



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNEVC, DRI, MNDCT

Introduction

In this application for dispute resolution, the tenants applied on May 16, 2022 seeking:

- compensation from the landlord for monetary loss under the Residential Tenancy Act (the Act), the Residential Tenancy Regulation, or the tenancy agreement, in the amount of \$33,600.00; and
- compensation for the cost of emergency repairs made by the tenants during the tenancy, in the amount of \$944.41.

The hearing was attended by the tenant and his spouse (collectively, “the tenant”) and the landlord and her associate (collectively, “the landlord”). Those present 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.

Neither party raised an issue regarding service of the hearing materials.

Preliminary Matter

The Notice of Dispute Resolution Proceeding (NDRP) generated by the Residential Tenancy Branch states the tenant has made claims for:

- compensation from the landlord related to a Notice to End Tenancy for Landlord’s Use of Property; and
- compensation for the cost of emergency repairs made by the tenants during the tenancy.

Based on the tenant’s paper application, I found it was clear they were seeking compensation related to how the tenancy ended, for a rent increase during the rent

freeze, and for monetary losses during the tenancy which were not related to emergency repairs as defined by section 33 of the Act.

During the hearing, the landlord appeared to be familiar with the relief the tenant was seeking, and the landlord did not state that it was different from what the landlord had anticipated and prepared for. Therefore, I find it reasonable to amend the tenant's application to articulate the following claims:

- compensation from the landlord, in the amount of \$33,600.00, related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term;
- dispute of a rent increase above the amount allowed by law; and
- compensation from the landlord, in the amount of \$944.41, for monetary loss or other money owed.

Issues to be Decided

- 1) Is the tenant entitled to \$33,600.00 in compensation related to how the tenancy ended?
- 2) Is the tenant entitled to compensation related to a rent increase above the amount allowed by law?
- 3) Is the tenant entitled to \$944.41 in compensation for monetary loss or other money owed?

Background and Evidence

While I have considered the testimony and presented documentary evidence of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. The most recent tenancy agreement began September 29, 2021, for a fixed term to end on February 29, 2022, though I note February had only 28 days in 2022; the tenant vacated the rental unit on February 25, returning the keys on February 27, 2022; rent was \$2,800.00 at the end of the tenancy, due on the first of the month, and the tenant paid a security deposit of \$1,350.00, which the parties agree has been returned to the tenant.

The parties agreed that they had also entered into a previous fixed term tenancy.

The copy of the first tenancy agreement, submitted by the tenants, states that the tenancy was for September 29, 2020 to September 29, 2021, states that rent is

\$2,700.00, and the agreement is signed by tenant CW, but not the landlord. The copy of the first tenancy agreement, submitted by the landlord, has handwritten changes indicating that the tenancy was for September 27, 2020 to September 27, 2021, states that rent is \$2,700.00, includes a handwritten notation stating: "\$100 discount for first year It will go back to \$2800 after first year." This note is initialed by tenant CW and the landlord, and the tenancy agreement is signed by both tenant CW and the landlord.

Copies of both the first and second tenancy agreements were submitted. Page 2, section E of both the first and second tenancy agreements indicate that at the end of the tenancy the tenant must vacate the rental unit. The required reason the tenant must vacate is indicated as "personal use."

The tenant testified they are seeking 12 times the rent of \$2,800.00 because after the tenant vacated the unit, the landlord did not use the unit, but intended to re-rent it at a much higher rate.

The tenant referred me to a text message from the landlord to the tenant, dated October 8, 2021, in which the landlord wrote that she will be needing the unit for personal use. Also submitted is a text from January 8, 2022, in which the landlord writes to the tenant's spouse, stating that the landlord asked the tenant if he would like to remain in the unit until May, but the landlord has not received a response. The landlord wrote: "If not I will start doing showings starting next week." Submitted as evidence by the tenant is a Craigslist posting from January 8, 2022, listing the unit for \$3,400.00 a month.

The landlord testified that three months before the end of the second fixed term tenancy she contacted the tenants to ask them what their plans were. The landlord testified that the tenant and his spouse were uncertain and asked for more time to decide whether they wished to remain in the unit. The landlord testified that because they didn't seem interested in continuing to rent the unit, the landlord's sister considered moving in, and the landlord told the tenant she will be using the unit for personal use after the end of the tenancy. The landlord testified that, due to personal reasons, her sister did not move into the unit. The landlord testified she started showing the unit because the tenant did not make it clear he wanted to remain there after February 28, 2022.

The tenant testified they found a new place because the landlord had said she would take back the unit for her personal use.

The tenant also testified that the landlord increased the rent from \$2,700.00 to \$2,800.00 during the rent freeze. The landlord testified that they gave the tenant a discount of \$100.00 for the first tenancy agreement.

Submitted as evidence by the landlord is a text exchange between her and the tenant's spouse, in which the landlord tells the spouse the rent will increase by \$100.00 to \$2,800.00. The spouse asked the landlord why she did not tell the spouse before, and the landlord replied that she told the tenant at the beginning of the tenancy, when he asked for a discount, and that the rent was originally \$2,800.00. The spouse replied, stating that she understands, and "Ok."

Considering the tenant's monetary claim for \$944.41, the tenant testified they seek to recover \$344.41 for repair to the dryer door, as it broke due to wear and tear. The tenant testified that there had been a few other tenants living in the unit before them, and that the plastic hinge fell off during the subject tenants' tenancy. A receipt for the repair is submitted as evidence. The landlord testified that the door was not broken when the tenants moved in, and that the landlord's handyman had assessed the broken dryer door, finding it was broken by an impact, not by wear and tear.

The tenant testified they are seeking to recover \$200.00 they paid to the strata council following receipt of a fine for excessive noise, because the tenant was not given a Form K, and did not receive a copy of the bylaws for the building. The landlord testified they did give the tenant a copy of the Form K, and that the tenant had received a few notices from the strata due to noise complaints before receiving the fine. A Form K is submitted as evidence, and was signed and dated by the landlord and tenant CW on September 27, 2020; it states that the current bylaws and rules are attached. The landlord testified that the tenant paid the fine directly to the strata; this was not disputed by the tenant.

The tenant testified they are also seeking to recover the move out fee of \$400.00, as they moved because the landlord told them she needed the unit for her personal use. The landlord submitted that tenant CW was aware of the moving fee, as the subject rental was the second unit he had rented in the building.

Analysis

Is the tenant entitled to compensation related to how the tenancy ended?

Section 51.1 states that if a fixed term tenancy agreement includes a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant

an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if:

- (a) steps have not been taken, within a reasonable period after the date the tenancy ended, to satisfy the prescribed circumstance, or
- (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

The tenant is of the position they are owed compensation as the landlord ended the tenancy but did not use the rental unit for her personal use.

The Transition section of [Policy Guideline 50. Compensation for Ending a Tenancy](#) states that Section 51.1 was brought into force by regulation on July 11, 2022, and that Section 51.1 can apply in circumstances where a fixed term tenancy agreement was entered into before section 51.1 was brought into force and the fixed term tenancy agreement has not yet ended. The Guideline states that Section 51.1 does not apply in circumstances where the fixed term tenancy agreement ended before the section was brought into force.

As the parties agree that the second fixed term tenancy was to end on the last day of February, 2022, and the tenant vacated on February 25, 2022, I find the tenant is not entitled to compensation under section 51.1 of the Act, as the tenancy ended before section 51.1 was brought into force on July 11, 2022.

However, Guideline 50 states that in circumstances where section 51.1 does not apply because the fixed term tenancy agreement already ended, it may still be possible for a tenant to bring an application against a landlord, seeking compensation for damage or loss if the landlord or their close family member failed to occupy the rental unit at the end of the fixed term tenancy.

Section 7 and 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the Regulation, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award.

Policy Guideline 16 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.

Considering whether the landlord has failed to comply with the Act, Regulation, or tenancy agreement, section 13.1(2) of the Regulation states that a landlord may include in a fixed term agreement a requirement for the tenant to vacate at the end of the term in only two conditions, one of them being that the landlord or a close family member, as defined by section 49(1) of the Act, will occupy the rental unit at the end of the term.

Both the first and second tenancy agreements included a vacate clause stating that the tenant must move out at the end of the fixed term, for the landlord's "personal use." At the end of the first fixed-term tenancy, the landlord did not use the unit, but rented it to the tenant for a second fixed term, and toward the end of the fixed term the landlord asked the tenant if he wanted to remain in the rental unit.

From this pattern, I find it more likely than not the landlord did not intend to use the rental unit for herself or a close family member, which is a contravention of 13.1(2) of the Regulation. For the landlord to be in compliance with section 13.1(2), at the beginning of the tenancy agreement the landlord would have had to have truly intended to occupy the rental unit at the end of the fixed term.

Next, I must consider whether loss or damage has resulted from the landlord's noncompliance with the Regulation.

The tenant testified they found a new place because the landlord had said she would take back the unit for her personal use. The tenant has testified that the move cost them

the \$400.00 moving fee, but otherwise presented little testimony or documentary evidence demonstrating any other expenses resulting from the move.

The landlord testified that toward the end of the second tenancy agreement they asked the tenant if he wished to continue renting the unit, and that the landlord's sister considered moving in only after the landlord did not receive an affirmative response from the tenant.

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 tenant has not provided sufficient evidence to prove that they had no choice but to move out, incurring the \$400.00 moving fee, I find on a balance of probabilities the tenant could have remained in the unit had they told the landlord they did not want to vacate, and the tenant is not entitled to compensation related to how the tenancy ended.

Is the tenant entitled to compensation related to a rent increase above the amount allowed by law?

The tenant is seeking compensation for a rent increase because when they signed the second tenancy agreement, which began September 29, 2021, the landlord implemented an increase of \$100.00 during the rent freeze.

The landlord testified that the rent at the beginning of the first tenancy was discounted by \$100.00 to \$2,700.00, and submitted as evidence a text message in which the \$100.00 rent increase is discussed, and the tenant's spouse indicates she understands. Also submitted as evidence is the first tenancy agreement, noting: "\$100 discount for first year It will go back to \$2800 after first year," which was initialed by the landlord and tenant CW.

Policy Guideline 30: *Fixed Term Tenancies* states that rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met.

Policy Guideline 37B: *Agreed Rent Increase* states that a tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. The agreement must:

- be in writing,
- clearly set out the rent increase,
- clearly set out any conditions for agreeing to the rent increase,
- be signed by the tenant,
- include the date that the agreement was signed by the tenant, and
- a [Notice of Rent Increase](#) must be issued to the tenant three full months before the increase is to go into effect.

As neither party presented a Notice of Rent Increase as evidence, nor testified that one was served on the tenant, I find the increase was not done in compliance with section 43 of the Act.

Therefore, considering that rent was due on the first of the month, and the second tenancy agreement began September 29, 2021, I find the tenant is entitled to recover the \$100.00 in increased rent they paid for the five months from October 2021 to February 2022, totalling \$500.00.

Is the tenant entitled to compensation for monetary loss or other money owed?

The tenant seeks to recover \$344.41 they paid to repair the dryer door and \$200.00 they paid to the strata after being fined for excessive noise.

Policy Guideline 1: *Landlord & Tenant – Responsibility for Residential Premises* states that the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

The tenant testified the dryer door broke due to wear and tear, and submitted a receipt for the amount they paid to repair it; the landlord testified that their handyman determined that the damage was due to an impact, not wear and tear.

As previously mentioned, when parties have presented equally plausible versions of an event, it is up to the party making the claim to provide additional evidence in support of their position.

As the tenant has merely stated that the door broke due to wear and tear, but has not presented compelling evidence to overcome the landlord's contradictory testimony, I find the tenant has failed to prove the breakage was due to wear and tear, and is not entitled to recover the \$344.41 they paid to repair it.

Considering the \$200.00 strata fine, the landlord testified that the tenant paid the fine directly to the strata, and the tenant did not dispute this.

As the parties appear to agree the matter of the fine is between the tenant and the strata, not the landlord, I find the Act does not contemplate the relief the tenant is seeking. Therefore, I find the tenant is not entitled to recover the \$200.00 they paid for the strata fine.

Conclusion

The tenant is granted a monetary order in the amount of \$500.00 for compensation related to a rent increase above the amount allowed by law. 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: March 1, 2023

Residential Tenancy Branch