



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

The Landlord seeks compensation under the *Residential Tenancy Act* (the “Act”).

Issue

Is the Landlord entitled to compensation?

Evidence and Analysis

In a dispute resolution proceeding before the Residential Tenancy Branch, the applicant must prove their claim on a balance of probabilities (meaning “more likely than not”). In reaching this decision, I have only considered relevant and necessary oral and documentary evidence that helped resolve the issue of the dispute.

The tenancy began August 4, 2022, and ended a month later, on September 4. However, the fixed-term tenancy was supposed to end on June 30, 2023, as per a written tenancy agreement. The tenancy agreement¹ was submitted into evidence.

¹ As an aside, the Landlord is cautioned that a non-standard tenancy agreement such as the one used in this tenancy is fraught with problems. Many of the terms in the tenancy agreement are inconsistent with the Act and some are unconscionable (see section 6(3) of the Act). The Landlord is encouraged to use the standard tenancy agreement available at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1.pdf>.

The Tenant paid a \$850 security deposit which the Landlord holds in trust.

Claim for Unpaid Rent

As per the tenancy agreement, rent of \$1,700 was due on the last day of the month.

The Landlord seeks \$1,700 in unpaid rent for September. According to the Landlord, the Tenant occupied the rental unit after September 1 but did not pay rent for September.

The Tenant testified that, shortly after moving into the rental unit, the Landlord was unhappy with the Tenant's bringing her boyfriend over. The Landlord asked her to find a new place to live and she began the search. The Tenant vacated the rental unit on September 4. The Landlord testified that the Tenant moved out sometime around September 15, but then later testified that she moved out around September 6.

At this point, it is worth noting that, while the Tenant may not have given proper notice to end the tenancy, neither did the Landlord. Nor did the tenancy agreement (for whom a landlord is responsible for drafting) include the required term for all fixed-term tenancies: once a fixed-term tenancy ends it either continues a month-to-month basis or the tenant must vacate if the landlord intends to occupy the rental unit (see section 44(1)(b) of the Act. Also see section 2, page 2, of the #RTB-1.)

For this reason, I find that the Tenant did not breach the tenancy agreement—its terms were vague and inconsistent with the Act—and the Tenant is thus not obligated to pay for the entire month of September.

That said, the Tenant's earlier proposal for the Landlord to deduct from the security deposit a prorated amount per each day of occupation is reasonable in the circumstances. The Landlord's evidence is that the Tenant vacated on either September 6 or September 15. The Tenant's evidence is that she moved out on September 5.

Based on the consistency of the Tenant's evidence, and in dismissing the inconsistent Landlord's evidence, it is my finding that the Landlord is entitled to compensation for five days of rent of \$279.45. ($\$1,700 \times 12 \text{ months} \div 365 = \55.89 per day.)

Claim for Compensation for Damages

The Landlord also seeks \$2,161.88 for a bedroom wall scratch and for water flood damage. There was an invoice for labor and white paint for the bedroom wall scratches. Photographs in evidence show the scratches. As for the water flood damage, the Landlord stated that (reproduced as written):

Very strange things happened to my hot water tank after [the Tenant] moved out. I didn't notice that water tanks start leaking since [the Tenant] moved out slowly until my other tenant find no hot water on Sep 13 And text to me about water flood in the basement

The leak caused damage to the hallway and living room floors which needed to be replaced. The Landlord argued that the Tenant or their partner might have damaged the tank intentionally. According to a plumber, the cool pipeline connect to the tank was loose which the Landlord thought "is very strange."

The Tenant testified that this aspect of the Landlord's application is "pure nonsense" and that she would have no idea how to cause a flood at a distance. The Tenant was long gone by the time the water leak was discovered. Moreover, she pointed out that the leak was discovered after another tenant had moved into the rental unit. As for the scratches to the wall, the Tenant denied that she caused these, and testified that they were there on the wall when she moved into the rental unit. She further stated that the Landlord completed the condition inspection report in her absence.

The Landlord submitted a copy of a non-standard condition inspection report (“Report”) with photographs of the interior of the rental unit (taken after the tenancy ended). The Report² has a “Move in condition” column and a “Move out condition” column. Everything is indicated to be in “OK” condition except for two notations of “FLOOR REPLACEMENT” in the living room and the hallway. At the bottom of the Report there is a notation that the inspection of the premises was conducted on August 4, 2022.

It is noted that the Report was not signed by either party. Section 23(5) of the Act requires that both “the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.” This is also reflected in section 18 of the *Residential Tenancy Regulation*.

Section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 234/2006, states that a condition inspection report, completed in accordance with this Part, is evidence of the condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

It is my finding that the Report was not completed in accordance with this Part. The Report was unsigned by either party, and therefore I am unable to accept it as evidence of the condition of the rental unit at the start of the tenancy. There are no photographs of the wall at the start of the tenancy, and thus I am unable to find that the Tenant was responsible for the scratches on the wall.

As for the water damage and subsequent floor replacement, there is no evidence before me to find that the Tenant (or her boyfriend) either negligently or intentionally caused the water tank or related piping to leak. The Landlord’s mistrust of the Tenant is insufficient in and of itself to prove culpability. Moreover, it is noted that it was the new tenants who brought the leak to the Landlord’s attention.

² The Landlord is encouraged to use the Condition Inspection Report (#RTB-27) available at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb27.pdf>.

There is, thus, a reasonable possibility that someone other than the Tenant caused the tank to leak. But there is a third possibility, probably the most probable: the tank simply leaked due to age or reasonable wear and tear. Water tanks and pipes are known to leak at some point during or at the end of their useful life. In summary, I am not persuaded that the Landlord has proven these claims.

Claim for Application Fee

Because the Landlord was only partly successful in their application, the Tenant is ordered to pay half of the Landlord's application fee, in the amount of \$50.00.

Summary of Award, Retention of Security Deposit, and Monetary Order

The Landlord is awarded \$329.45 and may retain this amount from the security deposit in full satisfaction of the award, pursuant to section 38(4)(b) of the Act.

The Landlord is ordered to return the remainder of the security deposit (\$520.55) to the Tenant within 15 days of receiving this Decision. A monetary order for this amount is issued with this Decision to the Tenant.

Conclusion

The Landlord's application is granted, in part, with the remainder dismissed.

Dated: June 16, 2023

Residential Tenancy Branch