Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNRL-S, MNDCL-S, FFL
Tenant: MNDCT, RPP, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the "Tenant Application") on December 15, 2021 seeking compensation for monetary loss/other money owed, the return of personal property, and reimbursement of the Application filing fee.

The Landlord filed an Application for Dispute Resolution (the "Landlord Application") on September 27, 2022 seeking an order for compensation for unpaid rent, and other money owed. Additionally, the Landlord seeks to recover the filing fee for their Application. The Tenant consented to hearing the Landlord's Application in the same scheduled hearing.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on October 17, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Is the Tenant entitled to compensation for other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to return of their personal property?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to compensation for unpaid rent and/or money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement, jointly signed by the parties on August 3 and 4, 2020. This was for the tenancy starting on August 26, 2020 for a fixed term ending on August 25, 2021, to revert to a month-to-month agreement after that time. The rent amount was $1,450 payable on the first day of each month. The Tenant paid a security deposit amount of $725.

The Tenant proposed that the proper end-of-tenancy date in this tenancy was February 12, or alternately February 8. They ended the tenancy on their own because they were not able to contact the Landlord during this time.

In the Landlord's evidence is the Tenant's notification from February 8, stating:

> After talking to my lawyer and with the recent ongoing multiple ongoing criminal activities within the building I am terminating my lease as of Feb 1st, 2021. I sent a text with some information but never received a reply. I will have all my property out shortly and will advise when the unit is empty. I will cease communication after this email until my property is out of the unit and will hand over my keys then.

The Landlord responded to say the Tenant's request was not received until February 8; therefore, option 1 is to pay the February rent "to secure the unit for the remainder of the month"; or return the keys in person by February 10.

A1.The Landlord's Application

The Landlord noted they had entered the rental unit previously, on January 27, for the purpose of an appraisal of the rental unit. The Landlord during that entry found another person's primary ID and other identification, and new furnishings. The Landlord speculated the Tenant was subleasing to another Tenant at that time. In response to this piece of the Landlord's version of events, the Tenant stated they were in the process of moving to another location in the province and had guests staying there to protect their personal property in the rental unit.

The Tenant did not pay rent on February 1. On February 3, the Landlord inquired with the Tenant on their well-being and checked whether the Tenant would pay rent, with no response.

The Landlord presented that they received no further communication from the Tenant after February 8. They concluded the Tenant had abandoned the unit. The Landlord then entered the rental unit on February 10 with the police. The Tenant had not returned keys to the Landlord; therefore, the Landlord changed the locks and deactivated the entry fob. As proof of this, the Landlord included a receipt from the locksmith dated February 10 for the amount of $131.25.

The Landlord noted the poor and unclean state within the rental unit, taking photos that appeared in their evidence. The Landlord returned to the rental unit on February 17 for cleaning, hiring a mover for that date to move out furniture and personal property that the Tenant had left in the rental unit. These items were moved "back to [the Landlord's] own residence . . . for storage."

The Landlord's claim, as set out on the Monetary Order Worksheet dated September 27, 2022 is as follows:

#	Items	$ claim
1	unpaid rent from February 1 – 19	983.93
2	rekeying locks	131.25
3	moving Tenant's personal property and garbage disposal	378.00
4	replacement of fob	100.00
5	strata move out fee	200.00
6	"nominal cleaning fees"	125.20
	Total	**1,918.38**

1. This is a pro-rated amount for the period of February for which the Landlord received no rent, having re-rented the unit on February 20, 2022. This is based on improper notice from the Tenant of ending the tenancy, with regard to s. 45 of the *Act*.

2. The Tenant did not respond to the Landlord after February 8 and did not return on February 10 to return the keys. The Landlord re-keyed the rental unit and de-activated the fob. The Landlord submitted this was reasonable in the circumstances.

3. The Landlord submitted photos of the state of the rental unit, with a number of personal belongings and furniture present in the rental unit. The Tenant did not comply with the requirement to clean the rental unit at the end of the tenancy. The Landlord provided a receipt from a moving company showing the full amount they paid: $378.

4. The Landlord provided a reminder from the strata regarding their outstanding balance for fees incurred in early 2021. This includes 2 key purchases on March 2, 2021, for the amount of $200.

5. The same strata reminder notes a move-in fee for the date of February 20, 2021, at $200. In their evidence, the Landlord included a copy of the strata rules.

6. The Landlord based this amount on “BC hourly wage”, and in their submission they noted “8 hours of own labour time”.

A2. Tenant’s response to Landlord’s Application

The Tenant provided a separate response to the Landlord’s written submission, signed by their counsel on October 13, 2022.

The Tenant arranged for a contact to look after the rental unit during their short absence in late January 2021. They sent an email to the Landlord on February 8 “providing one-month notice that [they] would terminate the Contract” because of the shooting and ongoing criminal activity in the building.

On February 12, they returned to the rental unit to find it locked. This prevented the Tenant from properly cleaning the rental unit “at the end of the one-month notice period”, returning the keys and fob, and removing their personal property.

The Tenant submits they are not responsible for the Landlord's compensation because the expenses to the Landlord were the result of their own doing "for wrongfully evicting the Tenant without notice."

In the hearing, the Tenant – via counsel – submitted they were not able to contact the Landlord after January 18, the date of the shooting. They decided to end the tenancy because they did not feel safe there.

B1. The Tenant's Application

The Tenant in the hearing presented their version of events that led to the ending of the tenancy:

- on January 18, 2021 there was a shooting in the rental unit building
- the Tenant on February 8 advised the Landlord of their intention to move because of the shooting
- on February 12 the Landlord changed the locks to the rental unit without notice to the Tenant
- the Tenant returned to the rental unit on that same date to find it locked

The Tenant comprehensively set out their claim for compensation in a written submission dated September 14, 2021. They reviewed sections from the tenancy agreement regarding the Landlord's entry into the rental unit, the Landlord changing the locks, and the manner in which the Landlord may end the tenancy.

The Tenant set out that "the Respondent or an agent for the Respondent" (*i.e.*, the Landlord) entered the property without providing notice to the Applicant and changed the locks of the Property." The Tenant returned on February 12 to find the rental unit locked. On this date, the Tenant had to find accommodation in a hotel, then staying for four nights. To the Tenant this as a reasonable step in the circumstances.

In the hearing the Tenant described trying to contact the Landlord for the purpose of giving a forwarding address; however, they were unable to do so and did not attempt further after they discovered the locks were changed. Their address was submitted to the Landlord as written notice in this dispute resolution process, with the evidence they served that notice to the Landlord via process server on March 28, 2022.

The Tenant listed personal belongings that were in the rental unit that they were never able to retrieve, giving values for each of those items. In the hearing they stated there was no evidence from the Landlord of the Landlord trying to contact the Tenant about their personal property.

The Tenant claimed:

- $1,500, being double the amount of the security deposit that was not returned to them by the Landlord
- $444 for their hotel stay
- $18 for a utility charge they paid for the month of February
- compensation for their personal property, totalling $3,400 should the Landlord not return those items
- $30,000 as “damages for the wrongful eviction”

In their evidence, the Tenant provided proof of the cost of personal property items: a self-massage device; two televisions; a TV stand; a bed frame; and a corner sofa unit. In their list of personal property not returned from the Landlord, the Tenant also listed two sports bags filled with gear, at $500 each.

In their written submission of September 14, 2021, the Tenant states: “The [Landlord] has not returned the . . . Personal Belongings to the Applicant, despite being provided with the forwarding address of the Appelant [*sic*].”

The Tenant also submitted that the Landlord did not provide an opportunity for an inspection of the rental unit to the Tenant, and did not provide a copy of a signed condition inspection report.

B2. Landlord’s response to Tenant’s Application

In their written submission of October 6, 2022, the Landlord provided their response to individual items from the Tenant’s Application:

- The Tenant did not provide a forwarding address in writing to the Landlord, neither when notifying the Landlord of the end of tenancy, nor after the tenancy ended. As of the date of the Landlord’s response, it had been over one year since the end of the tenancy and the Tenant’s right to the return of the security deposit was extinguished as per s. 39 of the *Act*.

- The Tenant claimed $444 for a four-night hotel stay; however, they provided invoices for only three nights. Further, these invoices are for an acquaintance of the Tenant and therefore not paid by the Tenant. This does not represent a monetary loss to the Tenant here. Additionally, the Tenant ended the tenancy on their own on February 8, retroactively for an effective date of February 1st, meaning "there was no tenancy between the parties at the time between February 12-14, 2021."

- The Tenant provided no evidence of their $18 utility payment.

- With the onus on the Tenant to substantiate their claim for personal items lost, they have not done so. The Landlord provided photos of their walkthrough at the rental unit on February 10; these show what items were left in the rental unit and the items claimed by the Tenant were not there. There were no receipts of items being re-purchased or replaced and no photos or other evidence from the Tenant showing that these items were present in the unit during the tenancy.

- The Landlord cites s. 25 of the *Residential Tenancy Regulation* to legitimize their point that they paid for the move of the Tenant's items, then stored those items for 60 days. The Tenant did not provide evidence that they requested the return of said items within that 60-day time period.

- The Tenant's claim for "up to $30,000" is "untenable and must fail", with "no basis in fact or law."

Overall, the Landlord submitted there was no evidence of the Tenant trying to contact the Landlord after their message of February 8. The Landlord advised they would attend to the unit on February 10; however, the Tenant did not respond. Further, there was no communication from the Tenant at the time they allegedly discovered they were locked out. This is a failure of the Tenant to mitigate by opting to stay in a hotel instead of contacting the Landlord to query and/or rectify the situation.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of

compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

A. The Landlord's Application

From the tenancy agreement, I find there was a positive obligation on the Tenant to end the tenancy in a manner that complies with part 14 of the tenancy agreement, in line with s. 45 of the *Act*. Additionally, the agreement sets out a paid security deposit amount of $725.

With due regard to s. 45 of the *Act*, I find the Tenant did not end the tenancy in a legally valid manner. This required a written notice in compliance with s. 52, and, as per s.45(2), not earlier than one month after the Landlord receives the notice, not earlier than the fixed end-of-tenancy date set in the agreement, and the day prior to the date on which rent payment is due. Here, the Tenant advised the Landlord of a past date, then abandoned the rental unit. The Tenant gave the tenancy and possession of the rental unit without properly giving notice to the Landlord. Moreover, they did not pay rent for February 2021 and told the Landlord on February 8 they don't intend to return.

The Tenant notified the Landlord of the end-of-tenancy on February 8, setting February 1st as the effective end-of-tenancy date. I find the Tenant breached s. 45 of the *Act* in seeking to end the tenancy in this manner. There was no evidence the Tenant presented serious security or personal safety issues to the Landlord in advance. The Landlord had no communication from the Tenant in a timely manner of the end to this tenancy. I find the Landlord is entitled to the February rent amount claimed. Further, this represents an effort at mitigation by the Landlord where they re-rented the unit as soon as possible within the same calendar month. I so award the Landlord the amount of $983.93 as claimed.

The *Act* s. 29 grants a landlord the right to enter the rental unit where the Tenant has abandoned the rental unit. I find it reasonable in these circumstances that the Landlord entered on February 10 based on their conclusion that the Tenant abandoned the rental

unit. There is no record of communication from the Tenant to the Landlord, and the Tenant did not provide an account of trying to call or otherwise message the Landlord between the days of February 8 or February 10 to clarify.

I find as fact that the Tenant abandoned the rental unit. The Landlord, in changing the locks to the rental unit, did not unreasonably restrict access to the Tenant, having no communication from the Tenant. I find the Landlord changed the locks based on their concern about others residing in the rental unit, based on the previous entry on January 27. Having not received any information from the Tenant to clarify, I find the Landlord would not normally have to change locks or rekey the rental unit if sufficient information or communication was in place. This was a case of abandonment, with evidence present to show the Landlord that other residents –*i.e.*, not the Tenant – had access to the rental unit. With no keys returned, and this evidence of other residents in place, I find the Landlord had to change locks or rekey, and this based on the Tenant's breach of s. 37 which sets the positive obligation on the Tenant to return keys. Because of the Tenant's breach and other circumstances present in this scenario, I grant the Landlord the cost for replacing the locks; that is $131.25. The Landlord would not have incurred this expense if not for the actions of the Tenant that were a breach of s. 37 of the *Act*.

I find the Tenant also breached the *Act* s. 37(2)(a) by abandoning the rental unit, and not leaving the rental unit reasonably clean, by leaving furniture and other items in the rental unit, with no communication to the Landlord. The Landlord incurred the significant expense of having to remove these items and haul them away. This cost of $378 entirely stemmed from the Tenant's breach. I grant this amount to the Landlord.

The Landlord presented that they had to deactivate the fob issued to the Tenant. There was no evidence to the contrary presented by the Tenant. I conclude this was because the Tenant did not return the fob when required to do so. I so award this claimed amount of $100 to the Landlord.

The strata reminder to the Landlord dated March 30, 2021 does not specify a Tenant move out fee. Rather, it shows a move in fee, and the Landlord did not otherwise present that they incurred an expense of $200 for the Tenant's abandonment, or that the Landlord had to pay that fee specifically. I dismiss this individual piece of the Landlord's claim.

The Landlord did not present what their "nominal cleaning fees" consisted of. They made reference to "BC hourly wage"; however, there is no record of what that amount was, and I am not at liberty to provide that amount on the Landlord's behalf. There was also no detailed account of the cleaning completed, or why the Landlord considers the

amount to be “nominal”. I dismiss this individual piece of the Landlord’s claim for this reason.

In sum, I find the Tenant breached the *Act* by not providing the Landlord notice of the end of this tenancy as required by the *Act*. Further, the Tenant did not return the keys as required, and this forced the Landlord to change the locks on the rental unit. I grant the Landlord $1,593.18 in satisfaction of their claim.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord has established a claim of $1,593.18. After setting off the security deposit of $725, there is a balance of $868.18. I am authorizing the Landlord to keep the security deposit amount and award the balance of $868.18 as compensation.

Because the Landlord was successful in this Application, I grant them the reimbursement of the Application filing fee.

B. The Tenant’s Application

The *Act* s. 36 sets consequences for either party if the requirement for a move-out inspection meeting is not offered or attended, and where a landlord does not provide a completed condition inspection report. A landlord’s right to claim against a security deposit is normally extinguished if they do not fulfill either of those requirements, as per s. 36(2), unless a tenant abandoned the rental unit.

As above, I find the Tenant abandoned the rental unit. In their written submission the Tenant submitted they sent an email on February 8, thereby providing one-month notice to the Landlord. I find as fact that was not the case, and instead the Tenant informed the Landlord they wished the tenancy to end as of February 1.

While the Tenant presented the Landlord did not provide a report or opportunity for inspection, the Landlord is not precluded, as per s. 36(2), from making a claim against the security deposit as they did in their Application.

A tenant is required to provide a forwarding address at the end of the tenancy, as per s. 38(1). Following this, s. 39 sets out that a tenant’s right to the return of the security deposit is extinguished when they do not give a forwarding address, in writing, within one year after the end of tenancy. The record shows the Tenant provided the Notice of Dispute Resolution Proceeding – containing the Tenant’s address for service – to the Landlord via process server on March 28, 2022. I find that is not proper written notice of their forwarding address, and there was no other communication from the Tenant to the

Landlord to state that was the case. Further, this was more than one year after the tenancy ended in February 2021.

In sum, I find s. 39 applies in this situation, and the right of the Tenant to the return of the deposit was extinguished; therefore, I dismiss the Tenant's Application for a double amount of the security deposit (incorrectly stated to be $1,500 for a $725 deposit).

I agree with the Landlord that the hotel stay is not causally linked to the Tenant returning to the rental unit to find it locked and not accessible to them. Each of the three receipts submitted – not totally $444 as claimed – shows another person paid, and that removes the transaction further from anything to do with the Landlord here. As well, there was no direct account from the Tenant to describe what prompted the hotel stay, and minus evidence to explain that I dismiss this piece of the Tenant's claim.

The Tenant presented no proof of their payment of an $18 utility charge for February 2021. I dismiss this piece of their claim for this reason.

Regarding the Tenant's claim for the value of their personal property, the Tenant did not provide sufficient proof of ownership of these items to show they were not returned to them. The Landlord's account simply contains more detail of the timeline and what they discovered within the rental unit on February 10; moreover, the Landlord provided photos in the evidence of what they found in the rental unit. This lends credibility to the Landlord's account over that of the Tenant who did not provide any proof of ownership of these items. As well, the Landlord in detail listed all items in the unit that required moving on February 17th. This included a sofa, but no televisions or other items presented by the Tenant in their Application. I dismiss this claim by the Tenant, minus such proof of ownership of said items. The Landlord is more credible in their account through the level of detail they provided on their observations on each consecutive visit to the rental unit in late January and February 2021. As well, I find it plausible that the Landlord was attentive to proper retention and disposal of the Tenant's personal property, and this necessitated a detailed and accurate inventory for property they transported back to their own residence on February 17, 2021.

Finally, the Tenant was vague on their claim for $30,000 for "damages for the wrongful eviction." As per the four points listed above, I find there was no wrongful eviction by the Landlord; therefore, the Landlord did not breach the *Act* or the tenancy agreement in this situation where the Tenant abandoned the rental unit. For this reason, I grant no award for this amount.

In sum, I dismiss the Tenant's claim for compensation in full, without leave to reapply.

The Tenant also applied for the return of their personal property. The *Residential Tenancy Regulation* sets out the following:

- s. 24: a landlord may consider any property that was left by the tenant at the rental unit to be abandoned, where that landlord received express notice from a tenant that they did not intend to return

- s. 25: a landlord must store the tenant's personal property for a period of not less than 60 days, keeping a written inventory, and advising a tenant who requests the information of its status.

As the Landlord provided in their written response to the Tenant's Application, the Tenant did not provide evidence that they requested information on their personal property at any time after the end of the tenancy. If the Tenant was locked out as they say, and legitimately lost personal property, I find there was no account from the Tenant on why they did not make that request. As per s. 24, I find the Landlord is only required to advise the Tenant on the status when a request is made to them. The Landlord had no other communication from the Tenant along the way after their message to the Landlord on February 8.

In sum, my finding is that the Tenant abandoned the rental unit, and that fact determines all pieces of the Tenant's claim to compensation, minus evidence to the contrary. Also, the Tenant did not make an inquiry on the status of their property to the Landlord; therefore, the Landlord followed the requirements set out in *Residential Tenancy Regulation* governing abandoned personal property.

For these reasons I dismiss the Tenant's Application in its entirety, without leave to reapply. Because the Tenant was not successful in this Application, I find they are not entitled to reimbursement of the Application filing fee.

Conclusion

I order that the Tenant pay to the Landlord the amount of $968.18. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order at the Provincial Court (Small Claims) where it will be enforced as an order of that court.

I dismiss the Tenant's Application in its entirety, without leave to reapply.

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

Dated: November 9, 2022

Residential Tenancy Branch