Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, MNDCT, LRE, MNDCL-S, AND MNDL-S

Introduction:

A hearing was convened on December 09, 2022 in response to cross applications.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) and/or the tenancy agreement, and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit. At the hearing on December 09, 2022 the Tenant withdrew the application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, as the rental unit has been vacated.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for a monetary Order and to retain the security deposit and/or pet damage deposit.

The hearing on December 09, 2022 was adjourned for reasons set out in my interim decision of December 10, 2022. The hearing was reconvened on April 24, 2023 and was concluded on that date.

Service of some documents was addressed in the interim decision of December 10, 2022 and will not be repeated here.

In my interim decision of December 10, 2022, I gave the Landlord authority to re-serve Tenant with the original evidence they submitted to the Residential Tenancy Branch in September and November of 2022, via email. The Landlord submits this evidence was re-served on December 10, 2022. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

In my interim decision of December 10, 2022, I gave both parties authority to submit/serve evidence relating to ownership of a desk left in the rental unit by the Landlord. Neither party submitted additional evidence regarding ownership of the desk.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

Rules 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that a claim is limited to what is stated in the Application for Dispute Resolution. This rule bars me from considering claims that are not clearly outlined in the Application for Dispute Resolution.

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. This section requires Applicants to clearly outline the claims being made in the Application for Dispute Resolution.

In the Tenant's Application for Dispute Resolution, the Tenant applied for compensation in the amount of $6,000.00. It is clear from the Application for Dispute Resolution that the Tenant was claiming compensation, in part, for the Landlord or the Landlord's agent entering the unit, without proper notice, for the purposes of taking photographs. This is an issue which will be determined at these proceedings.

It is also clear from the Application for Dispute Resolution that the Tenant was claiming compensation, in part, because the Landlord/Landlord's agent moved personal property. This is an issue which will be determined at these proceedings.

It is also reasonably clear from the Application for Dispute Resolution that the Tenant was claiming compensation, in part, because the Tenant paid to have the washing machine inspected and the Tenant was without a washing machine for a period of time. This is an issue which will be determined at these proceedings.

The Tenant made no reference to any other monetary claims in the Tenant's Application for Dispute Resolution or in any evidence submitted with the Tenant's Application for Dispute Resolution. As such, the Tenant's claims are limited to those referenced above.

On October 21, 2022 the Tenant submitted evidence in response to the Landlord's Application for Dispute Resolution. In this evidence package the Tenant appears to list additional financial claims, including the return of double the security/pet damage deposit, a rent refund from February, a rent refund from August, and the cost of staying in a hotel.

Providing details of financial claims in evidence submitted in response to a counterclaim is not, in my view, sufficient notice to the other party that additional claims are being made. In the event the Tenant wished to amend the Tenant's Application for Dispute Resolution to include additional claims, the Tenant was required to amend the Application for Dispute Resolution in accordance with Rule 4 of the Residential Tenancy Branch Rules of Procedure.

Rule 4 requires an Applicant, in part, to complete an Amendment to an Application for Dispute Resolution form, to file that form with the Residential Tenancy Branch, and to serve a copy of that Amendment to the Respondent "as soon as possible". This Amendment must be received by the "not less than 14 days before the hearing". The Tenant did not file an Amendment to an Application for Dispute Resolution to include any additional claims and, as such, no additional financial claims were considered at the hearing.

Rule 4.2 permits me to amend an Application for Dispute Resolution at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I do not find it would be reasonable or fair to amend the Application for Dispute Resolution at the hearing, as the Tenant did not, in my view, clearly notify the Landlord of any additional claims. "Burying" a list of claims in a package of evidence does not, in my view, sufficiently notify the other party that an Application for Dispute Resolution is being amended. The Tenant had ample time to properly amend the Application for Dispute Resolution and I find it would be unfair to the Landlord to allow this amendment at the hearing.

Issue(s) to be Decided:

Is the Tenant entitled to compensation because the Landlord moved personal items, the Landlord entered the unit without proper authority**,** and/or because the Landlord failed to repair a washing machine?
Is the Landlord entitled to compensation for damage to the rental unit, strata fines, and/or for the cost of finding a new tenant?
Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- The tenancy began on February 01, 2022;
- The parties signed a fixed term tenancy agreement, the fixed term of which began on February 01, 2022 and ended on January 31, 2023;
- Rent was $1,975.00 per month;
- A security deposit of $987.50 was paid;
- A pet damage deposit of $987.50 was paid;
- A condition inspection was completed on February 03, 2022;
- The Tenant gave notice to end the tenancy;
- The rental unit was vacated on August 26, 2022;
- A final condition inspection report was completed on August 25, 2022;
- The Tenant provided a forwarding address, via email, on August 25, 2022 or August 26, 2022;
- The Landlord or person acting on behalf of the Landlord entered the rental unit on various occasions, with proper authority, for the purposes of showing the unit and/or preparing it for sale;
- On June 11, 2022 the Landlord's relator entered the unit for the purposes of having an open house;
- The Tenant was not given proper notice of the entry on June 11, 2022;
- On June 11, 2022 the Landlord or someone acting on behalf of the Landlord moved several items in the home and placed them in cupboards and under the bed**.**

The Landlord #2 stated that the notification of the entry on June 11, 2022 was "missed" because the Tenants were out of town and they had difficulty communicating with them. She stated that prior to any potential purchasers viewing the unit during the open house, the Landlord's realtor spoke with the Tenant and was told to cancel the open house. She stated the realtor vacated the unit prior to showing the house to anyone on June 11, 2022.

The Tenant stated that they were out of town on June 11, 2022 but they were advised of the open house by a third party. He stated that he contacted the realtor and confirmed there was an open house, although he did not ask the realtor to cancel the open house.

The Landlord#2 stated that the Tenant's personal items were moved on June 11, 2022 for the purposes of "staging" the unit for the open house. She stated that some items, such as a highchair and area rug, were removed from the unit and later returned.

The Tenant #2 stated that when they returned to the unit, items that had been moved on June 11, 2022 were found under the bed and in various cupboards.

The Tenant is seeking compensation of $6,000.00 because the Tenant's personal privacy was violated and because the Tenant was denied the use of a washing machine for an extended period.

The Tenant initially stated that at the end of May of 2022 the Landlord was advised that washing machine was not working. He subsequently stated the problem was reported to the Landlord on May 17, 2022, by telephone.

The Landlord #2 stated that the problem with the washing machine was reported to the Landlord, via text message, on May 20, 2022. The Landlord stated that the problem was not reported prior to May 20, 2022.

The Tenant stated that the Tenant's the washing machine was inspected on May 19, 2022, and that the Tenant paid $220.00 for the inspection. He stated that Tenant paid to have it inspected so he would know if it could be repaired.

The Landlord #2 stated that the Landlord's received a copy of the inspection report on May 30, 2022. She stated that she was somewhat confused when she received the report as the report declares it was an inspection of a refrigerator. She stated that they subsequently determined that it was a report about the washing machine.

The Landlord #2 stated that the Landlord concluded that they should replace the washing machine, rather than repair it. She stated a new washing machine was ordered on June 23, 2022 and it was installed on July 02, 2022. The Tenant agrees a new washing machine was installed on July 02, 2022. The Landlord #2 stated that the

delay in replacing the washing machine was due, in part, to the fact she knew the Tenant left town on June 01, 2022.

The Landlord and the Tenant agree that nobody was living in the rental unit between June 01, 2022 and July 07, 2022, as the Tenant was out of town.

The Tenant #2 stated that between the time the washing machine broke and the time they left the unit on June 01, 2022, she did laundry at her place of employment.

The Landlord is seeking compensation for replacing the washing machine. The Landlord #2 stated that she has no evidence that the Tenant misused the washing machine, although it was "full of dog hair" when it was replaced. The Tenant #2 stated that the washing machine was not misused.

The Landlord is seeking compensation of $200.00 for a strata fine that was imposed on June 02, 2022. At the hearing on December 09, 2022, the Tenant agreed that they are responsible for paying this fine.

The Landlord is seeking compensation of $445.76 for replacing a desk that was in the rental unit at the start of the tenancy.

The Tenant stated that this desk was left in the rental unit as a "gift" and that they subsequently gave it to a third party. The Tenant was unable to direct me to any document that corroborates the Tenant's submission that the desk was a gift.

The Landlord stated that the desk was left in the unit for the Tenant to use during the tenancy.

The Landlord submitted on estimate that shows the desk can be purchased for $445.76. The male Tenant stated that he found the desk for less, but he could not refer me to any evidence that corroborates that submission.

The Landlord and the Tenant agree that the desk was 9 years old at the end of the tenancy.

In the Condition Inspection Report that was signed at the end of the tenancy agreement, there is a note that a desk is missing. The Tenant stated that he did not comment on that note when he signed the report because he wanted to get the inspection "over with"

and because he thought the issue would late be determined by the Residential Tenancy Branch.

The Landlord is seeking compensation for $100.80 for expenses they incurred when advertising for a new tenant. The Landlord submitted proof of these costs. The Landlord submits that they would not have incurred this expense if the Tenant had not ended the tenancy prior to the end of the fixed term.

The Landlord is seeking compensation of $100.00 for a “move-in fee”, which they incurred when a new tenant moved into the rental unit. The Landlord submitted proof of this cost. The Landlord submits that they would not have incurred this expense if the Tenant had not ended the tenancy prior to the end of the fixed term.

Analysis:

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of $987.50 and a pet damage deposit of $987.50.

I find that this tenancy ended on August 26, 2022, pursuant to section 44(1)(d) of the *Act*, when the Tenant vacated the rental unit. On the basis of the undisputed evidence, I find that the Tenant provided the Landlord with a forwarding address, via email, on August 25, 2022 or August 26, 2022.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As the tenancy ended on August 26, 2022 and a forwarding address was received by August 26, 2022, I find that the Landlord had until September 10, 2022 to apply to keep the security/pet damage deposit. As the Landlord filed their Application for Dispute Resolution on September 08, 2022, I find that the Landlord complied with section 38(1) of the Act by applying to retain the deposits within the legislated time period.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord complied with section 38(1) of the *Act,* the Landlord is not subject to the penalty imposed by section 38(6) of the *Act*.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 29(1) of the *Ac*t permits a landlord to enter a rental unit only in the following circumstances:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d)the landlord has an order of the director authorizing the entry;

(e)the tenant has abandoned the rental unit;

(f)an emergency exists and the entry is necessary to protect life or property.

On the basis of the undisputed evidence, I find that the Landlord's realtor entered the rental unit on June 11, 2022, for the purposes of holding an open house, without providing the Tenant with proper notice of the entry. On the basis of the undisputed evidence, I find that nobody other than the realtor entered the unit without authority on June 11, 2022.

On the basis of the testimony of the Landlord #2, I find that the failure to provide the Tenant with notice of the open house on June 11, 2022 was an oversight. I find there is no evidence that the Landlord was acting maliciously by failing to provide notice of the entry.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers a loss as a result of the landlord breaching the *Act*. I find that the

Tenant did not experience any significant loss as a result of the realtor entering the unit on June 11, 2022. In reaching this conclusion I was influenced by the following:

- the Tenant knew the unit was being sold and he should have reasonably expected that it would be shown to potential purchasers;
- had the Tenant received proper notice of the hearing, the Tenant would not have been able to prevent it; and
- the Tenant was not in town on June 11, 2022 and was not, therefore, inconvenienced by the entry.

As the Tenant has failed to establish that he suffered any significant loss as a result of the entry on June 11, 2022, I find that the Tenant is not entitled to compensation for the unlawful entry.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find that the Landlord breached the Tenant's right to quiet enjoyment when the Landlord moved the Tenant's personal property and placed it in cupboards and under the bed and when the Landlord temporarily moved items from the rental unit. I find that most people would consider this a violation of their personal privacy.

When determining the amount of compensation due to a tenant for a breach of their right to quiet enjoyment, Residential Tenancy Branch Policy Guideline suggests I consider the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed. While I consider this to be a fairly serious breach of the Tenant's right to quiet enjoyment, I note that it only occurred on one occasion. As such, I find that compensation of $250.00 is reasonable.

Section 27(2)(b) of the *Act* permits a landlord must not terminate or restrict a service or facility that is not essential to the tenant's use of the rental unit as living accommodation and which is not a material term of the tenancy agreement, if the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement. The definition of service or facility includes appliances.

On the basis of evidence before me, I find that sometime between May 17, 2022 and May 20, 2022 the Landlord was informed that the washing machine was broken and that a new machine was provided to the Tenant on July 01, 2022. I find that the Landlord was obligated to reduce the rent for the days the Tenant was without the washing machine, to compensate the Tenant for the resulting reduced value of the tenancy agreement.

Assessing the value that a washing machine has on a tenancy agreement is highly subjective. I find it reasonable to conclude that being without a washing machine reduced the value of this particular tenancy by $100.00. I therefore grant the Tenant compensation of $100.00 for being without a washing machine. In assessing the amount of compensation due, I took note of the fact the Tenant was not living in the rental unit for the month of June and was, therefore, only deprived of the use of the machine for approximately 3 weeks.

I have not granted the Tenant any compensation for the costs incurred when he hired a technician to inspect the washing machine. That is a cost the Tenant did not need to incur. The issue with the washing machine should have been reported to the Landlord and the Landlord was then responsible for inspecting and repairing the machine. As the Tenant did not need to incur this cost, I cannot conclude that the Landlord must compensate the Tenant.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the Tenant must leave the rental unit reasonably clean and undamaged, except for wear and tear.

I find that the Landlord has submitted insufficient evidence to establish that the washing machine broke due to the actions or neglect of the Tenant. In the absence of such evidence, I find it entirely possible that it broke as a result of normal wear and tear. As the Tenant is not obligated to repair damage that occurs as the result of normal wear and tear, I dismiss the Landlord's application to recover the cost of replacing the washing machine.

As the Tenant agreed to pay the strata fine of $200.00 that was imposed on June 09, 2022, I find that the Landlord is entitled to compensation of $200.00.

I favour the Landlord's submission that the desk was provided to the Tenant for the duration of the tenancy agreement over the Tenant's submission that it was a gift. In reaching this conclusion I was heavily influenced by the note on the final Condition Inspection Report which declares a desk is missing. I find the Landlord would likely not have made this note if the desk had been gifted. Similarly, I find that the Tenant would not have signed the report to indicate he agreed with the contents of the report if the desk had been gifted.

As the desk was not a gift, I find that the Tenant failed to comply with section 37 of the *Act* when they did not leave the desk at the end of the tenancy and that the Landlord is entitled to compensation for that breach.

On the basis of the evidence submitted by the Landlord and in the absence of documentary evidence to the contrary, I find that the missing desk can be replaced for $445.76.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and <u>not</u> based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

I find it reasonable to conclude that the useful life of a desk is 20 years. The evidence shows that the desk was 9 years old at the end of the tenancy and had, therefore, depreciated by 45 percent. I therefore find that the Landlord is entitled to 55 percent of the cost of replacing the desk, which in these circumstances is $245.16.

Section 45(2) of the *Residential Tenancy Act (Act*) allows a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a)is not earlier than one month after the date the landlord receives the notice,

(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the Tenant failed to comply with section 45(2) of the *Act* when the Tenant ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord, pursuant to section 67 of the *Act*, for any losses the Landlord experienced as a result of the Tenant vacating the unit prior to the end of the fixed term of the tenancy.

I find that the Landlord incurred advertising expenses of $100.80 and a “move in fee” of $100.00 that the Landlord would not have incurred in August of 2022 if the tenancy had continued until the end of the fixed term. I therefore find that the Tenant must compensate the Landlord for these costs.

I find that both Applications for Dispute Resolution have merit, and that each party is responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion:

The Tenant has established a monetary claim of $350.00, which includes $250.00 for loss of quiet enjoyment arising from their personal possessions being moved and $100.00 for being without a washing machine.
The Landlord has established a monetary claim of $645.96 which includes $200.00 for a strata fine, $245.16 for replacing the desk, and $200.80 for costs associated to an early end of the tenancy.

After offsetting the two claims, I find that the Tenant owes the Landlord $295.96. Pursuant to section 72 of the *Act*, I authorize the Landlord to retain this amount from the security deposit paid by the Tenant, in full satisfaction of the monetary claim.

The Landlord must return the remainder of the security deposit and pet damage deposit, which is $1,679.04, to the Tenant. I grant the Tenant a monetary Order for this amount. In the event the Landlord does not voluntarily comply with this monetary Order, it may

be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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 *Residential Tenancy Act*.

Dated: April 25, 2023

Residential Tenancy Branch