



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, ERP, RP, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenants applied on May 27, 2022 to:

- dispute a One Month Notice to End Tenancy for Cause, dated May 27, 2022; and
- recover the filing fee.

On June 30, 2022, the tenants amended their application to:

- dispute a second One Month Notice, dated June 21, 2022;
- request an order for the landlord to make emergency repairs for health or safety reasons;
- request an order for the landlord to make repairs to the unit or property; and
- request an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

On September 12, 2022, the tenants amended their application, seeking:

- compensation for monetary loss or other money owed.

The hearing was attended by the tenants and the landlord. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and Rule 7.4 requiring evidence to be presented.

The landlord confirmed he received the tenants' materials for the hearing; he did not submit evidence in support of any of the tenants' claims I heard on.

Preliminary Matter

As the tenants stated they vacated the rental unit, and the landlord confirmed he does not require an order of possession, I dismiss the tenants' claims for orders cancelling the One Month Notices, an order for the landlord to make emergency repairs, an order for the landlord to make repairs, and an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

Issues to be Decided

- 1) Are the tenants entitled to compensation for monetary loss or other money owed?
- 2) Are the tenants entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began March 1, 2021; rent was \$1,800.00, due on the first of the month; and the tenants paid a security deposit of \$900.00 which the landlord still holds.

The tenants testified they vacated the rental unit on July 30, 2022, and sent the keys to the landlord by registered mail. The accompanying letter, dated July 30, and submitted as evidence, provides the tenants' forwarding address. The landlord testified he gained possession of the unit on August 10, 2022.

Page 2 of the tenants' September 12 amendment states they are seeking \$5,759.81, and a Monetary Order Worksheet is submitted in support, listing the following monetary amounts sought.

The tenants testified they are seeking to recover the \$900.00 security deposit. The parties agree that no move in inspection was done at the beginning of the tenancy, and no move out inspection was completed. The landlord testified he had not been aware the tenants were moving out. The landlord testified he received the tenants' forwarding address in writing on August 10, 2022. The parties agree the tenants did not authorize the landlord to keep any of the security deposit.

The tenants testified they are seeking \$3,600.00 for June and July 2022 rent, because the landlord contravened section 28 of the Act, which protects a tenant's right to quiet enjoyment. The tenants testified they did not feel comfortable in the home due to the

landlord and the downstairs neighbour, but did not provide further testimony regarding issues with the neighbour. The tenants testified that the landlord served them with two eviction notices, continually harassed and bullied them, and that he or his business partner were at the rental unit “semi-daily” after serving the May eviction notice. The tenants testified that the landlord’s behaviours made life stressful, such that they did not have the ability to enjoy their home. In their testimony, the tenants did not provide any dates or details regarding the landlord’s alleged problematic behaviour, but stated that after serving the eviction notices, he seemed to suddenly take an interest in the property, and served inspection notices. The tenants referred to emails between the parties, submitted as evidence.

In an email exchange between tenant TL and the landlord, spanning June 19 to 22, 2022, the parties disagree about how the tenants should be notified about an inspection, the tenant references the landlord’s “constant barrage of emails, messages, and showing up on property,” and the landlord states that the tenants are not answering the landlord’s emails regarding repairs, payment of utilities, and other matters regarding the tenancy. The tenant’s June 19 email states that the landlord is now emailing the tenants daily. However, the tenants did not testify when daily emails from the landlord began, or how long they continued for. In tenant TL’s June 19 email, the tenant threatens the landlord, stating that someone will attend the unit on the tenants’ behalf for an inspection and to pick up a Wi-Fi router, and: “If you attempt to block her in anyway I promise you will regret it.”

The landlord testified that he had been at the rental unit for about 4 to 5 days because he had some time off, so decided to work on a retaining wall. The landlord testified that his girlfriend, who acts as his agent when he is away, had been to the unit once to do an inspection. The landlord testified that he disputes the tenant’s assertions, and that he “was not there many, many times.”

The tenants testified that, on an unspecified date, the landlord was “aggressively knocking” on the door of the rental when only their minor daughter was home, frightening her. The landlord testified that the tenants’ daughter did not answer the door, and the landlord did not hear the doorbell, so he taped the notice to end tenancy on the door. The landlord testified that all other times he has served notices, he has posted them to the door.

The tenants testified they are seeking to recover moving and professional cleaning costs totalling \$1,125.93, and submitted receipts in support.

The tenants testified they are also seeking to recover the \$33.88 (\$16.94 x 2) they spent serving their amendments on the landlord by registered mail.

Analysis

I find that in accordance with section 44(1)(d) of the Act, this tenancy ended on July 30, 2022, the date the tenants vacated the rental unit.

The tenants have made a claim for compensation for monetary loss or other money owed, which includes the return of the security deposit.

Return of Security Deposit

Section 38(1) states:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) states:

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenants have provided affirmed testimony and documentary evidence that they served the landlord with their forwarding address in writing on July 30, 2022 by

registered mail. I deem the tenants' forwarding address received by the landlord on August 4, 2022, pursuant to section 90 of the Act.

The parties agree the landlord still holds the security deposit.

As the landlord has not repaid or made a claim against the security deposit within 15 days of receiving the tenants' forwarding address in writing, I find that in accordance with section 38 of the Act, the landlord is required to pay the tenants double the amount of the \$900.00 security deposit: \$1,800.00.

Remaining Monetary Claim

Section 7 of the Act includes:

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.

Section 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the 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.

Policy Guideline 16 includes:

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; and
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss.

The tenants have applied for \$3,600.00 for June and July 2022 rent due to loss of quiet enjoyment, which is protected by section 28 of the Act. The tenants have testified they did not feel comfortable in the home due to the behaviour of the landlord and the

downstairs neighbour, but did not provide testimony or present evidence regarding issues with the neighbour. The tenants submitted that the landlord served them with two eviction notices, continually harassed and bullied them, and that he or his business partner were at the rental unit “continually” after serving the first eviction notice. However, the tenants have provided few dates or details regarding the landlord’s alleged problematic behaviour, other than stating that he or his business partner attended the property “semi-daily” following service of the eviction notice, and that the landlord emailed the tenants daily for an undetermined length of time. The email correspondence between the parties submitted as evidence reveals an acrimonious relationship, but does not demonstrate that the landlord is harassing or bullying the tenants.

The landlord submitted that he had been at the rental unit for 4 to 5 days because he had some time off, so decided to work on a retaining wall at the property. The landlord submitted that the tenants had not got back to him regarding repair issues and utility costs, and disputes the tenants’ assertions that he or his agent were at the unit frequently.

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.

As the tenants have not presented detailed, specific evidence as to the frequency with which the landlord or their agent visited the unit, and how the tenants were disturbed, I find the tenants have failed to provide sufficient evidence to prove that the landlord did not comply with section 28 of the Act. Therefore, I find the tenants are not entitled to rent for June and July 2022.

The tenants have applied for \$1,125.93 for moving and professional cleaning costs. I find they are not entitled to these costs as they chose to move out before the hearing, rather than await the outcome of their disputes of the One Month Notices.

The tenants testified they are also seeking to recover the \$33.88 they spent serving their amendments on the landlord by registered mail. I decline to award this amount as the tenants had the option to serve the landlord in person at no cost.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are partially successful in their

application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

The tenants are entitled to a monetary order in the amount of \$1,900.00, comprising \$1,800.00 for the doubled security deposit and \$100.00 for the filing fee.

Conclusion

The tenants are granted a monetary order for \$1,900.00. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 31, 2022

Residential Tenancy Branch