Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67.

Both parties attended the hearing. The tenant was assisted by advocate BB (the advocate). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Preliminary Issue – Prior decision and order from the BC Supreme Court

This hearing was originally convened on November 07, 2017 and a decision was rendered on November 08, 2017 (the original decision):

> I have decided to dismiss the tenant’s application without leave to reapply. Since the tenancy ended on June 1, 2015, and the tenant delayed making their application until May 31, 2017, which was the last day possible under the Act. I find any future application would be barred from being heard, as it would be filed past the two year statutory time limit.

> Conclusion
> The tenant failed to comply with the Act and the Rules. The tenant's application is dismissed without leave to reapply.

The British Columbia Supreme Court (BCSC) set aside the original Residential Tenancy Branch (RTB) decision and ordered a rehearing. The BCSC file number is recorded on the cover page of this decision. The BCSC decision states:

> THIS COURT ORDERS THAT:
> 1. The style of cause in this case is amended to replace "British Columbia Residential Tenancy Branch" with "Director, Residential Tenancy Branch";
> 2. The decision made by arbitrator [redacted for privacy] on November 08, 2017 in Residential Tenancy Branch File No. [redacted for privacy] is set aside;
> 3. The Petitioner's Application for Dispute Resolution with the Residential Tenancy Branch in File No. [redacted for privacy] is remitted to the Residential Tenancy Branch for rehearing;
> 4. Costs are declined to be awarded against any of the Respondents.

Both parties agreed the BCSC did not provide further orders, details or reasons.

The British Columbia Court of Appeal (BCCA) heard an appeal from the BCSC decision:

> [1] The appellant is embroiled in a dispute with her former landlord and the B.C.Residential Tenancy Branch (the "RTB") over the return of her security deposit of $350 and unspecified compensation in relation to the termination of her lease. She was unsuccessful before an arbitrator of the RTB and wishes to institute judicial review proceedings challenging that decision. **On May 15, 2018,the appellant filed a requisition in the Supreme Court of British Columbia for an order under R. 20-5 of the Supreme Court Civil Rules, B.C. Reg 168/2009 (the"Rules") to be exempted from paying court fees in those judicial review proceedings. The denial of that application has led to this appeal.**
> Disposition
> [29] For the foregoing reasons, I would set aside the decision of the appeal judge and allow the appeal from the master's decision.
> [30] Ordinarily, we would send the matter back to the trial court for decision, but applying the somewhat more practical approach taken by this Court in Vilardell (at para42**), I would allow the application and exempt the appellant from the fees.** The exemption is effective from the date of the appellant's application in the Supreme Court of British Columbia, so that the appellant is entitled to the return of any court fees that have been paid as a consequence of the master's decision.
> (emphasis added)

Preliminary Issue – Service

The RTB provided the January 20, 2022 notice of hearing to both parties. It states:

> Tenant's advocate: TM
> NOTE: The arbitrator will be considering the evidence that was previously submitted to the Residential Tenancy Branch and the documentation that was before the Court. Parties to the dispute must submit, to the Residential Tenancy Branch, all of the documents that they relied upon in the Judicial Review Proceeding and must serve them upon the other party. When submitting/ exchanging evidence, the parties are to do so in accordance with the Residential Tenancy Branch Rules of Procedure.

The tenant served the amendment, the April 11, 2022 monetary order worksheet and the evidence (the tenant's materials) by registered mail on April 26, 2022. The landlord confirmed receipt of the tenant's materials. Based on the testimony offered by both parties, I find the tenant served the tenant's materials in accordance with section 89(1) of the Act.

The landlord affirmed she served her response evidence a long time ago via email. Later the landlord stated she emailed the response evidence on March 08 or March 11, 2022 at 2:50 P.M.

The landlord testified she emailed the response evidence to TM, TM informed the landlord that he no longer represents the tenant and provided the landlord with the email address of the tenant's current advocate. The landlord then emailed the response evidence to the tenant's current advocate.

The tenant and the advocate said they only received a one-page receipt of evidence submitted to the RTB on March 08, 2022. The tenant and the advocate affirmed TM did not receive response evidence from the landlord.

The parties did not authorize service of documents via email.

Residential Tenancy Branch Policy Guideline 12 states:

> The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

The landlord's testimony about the service of the response evidence was vague and not convincing. The landlord did not submit a copy of the email. I find the landlord did not prove that she served the response evidence to the tenant.

Rule of Procedure 3.15 states:

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I have excluded the landlord's response evidence, per Rule of Procedure 3.15.

Preliminary Issue – Res Judicata

The tenant is claiming compensation for purchasing a new stove, loss of use of the stove from December 2013 to May 2014 and April and May 2015 (claims 3 and 4 in the monetary order worksheet); rent reduction because of a cockroach infestation for 22 months and aggravated damages because of the infestation (claims 7 and 8).

The landlord stated that claims 3, 4, 7 and 8 were heard in two prior applications for dispute resolution. The landlord testified that on March 31, 2014 there was a hearing regarding compensation for a new stove and loss of use of the stove from December 2013 to March 2014. The landlord said that on June 30, 2014 there was a hearing regarding a rent reduction because of a cockroach infestation. The landlord read parts of the June 30, 2014 decision:

> The tenant also seeks a 20% rent reduction as the landlord has not complied with a previous order to deal with cockroaches. The landlord submitted a copy of a cheque for payment to a pest control company. The landlord stated that they are actively dealing with it but the tenant has made in difficult in accessing the unit. The tenant stated she has not restricted access. The tenant stated she was "confused" as to whether the landlord had in fact sprayed her unit. Based on the above the tenant. has not satisfied the that she is entitled to a rent reduction and accordingly I dismiss this portion of her application.

The two RTB file numbers are recorded on the cover page of this decision.

I asked the advocate to provide testimony about the prior 2014 hearings and the advocate deferred the question to the tenant. The tenant affirmed the 2014 hearings only dealt with the cockroach infestation and the RTB ordered the landlord to address the infestation. Later the advocate stated that the tenant only asked for compensation related to the stove and cockroach in this application.

I find the landlord's testimony more convincing than the testimony offered by the tenant and her advocate. Thus, I find the tenant claimed compensation for purchasing a new

stove and loss of use of the stove and there was a prior decision addressing these issues on March 31, 2014. I find the tenant claimed a rent reduction because of the cockroach infestation and there was a decision addressing this issue on June 30, 2014.

Thus, the tenant's application for compensation for purchasing a new stove and compensation for loss of use of the stove from December 2013 to March 31, 2014 and a rent reduction due to the cockroach infestation until June 30, 2014 are *res judicata* – a matter already decided upon, and I decline to hear them.

Issues to be Decided

Is the tenant entitled to:

- an order for the landlord to return the deposit?
- a monetary order for compensation for damage or loss?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on July 01, 2011 and ended on May 31, 2015. Monthly rent was due on the first day of the month. At the outset of the tenancy a deposit of $350.00 was collected and the landlord holds it in trust.

The tenant testified that the landlord increased rent to $750.00 effective in May 2013. The landlord said that rent was $700.00, and it did not include the utilities. The landlord affirmed she started collecting $750.00 per month because $50.00 was a flat rate for the utilities. The landlord does not remember when she started collecting the extra $50.00.

The tenancy agreement was submitted into evidence. It indicates that monthly rent in the amount of $700.00 included water, electricity, heat, garage, stove and oven, refrigerator, laundry (free), storage and parking.

The tenant emailed her forwarding address on May 31, 2016. The email was submitted into evidence. The landlord confirmed receipt of the email on another date, as the landlord does not regularly check the email address used by the tenant to serve the forwarding address.

The tenant did not authorize the landlord to retain the deposit and submitted the application on May 31, 2017. The tenant did not submit the application earlier because she was trying to settle the issues with the landlord.

The tenant is claiming compensation in the amount of $300.00 (10% of rent for 4 months), as the landlord prohibited her from using the laundry from February 01 to May 31, 2015. The tenant emailed the landlord:

> [January 14, 2015]: Can you please unlock the door so I can have access to the washing and drying machine?
> [January 15, 2015]: This is my final request that you unlock the laundry room so I can access my personal items and so I can use the washing machine and wash my laundry. If you continue to refuse me access to the facility, it is a breach of our contract and I will be forced to apply for reimbursement and compensation.
> [Landlord's email on January 16, 2016]: The washing machine is not working now because it is having water in it because of clogged problems.

The tenant submitted into evidence receipts for laundry services from February 15 to May 25, 2015 totalling $247.40.

The landlord affirmed she does not remember what happened regarding the laundry.

The tenant is claiming compensation in the amount of $100.00, as she purchased a new stove in May 2014 and $525.00 (10% of rent for 7 months), as the stove did not function from December 2013 to May 2014 and from April 01 to May 31, 2015. The tenant stated she notified the landlord and the landlord failed to repair the stove. The tenant sent a letter to the landlord on January 16, 2014:

> You have also been aware of the rangehood in our suite that needed to be replaced. To date, you have not followed up. The vent/duct leading from the stove to outside is made of paper. We have found a rangehood to replace the old one but need you to remove the current vent/duct system you have installed and replace It with one that is legal. The paper duct is saturated in oil and poses a serious health and fire risk. We need this fixed immediately in order for us to use the stove and to cook safely.

The tenant testified she used the stove she purchased for one month and the landlord provided a new stove in June 2014.

On April 07, 2015 the tenant emailed the landlord: “The stove is not working. Please let me know when you have one to change it so I can cook.”

The landlord said the stove did not function only for a few months.

The tenant is claiming compensation in the amount of $75.00 (10% of rent for one month), as she notified the landlord on October 26, 2014 that the refrigerator was not functioning and the landlord only repaired it in the end of November 2014. The tenant submitted into evidence an email sent on October 26, 2014: “Our fridge downstairs is not working properly. Please can you get a working one for us soon”.

The landlord does not remember what happened.

The tenant is claiming compensation in the amount of $75.00 (10% of rent for one month), as she notified the landlord on December 01, 2014 that the heat was not functioning and the landlord did not repair the heat until January 2015. The tenant submitted into evidence an email sent on December 01, 2014: “It is very cold and the 1 vent in the bathroom that turns on and off from upstairs is not an adequate heat source. I expect you to take this matter seriously as there is no other heating for downstairs”.

The landlord affirmed she provided heat and the landlord is not aware of what happened.

The tenant is claiming compensation in the amount of $3,300.00, as she notified the landlord on June 01, 2013 about a cockroach infestation and the landlord did not address this issue. The tenant stated the compensation sought is 25% of rent for 22 months. The tenant submitted several emails into evidence:

> [tenant on June 01, 2013]: Could you please give me the number to the pest control that came for the cockroaches. It is getting very bad in the house.
> [tenant on June 10, 2013]: Do you have the pest control guys phone number and our invoice number (should be on the receipt I have to you). The bug problem is really bad.
> [landlord on June 10, 2013]: I sent you by message on 6/3. His phone number is [redacted]
> [tenant on October 01, 2013]: We need the cockroaches to be taken care of right away. It is a very serious health problem. We have already had to throw away many of our stuff that had been damaged and contaminated by the bugs. Please call me and set up an appointment with pest control to come in right away. It is not in liveable condition here with so many bugs.

The tenant emailed again the landlord twice in December 2013 and once in January 2014 about the cockroach infestation. On January 02, 2014 the landlord emailed the tenant: “I will call the person who helped to kill cockroaches before to figure out what we can do”. The tenant submitted four videos and two photographs not dated about the infestation.

The landlord testified she addressed the cockroach infestation and for this reason the tenant’s request for compensation in June 2014 was denied.

The tenant is claiming compensation in the amount of $1,000.00 for aggravated damages because the landlord was negligent in addressing the cockroach infestation. The tenant said she and her family suffered and they could not have visit of family and friends because of the cockroach infestation.

I inquired the tenant why she did not submit an application for dispute resolution regarding the ongoing cockroach infestation after the March and June 2014 decisions. The tenant affirmed she was hopeful that the landlord would comply with the RTB orders issued in March and June 2014.

The landlord stated the rental unit was older than 100 years, the landlord addressed the cockroach infestation, but it takes time to solve the pest issue.

The tenant submitted into evidence a monetary order worksheet indicating a total monetary claim in the amount of $6,075.00.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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 who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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 the case is on the person making the claim.

Deposit

I accept the uncontested testimony that the tenancy ended on May 31, 2015.

The parties did not accept service of documents via email. The landlord does not recall the day she received the May 31, 2016 email with the forwarding address.

Section 71(2)(b) provides that the Director may order “that a document has been sufficiently served for the purposes of this Act on a date the director specifies”.

Section 90 of the Act states:

> A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:
> (a)if given or served by mail, on the fifth day after it is mailed;
> (b)if given or served by fax, on the third day after it is faxed;
> (c)if given or served by attaching a copy of the document to a door or other place, on the third day after it is attached;

> (d)if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after it is left.

Regulation 44, effective on March 01, 2021, states that a document is deemed received three days after it is emailed.

I find it is reasonable to deem the landlord received the May 31, 2016 email three days after the tenant sent it. Thus, the landlord is deemed served the forwarding address on June 03, 2016.

Section 39 of the Act states:

> Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
> (a)the landlord may keep the security deposit or the pet damage deposit, or both, and
> (b)the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Thus, I find the tenant served the forwarding address more than one year after the tenancy ended. The tenant extinguished her right for the return of the deposit, per section 39(b) of the Act.

I dismiss the tenant's claim for an order for the return of the deposit.

Laundry expenses

Section 27 of the Act addresses the landlord's ability to terminate or restrict services of facilities:

> (1)A landlord must not terminate or restrict a service or facility if
> (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b)providing the service or facility is a material term of the tenancy agreement.
> (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
> (a)gives 30 days' written notice, in the approved form, of the termination or restriction, and
> (b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Residential Tenancy Branch Policy Guideline 01 states:

> 1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.
> 2. If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Based on the tenant's undisputed convincing testimony, the January 2015 emails, and the tenancy agreement, I find the landlord breached section 27(2) of the Act by restricting the tenant's access to the laundry service included in the tenancy agreement from February 01 to May 31, 2015 and the tenant suffered a loss.

Based on the laundry receipts, I find the tenant proved a loss of $247.40.

As such, the tenant is entitled to compensation for the restriction of access to the laundry from February 01 to May 31, 2015 in the amount of $247.40.

Stove

As referenced in the topic 'Preliminary Issue – Res Judicata', the tenant's claim for compensation for a new stove and loss of use of the stove from December 2013 to March 31, 2014 is *res judicata* and I declined to hear these claims.

I am considering the tenant's claim for compensation for loss of use of the stove from April 01 to May 31, 2014 and April 01 to May 31, 2015.

Section 32(1) of the Act states:

> A landlord must provide and maintain residential property in a state of decoration and repair that
> (a)complies with the health, safety and housing standards required by law, and
> (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the tenant's undisputed convincing testimony and the April 07, 2015 email, I find the landlord breached section 32(1) of the Act by failing to repair or replace the

stove and the tenant suffered a loss from April 01 to May 31, 2014 and April 01 to May 31, 2015.

I find it is reasonable to award compensation in the amount of 10% of rent for each month the landlord did not provide a functional stove.

Based on the tenant's more convincing testimony and the tenancy agreement, I find that monthly rent was $700.00, including water, electricity and heat, and in May 2013 the landlord increased rent to $750.00, including water, electricity and heat.

Thus, I award the tenant compensation in the amount of $300.00 (4 months x $75.00 per month)

Refrigerator

Based on the tenant's undisputed convincing testimony and the October 26, 2014 email, I find the landlord breached section 32(1) of the Act by failing to repair or replace the refrigerator and the tenant suffered a loss from November 01 to 31, 2014.

I find it is reasonable to award compensation in the amount of 10% of rent for the month the landlord did not provide a functional stove.

Thus, I award the tenant compensation in the amount of $75.00.

Heat

Based on the tenant's more convincing testimony and the December 01, 2014 email, I find the landlord breached section 32(1) of the Act by failing to repair the heat in December 2014 and the tenant suffered a loss from December 01 to 31, 2014.

I find it is reasonable to award compensation in the amount of 10% of rent for the month the landlord did not provide heat.

Thus, I award the tenant compensation in the amount of $75.00.

Cockroach infestation

As referenced in the topic 'Preliminary Issue – Res Judicata', the tenant's claim for a rent reduction for 22 months for cockroach infestation until June 30, 2014 is *res judicata* and I declined to hear it.

I am considering the tenant's claim for a rent reduction from July 01, 2014 to May 31, 2015 and the aggravated damages.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find the tenant failed to prove, on a balance of probabilities, that the landlord breached the Act after June 30, 2014. The tenant provided emails prior to June 30, 2014. The landlord's testimony about addressing the cockroach infestation after June 30, 2014 was convincing. The landlord's email dated January 02, 2014 indicates the landlord addressed the cockroach infestation. The videos and photographs submitted by the tenant are not dated.

I dismiss the tenant's claim for a rent reduction from July 01 2014 to May 31, 2015.

RTB Policy Guideline 16 states:

> "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

Based on the tenant's testimony and emails, I find the tenant failed to prove, on a balance of probabilities, that she suffered significant damage or loss due to the landlord's negligence. The tenant could have submitted a new application for the RTB between July 01 2014 and May 31, 2015 regarding the cockroach infestation.

I dismiss the tenant's claim for aggravated damages because of the cockroach infestation.

Summary

In summary, the tenant is entitled to:

Expenses	**$**
Laundry expenses	247.40
Stove	300.00
Refrigerator	75.00
Heat	75.00
Total	**697.40**

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of $697.40.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 18, 2022

Residential Tenancy Branch