



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, MNDCT, CNR, FFT, CNMN**

Introduction

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

- An order requiring the landlord to comply with the Act pursuant to section 62;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- 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*;
- Cancellation of a Monetary Order for rent granted pursuant to section 55 (1.1).

The agent CL and the landlord attended (“the landlord”). Both tenants attended.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions.

No issues of service were raised. I find each party served the other in accordance with the *Act*.

The hearing process was explained.

The parties are referenced in the singular in this Decision.

Each party confirmed the email address to which the Decision shall be sent.

1. Preliminary Issue – Previous Proceedings

This is the second hearing on this application.

This hearing was first held on April 5, 2022. An Arbitrator submitted a Decision on that date and granted the landlord a Monetary Order for outstanding rent. The tenant did not attend the hearing.

The tenant applied for a Review Consideration of the previous Decision.

An Arbitrator submitted a Review Consideration Decision dated April 11, 2022. They directed a new hearing and suspended the previous Decision and Monetary Order.

2. Preliminary Issue – Tenant vacated, Dismissal of Claims

The parties agreed the tenant vacated the unit on February 2, 2022. Accordingly, the tenant's claims under sections 62 and 46 are dismissed without leave to reapply.

The tenant also applied to cancel a Monetary Order for unpaid rent issued pursuant to section 55(1). The Review Consideration Decision suspended this Monetary Order pending a new hearing and this application is unnecessary.

This hearing will determine the issue of the landlord's entitlement to outstanding rent and request for authorization to apply the security deposit to the Monetary Order.

Therefore, I dismiss this aspect of the tenant's application without leave to reapply.

3. Preliminary Issue – Upcoming Hearing and Severance

During the hearing, the landlord informed the Arbitrator they had filed an Application for Dispute Resolution on February 14, 2022, which has been scheduled for hearing on

October 3, 2022, at 1:30 PM. The file number is referenced on the first page of this Decision. The landlord claimed the same relief as in this Application as well as additional relief for damages to the unit.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with outstanding rent and the security deposit.

Section 2.3 of the *Rules of Procedure* states that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As a result, I exercised my discretion to dismiss, with leave to reapply, the remainder of the tenant's claim for damages under section 67 and reimbursement of the filing fee.

As I have dismissed the tenant's claims with leave to reapply, the only issue before me is the application by the landlord for a monetary order for outstanding rent based on section 55(1.1).

Section 55(1.1) states that I must consider the application by the landlord for a Monetary Order for outstanding rent. The section states as follows:

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for outstanding rent and authorization to apply the security deposit to the award?

Background and Evidence

The parties submitted considerable documentary evidence. Each party provided substantial testimony, much of which was conflicting, in an 85-minute hearing.

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Tenancy Agreement

The parties submitted a copy of the tenancy agreement and agreed as follows.

The tenancy began on October 1, 2021. Monthly rent was \$3,900.00. The tenants paid a security deposit of \$1,950.00 and a pet deposit of \$250.00, for a total of \$2,200.00 (the “security deposit”). The tenancy was for a fixed term of one year. The agreement included a residential address for service of the landlord. The unit was a single family furnished residence.

The parties agreed the tenant did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenant.

Condition Inspection Reports

Inspection and Report on Moving In

The landlord testified they conducted a condition inspection on moving in although they did not submit a copy of a Condition Inspection Report.

The tenant testified no such inspection had been conducted.

After the landlord asked if they could move out early, the tenant addressed the condition of the unit. In a text of December 30, 2021, from the tenant to the landlord, a copy of which was submitted, the tenant stated,

“we have never had one [moving in condition inspection] to know what is out of the norm moving out.”

In a reply text of December 30, 2021, the landlord stated:

We did suggest that you take picture and video of the home upon move in as to ensure it looks relatively the same upon move out. That was your responsibility.

Inspection and Report on Moving Out

The parties agreed that no condition inspection was conducted on moving out. The landlord testified they did not know the tenant was vacating and therefore could not arrange an inspection.

The tenant testified they informed the landlord by text of their move out date two to three weeks in advance although no copy of the text was submitted.

Landlord Request to Move Back in Early

On December 29, 2021, the landlord expressed an interest in moving back into the unit and ending the fixed term tenancy early. A copy of the text from the landlord to the tenant dated December 29, 2022, was submitted. The landlord offered a rent reduction for January and February of \$500.00 and free rent for March 2022.

Difficulties subsequently arose between the parties following the request which escalated.

The tenant requested from the landlord one month's rent as compensation for January 2022 although a Two Month Notice had not been issued. Alternatively, the tenant requested that the amount of rent be reduced. The landlord declined suggesting the tenant was financially "in over their head".

The tenant objected to the landlord's characterization of the situation, saying the problem started with the landlord's request by text to end the tenancy. The tenant explained their financial difficulties which were unexpected and temporary. Both tenants then developed Covid.

The exchanges between the parties became more heated and accusatory. The landlord did not want to move back in until April and wanted the tenant to remain in the unit until then. The landlord offered the month of March as free rent.

The tenant stated the landlord's "proposal is aggressive and you threatening". The tenant told the landlord they felt "scammed" and the "whole experience was terrible".

The tenant complained to the landlord about other aspects of the tenancy. These exchanges took place by text or email and copies were submitted.

The tenant did not pay rent for January 2022. They testified they decided to move out on February 1, 2022, and shortly afterward informed the landlord of their decision.

No agreement was reached. The landlord did not issue a Two Month Notice to End Tenancy for Landlord's Use. The landlord denied receiving notice the tenant intended to move out February 1, 2022.

10 Day Notice

The landlord issued a 10 Day Notice on January 3, 2022, and the tenant acknowledged service on that day. The tenant filed an Application for Dispute Resolution to dispute the 10 Day Notice, along with other relief. The Application was filed January 6, 2022.

As stated, the tenant did not pay rent as due on January 1, 2022.

The tenant and landlord agreed that on January 24, 2022, the landlord's agents attended at the unit for a scheduled inspection. The tenant testified they confirmed verbally with the agents their intended move-out date of February 1, 2022. The landlord denied any such conversation and the agents were not called as witnesses.

Moving Out

The tenant testified they sent the landlord a text message shortly after they filed the Application for Dispute Resolution saying they would move out on February 1, 2022. The landlord denied receipt of any verbal or written message. The tenant did not produce a copy of any communication.

The tenant notified the landlord on February 1, 2022, that their move-out was delayed by one day to February 2, 2022. The landlord acknowledged receipt in an email of February 2, 2022. Copies of the communication were submitted.

The tenant moved out February 2, 2022.

The landlord did not take steps to conduct a condition inspection on moving out.

The landlord testified that the unit remained vacant for the month of February.

Forwarding Address

The tenant testified they sent the landlord a message before they moved out enclosing their forwarding address. The tenant did not submit a copy of the message and the landlord denied receipt.

Summary of Claims

The landlord seeks a Monetary Order for outstanding rent for January and February 2022.

The tenant requested that the landlord's application for a Monetary Order be dismissed.

Analysis

Burden of Proof

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.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The claimant (the landlord) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The above-noted criteria are based on sections 7 and 67 of the Act.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations, or a tenancy agreement.

These sections state as following:

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.

Each of the four tests are considered.

1. *Did the tenant fail to comply with Act, regulations, or tenancy agreement?*

I find the landlord has met the burden of proof that the tenant failed to comply with the Act and tenancy agreement in two ways.

First, as agreed between the parties, the tenancy was a fixed term tenancy. I find the tenant unilaterally ended the tenancy on a date that was earlier than the date specified in the tenancy agreement. I find the landlord did not consent to the early end.

Secondly, the parties agreed the tenant moved out on February 2, 2022, and did not pay rent for January and February 2022 as specified in the tenancy agreement.

I accept the landlord's evidence the unit was vacant for the remainder of February 2022.

2. Has the damage or loss resulted directly from a violation – by the other party, the tenant – of the Act, regulations, or tenancy agreement?

The parties agreed the rent was \$3,900.00 and the tenant did not pay rent for January and February 2022.

I find the landlord incurred a loss of rent for both months because the tenant failed to pay rent when it was due.

I accept the landlord's credible testimony they had no other rental income from the unit for those two months.

3. Has the landlord established the actual monetary amount or value of the damage or loss?

The parties agreed the monthly rent was \$3,900.00. The landlord testified that the unit was vacant for February 2022.

As stated, I accept the landlord's testimony as reliable and credible that the unit was vacant for February 2022.

I therefore find the landlord established the actual monetary amount or value of the damage or loss, being two months' rent as claimed.

4. Has the landlord done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act?

I accept the landlord's credible testimony that the tenant did not notify the landlord when they were moving out. I have reached this Decision considering the testimony of the parties and the lack of any documentary evidence of notice.

Without knowing the vacancy date, I find the landlord could not take steps to advertise or rent the unit in the remaining time in February 2022.

I find the landlord has met the burden of proof that they did what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act.

Conclusion

On a balance of probabilities and for the reasons stated, I therefore find the landlord has met all four parts of the 4-part test.

Security deposit

I have considered the testimony and the communication between the parties referenced earlier. I find the reasonable I interpret to mean that no inspection on moving in took place. I find a commonsense interpretation of the communication is that no condition inspection on moving in took place.

I find the landlord has not established there was a condition inspection on moving in.

The parties agreed that no condition inspection was conducted on moving out. The landlord testified they did not know the tenant was vacating. However, the tenant provided a copy of the email of February 1, 2022, to the landlord stating their move out was delayed by one day and they would move out the following day. The landlord acknowledged receipt.

I find the landlord was notified the day before the tenant moved out. The landlord did not submit copies of texts or emails to the tenant about an inspection on moving out. I find the landlord took no steps to schedule a condition inspection on moving out.

Section 38 of the Act requires the landlord to either return the security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of

the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

The tenancy ended on February 2, 2022. The tenant informed the landlord on February 1, 2022 they were moving out the following day. The tenant did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the security deposit to the tenant.

The landlord made an application for dispute resolution to claim against the deposit for damages on February 14, 2022, which is within 15 days of the end of tenancy date.

However, I find that the landlord extinguished their right to claim against the security deposit for damages, as per sections 24 and 36 of the Act, for failure to complete move-in and move-out condition inspection reports for this tenancy. The parties continued to use the same email and text addresses after the vacancy date as before. The landlord made no effort to schedule an inspection or to follow the Rules regarding arranging for an inspection on moving out.

Section 19 of the Residential Tenancy Regulation ("Regulation") requires that condition inspection reports must be in writing. Section 20 of the Regulation requires detailed, specific information to be included in the condition inspection reports.

Residential Tenancy Policy Guideline 17 states the following, in part, emphasis added:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, **the arbitrator will order the return of double the deposit:**

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

In accordance with section 38(6)(b) of the Act and Residential Tenancy Policy Guideline 17, I find the landlord's right to claim against the security deposit was extinguished for failure to conduct condition inspections on moving in and moving out. I therefore find the tenant is entitled to receive double the value of their security deposit of \$2,200.00, which I find is \$4,400.00. There is no interest payable on the deposit during the period of this tenancy.

Pursuant to section 72, authorize the landlord to retain the security deposit in partial compensation of the award.

Summary

I find the landlord is entitled to compensation for rent for the months of January and February 2022 in the amount of \$3,900.00 per month.

I find the tenant is entitled to double the return of the security deposit which I find is the sum of \$2,200.00 for a total of \$4,400.00..

My award is summarized as follows:

ITEM	AMOUNT
Rent January 2022	\$3,900.00
Rent February 2022	\$3,900.00
(Less double security deposit)	(\$4,400.00)
TOTAL MONETARY ORDER LANDLORD	\$3,400.00

I grant a Monetary Order to the landlord of \$3,400.00.

Conclusion

I grant the landlord a Monetary Order of \$3,400.00. This Order must be served on the tenant. The Monetary Order may be filed and enforced in the courts of the province of BC.

The tenant's claims under section 62 and 46 are dismissed without leave to reapply.

The tenant's claims under section 67 and 72 are dismissed ***with leave to reapply***.

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

Dated: May 16, 2022

Residential Tenancy Branch