false.” It would suffice to say that there is little to no common ground between the parties in respect of any of their claims.

A few points made by the landlord require reproduction, however. Regarding the internet being allegedly cut off, the landlord testified that he “never did anything to cut [the] internet.” If there was anything wrong with the internet service, it was due to the ISP. The tenant was simply not happy with the internet that was provided. He further noted that after the internet worked properly, the tenant than at a later point claimed for a full semester’s worth of tutoring.

As for the rent increase being claimed, the landlord explained that he never overcharged for rent and that this claim is “completely false.” Nor, he remarked, did he ever have any intention to increase the rent. Rent was, according to the landlord, $1500.00 a month.

The Landlord’s Case

The landlord seeks $7,550.00 in compensation for the following (as they appear in the landlord’s Monetary Order Worksheet):

1. $4,500.00 for unpaid rent for July, August “plus one month”;
2. $2,500.00 as estimate for repairing floor damage;
3. $180.00 for the cost of removing the tenant’s abandoned belongings;
4. $225.00 for cleaning costs;
5. $45.00 for a wall clock that was taken by the tenant (this claim was dropped by the landlord in the hearing and is not considered further); and,
6. $100.00 for the Residential Tenancy Branch application filing fee.

The claim for rent is “very straightforward.” The tenant moved out – without notice – on July 1 and did not pay rent for July. She also did not pay any rent for August, though he took back possession on August 10. However, the landlord noted that the tenant did have possession and control of the rental unit until August 10.

The damage to the floor was not discovered until after the tenant vacated the rental unit. He also later discovered that the kitchen sink was deliberately plugged. When asked about whether a condition inspection report was completed at any time, the landlord explained that “this was not a normal rental” situation. And I’m that “given the circumstance, there was no chance of the tenant participating or cooperating” in a condition inspection.

Neither party appeared to want to do a condition inspection.

The Tenant's Response

In response, the tenant reminded me to consider her evidence: the landlord received $10,000.00 in rent for six months. The landlord is not entitled to any compensation for rent because he "has already received ten-thousand dollars." And, that this amount *should* cover July and August, regardless of whether the rent was higher than the amount claimed.

The tenant briefly explained that the parties had tried to mutually end the tenancy, but a mutual agreement to end the tenancy did not work out. The tenant was trying in-person to find an end to the tenancy agreement, but this did not occur. The landlord then gave a ten-day notice.

The tenant further remarked that she felt unsafe to participate in any condition inspection, and the landlord refused to permit it to occur. On August 13, the tenant returned the keys to the landlord.

Additional Matter: Service of documents after conclusion of hearing

The tenant's interpreter asked where they could, if necessary, serve documents on the landlord. The landlord said that he no longer has a Canadian address, and that his email address will suffice for any service of documents. The parties confirmed the email address during the hearing. In this circumstance, section 43 of the *Residential Tenancy Regulation,* B.C. Reg. 477/203, permits service by email.

Analysis

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.

Both applications involve one party seeking compensation against the other party. 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 respondent party to a tenancy agreement 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 applicant proven the amount or value of their damage or loss?

4. has the applicant done whatever is reasonable to minimize the damage or loss?

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.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, 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.

The Tenant's Application

There is a receipt in evidence, substantiated by a translated version by a certified translator, in which the landlord issued a receipt on February 26, 2021 wherein he acknowledges receipt of $10,000.00 from the tenant.

At $1,500.00 – which is the monthly rent according to the landlord – $10,000.00 would cover a period of 6.7 months. In other words, the prepaid rent would cover a period of March 1, 2021 until sometime into September 2021.

The tenant did not give a notice to end tenancy pursuant to section 45 of the Act, which requires written notice at least one full month *before* the last date of the tenancy. In this case, the tenant simply left. And it was reasonable for the landlord to assume that the tenant was still in legal possession of the rental unit until he took back possession on the basis that it was abandoned on August 10, 2021. Thus, it is my finding that the landlord was entitled to receive rent until August 10, 2021, but not for any rent (prepaid) for the period after August 10, 2021.

The landlord was entitled to rent of $7,500.00 for the period of March 1 until July 31. He is also entitled to an additional $49.32 of rent per day until he took possession on August 10, 2021. This means that he was entitled to rent for ten days in the amount of $493.15. However, the landlord is not entitled to the remaining $2,006.85 that he received prepaid from the tenant.

As such, taking into careful consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving that she is entitled to at least a part of the monies that she prepaid to the landlord in the reduced amount of $2,006.85.

There is insufficient evidence before me to find that the tenant was overcharged rent. As such, this aspect of the tenant's claim for compensation is dismissed without leave.

In respect of the $10,000.00 claim for "unfaithful notice and negative effects," there is insufficient evidence for me to find a breach of the Act by the landlord that might give rise to a claim for compensation. This claim must be dismissed.

In respect of the $182.76 claim for extra data plan charges and the $199.36 claim for internet for basement, there is no evidence before me to find that the landlord either deliberately, wantonly, or negligently interfered with the internet/Wi-Fi. The screenshot provided by the tenant showing a potential server issue does not prove landlord interference. I am, based on the (lack of) evidence, unable to find that the landlord breached his obligation to provide internet under the terms of the tenancy agreement. For this reason, I am unable to award compensation in respect of these two claims and the tenant's claims are dismissed.

Similarly, having not proven negligence or wilful interference with the internet, and having not proven that the internet was disrupted for more than two instances, I am unable to similarly find how the landlord breached the Act or the tenancy agreement that would somehow lead to the tenant being entitled to compensation for $1,248.00 in tutoring costs. As such, taking into careful consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their claim for tutoring costs.

The claim for the mattress must be dismissed. There is insufficient evidence for me to find that the landlord breached the Act, and there is no documentary evidence proving the cost of the mattress in any event. As such, this claim must be dismissed.

Regarding the moving fee, this is a monetary loss that is incurred whenever a tenant moves, regardless of whether an end of tenancy comes about voluntarily or involuntarily. Indeed, that the tenant was attempting to end the tenancy earlier leads me to find that moving expenses would have ultimately been necessary. I am unable to find that the landlord breached the Act or the tenancy agreement that would give rise to a claim for compensation for moving expenses. This claim is dismissed.

In respect of the $1,200.00 claim for "Estimate[d] increase rent in the future," this is based on the tenant's estimated additional rent between what she was paying in the rental unit and what she is paying in her new rental unit. However, as explained by the tenant, this was simply an estimate. There is no documentary evidence to establish that this is any thing but an estimate. What is more, and most importantly, there is no proven breach of by the landlord that might give rise to a claim being awarded. This claim is accordingly dismissed.

Last, regarding the claim for the return of her security and pet damage deposits totalling $1,500.00, it is worth noting that the landlord did not say anything about, or dispute, this aspect of the tenant's claim. As such and taking into careful consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving their claim for the return of her security and pet damage deposits of $1,500.00.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenant partly succeeded in her application, she is therefore granted a partial recovery of the fee in the amount of $50.00.

The Landlord's Application

1. $4,500.00 for unpaid rent for July, August "plus one month";
2. $2,500.00 as estimate for repairing floor damage;
3. $180.00 for the cost of removing the tenant's abandoned belongings;
4. $225.00 for cleaning costs;
5. $45.00 for a wall clock that was taken by the tenant (this claim was dropped by the landlord in the hearing and is not considered further); and,
6. $100.00 for the Residential Tenancy Branch application filing fee.

In respect of the first claim, I am persuaded on the evidence before me that the landlord has already received the rent for July and August. Despite his denial to the contrary, the documentary evidence establishes that the landlord accepted "prepaid" rent in the

amount of $10,000.00, and which covered rent well into September. For this reason, subject to the amount of rent that the landlord is entitled to keep as per above, it is my finding that the landlord has already been paid the “unpaid” rent for July and rent for ten days in August. Given the above, this aspect of the landlord’s claim is dismissed without leave to reapply.

In respect of the claim for repairing floor damage, the landlord provided little evidence other than that the tenant damaged the floor. No repair estimates or invoices were provided into evidence. In other words, the landlord has not established the dollar amount for the amount of compensation he seeks. Equally as important in proving this claim, but missing from evidence, is a completed condition inspection report.

Regardless of whether a tenant participates in such an inspection (though they are required to), a landlord is always required under section 23 and section 35 of the Act to complete a condition inspection at the start and end of the tenancy. A condition inspection report is a crucial piece of evidence that may be used to show whether a tenant damaged a rental unit during the tenancy.

Taking into consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for any compensation related to the purported floor damage. This claim is dismissed.

In respect of the claim for $180.00 for the cost of removing the tenant’s abandoned belongings and the claim for $225.00 for cleaning costs, I am satisfied on the evidence that the tenant did abandon property with which the landlord had to remove. Further, the photographs of the rental unit establish that the tenant left the rental unit in a state and condition which required the landlord to expend time and effort in cleaning the rental unit.

Therefore, in taking into consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has et the onus of proving their claim for $405.00 for cleaning costs and property removal.

Again, section 72 of the Act permits an arbitrator to order compensation for the cost of the filing fee to a successful applicant. As the landlord also partly succeeded in his application, he is granted a partial recovery of the fee in the amount of $50.00.

Summary of Awards and Offset

The tenant is awarded a total of $3,556.85. The remainder of the tenant's claims, including amounts not awarded, are dismissed without leave to reapply.

The landlord is awarded a total of $455.00. The remainder of the landlord's claims are dismissed, without leave to reapply.

The amount awarded to the landlord is deducted from the amount awarded to the tenant, for a balance owing to the tenant by the landlord in the amount of $3,101.85.

Pursuant to section 67 of the Act, the landlord is hereby ordered to pay $3,101.85 to the tenant.

A monetary order in this amount is issued in conjunction with this decision to the tenant. It is the tenant's responsibility to serve a copy of the monetary order on the landlord. Should the landlord fail to pay this amount to the tenant within 15 days of receiving a copy of the monetary order, the tenant may file and enforce the monetary order in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The parties' applications are granted, in part, as outlined about. The remainder of the parties' claims, as explained above, are dismissed without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: March 4, 2022

Residential Tenancy Branch