



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: **FFL, MNRL-S, MNDL-S, MNDCL-S**
Tenant: **MNSDS-DR, FFT**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for the Landlord to recover money for unpaid rent - holding security and/or pet damage deposit pursuant to Sections 38, 62, and 67 of the Act;
2. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act;
3. An Order for compensation for the Landlord's monetary loss or other money owed - holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Tenant's cross application pursuant to the Act for:

1. An Order for the return of the Tenant's security deposit that the landlord is holding without cause pursuant to Section 38 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The

Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord testified that he served the Tenant with the Notice of Dispute Resolution Proceeding package on January 17, 2022 by Canada Post registered mail (the "NoDRP-L package"). The Landlord referred me to the Canada Post tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP-L package five days after mailing them on January 22, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served the Tenant with their evidence by Canada Post registered mail on July 27, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord's evidence was deemed served on the Tenant on August 1, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The RTB issued the Tenant's Notice of Dispute Resolution Proceeding package on March 29, 2022 (the "NoDRP-T package"). The Landlord testified that he did not receive the NoDRP-T package from the Tenant. He also confirmed that he did not receive any evidence from her. RTB Rules of Procedure 3.1 state that the applicant must serve the respondent with the NoDRP package and their evidence within three days after the NoDRP package is issued. Rules of Procedure 3.14 states that evidence to be relied upon must be received by the respondent not less than 14 days before the hearing. As the Landlord did not receive the Tenant's NoDRP-T package or evidence, I dismiss the Tenant's application without leave to re-apply.

Issues to be Decided

1. Is the Landlord entitled to an Order for the Landlord to recover money for unpaid rent - holding security and/or pet damage deposit?
2. Is the Landlord entitled to an Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?

3. Is the Landlord entitled to an Order for compensation for the Landlord's monetary loss or other money owed - holding security and/or pet damage deposit?
4. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that this tenancy began as a fixed term tenancy on August 21, 2021. The fixed term was to end on August 21, 2022. Monthly rent is \$3,995.00 payable on the first day of each month. A security deposit of \$1,997.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenant vacated the rental unit on December 2, 2021 and she provided her forwarding address at that same time.

The Landlord made efforts to have the rental unit re-rented to minimize his losses from the Tenant's fixed term tenancy from which she vacated. He had one renter for the month of February 2022 who took the unit sight unseen. When this person saw the unit, they did not want to keep it. The Landlord had another renter from March to June 2022, but this renter also left. The last two months of the Tenant's fixed term, the Landlord secured different renters who paid more than what the Tenant was paying. The following table outlines the rent shortfall the Landlord experienced for this fixed term tenancy:

Fixed Term Tenancy Duration	Replacement Tenants - Rent collected	Rent Shortfall
November 2021	Tenant - \$3,495.00	\$500.00
December 2021	None - \$0.00	\$3,995.00
January 2022	None - \$0.00	\$3,995.00
February 2022	1 month - \$3,595.00	\$400.00
March 2022	4 months - \$3,700.00	\$295.00
April 2022	4 months - \$3,700.00	\$295.00
May 2022	4 months - \$3,700.00	\$295.00
June 2022	4 months - \$3,700.00	\$295.00
July 2022	2 months - \$4,195.00	-\$200.00
August 2022	2 months - \$4,195.00	-\$200.00
TOTAL RENT SHORTFALL OWING:		\$9,670.00

The Landlord provided evidence about damage done to the rental unit and furniture, but did not provide receipts for repairs or replacement of items. The Landlord seeks compensation for the monetary loss for rent during the fixed term tenancy totalling \$9,670.00.

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

The Tenant's application is dismissed without leave to re-apply due to her non-attendance at the hearing.

Liability for not complying with this Act or a tenancy agreement

- 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.*

RTB Policy Guideline #3-Claims for Rent and Damages for Loss of Rent states that:

C. *Tenancies ending early and compensation*

...

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the RTA and the MHPTA). A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.

...

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent. The tenant is not entitled to recover any remainder. ... (emphasis mine)

The Tenant was in a fixed term tenancy with the Landlord but vacated the rental unit early in the tenancy. The Landlord is entitled to compensation for the loss of rental revenue during the fixed term tenancy. The Landlord made efforts to minimize his losses of rent, including re-renting the rental unit at a higher rent which has been considered in this decision. Based on the undisputed testimony of the Landlord, I grant the Landlord compensation totalling \$9,670.00 for loss of rental revenue.

The Landlord neither provided totals for damage to the rental unit or furniture nor receipts for the expenses of doing repairs in the rental unit. I decline to make an award for these damage claims.

Having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

Monetary Award

Rent shortfall owing:	\$9,670.00
Plus application filing fee:	\$100.00
Less security deposit:	-\$1,997.00
TOTAL Monetary Award:	\$7,773.00

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$7,773.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and 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 Act.

Dated: August 30, 2022

Residential Tenancy Branch