Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCL FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (Application) filed by the Landlords pursuant to the *Residential Tenancy Act* (Act). The Landlords seek the following:

- a monetary order for compensation for monetary loss or other money owed by the Tenant pursuant to section 67; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 72.

The two Landlords (JD and JJ) and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (RoP). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

JJ stated the Landlords served the Notice of Dispute Resolution (NDRP) on the Tenant at the Tenant's place of work by registered mail on September 12, 2022. JD provided the Canada Post tracking number for service of the NDRP Package on the Tenant. JJ stated the Landlords also obtained an order from an adjudicator of the Residential Tenancy Branch, dated October 5, 2023, that granted the Landlords permission to serve the NDRP and evidence on the Tenant by email. The Tenant acknowledged receipt of the NDRP and evidence. I find the NDRP and the Landlord's evidence was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Non-Service of Evidence by Tenant on Landlord

The Tenant stated she did not submit any evidence for this proceeding. The Tenant stated she served the Landlords with evidence in relation to an earlier dispute resolution proceeding between the Landlords and Tenant. Rule 3.15 of the RoP states:

> **3.15 Respondent's evidence provided in single package**
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> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.
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> *The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible.* Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.
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> See also Rules 3.7 and 3.10.

As stated in RoP 3.15, the Tenant was required to ensure any evidence that she intended to rely on at the hearing is served on the Landlords and submitted to the Residential Tenancy Branch (RTB) as soon as possible, but not less than seven days before the hearing. As such, the Tenant cannot rely upon evidence she served on the Landlords, and submitted to the RTB, in respect of a previous dispute resolution proceeding. As such, I find the Tenant did not serve any evidence on the Landlords or submit any evidence to the RTB for this proceeding.

Preliminary Matter – Late Service of Evidence by Landlord

The Tenant stated she received additional evidence from the Landlord the day before this hearing. JJ acknowledged the Landlords served the Tenant, and submitted to the RTB, an updated Monetary Order Worksheet to add an additional $200.00 to include a move out fee, move-in and move-out Condition Inspection Reports and a move-in fee statement.

Rule 3.14 of the RoP states:

> **3.14 Evidence not submitted at the time of Application for Dispute Resolution**
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> Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.
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> In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

The Landlords did not serve the additional evidence on the Tenant, and submit it to the RTB, at least 14 days before the hearing. As such, I find the Landlord did not comply with the provisions of section 3.14. As I need to review the Move-In and Move-out Inspection Reports, I will admit the Inspection Reports into evidence. However, I will not admit the statement regarding the move-in fee or updated Monetary Order Worksheet into evidence. I told the Landlords they have the option of providing, or calling witnesses to provide, oral testimony on the contents of the inadmissible evidence.

Issues to be Decided

Are the Landlords entitled to:

- a monetary order for compensation for monetary loss or other money owed by the Tenant?
- recover the filing fee for the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

JJ submitted into evidence a copy of the signed tenancy agreement and addendum, dated July 13, 2022, between the Landlords and Tenant. The parties agreed the tenancy commenced on July 14, 2022, with rent of $2,900.00 payable on the 14th day of each month. Paragraph 9 of the addendum stated the Tenant was responsible to pay the move-in and move-out fee charged by the strata corporation in which the rental unit is located. The Tenant was required to pay a security deposit of $1,450.00 by July 14, 2022. JJ stated the Tenant paid the security deposit and that the Landlords were holding the deposit in trust for the Tenant. Based on the foregoing, I find there was a residential tenancy between the parties and that I have jurisdiction to hear the Application.

JJ submitted into evidence a copy of the move-in inspection report performed by the parties on July 4, 2022. JJ stated the Landlords received a text message on August 6, 2022 (Tenant's Notice) in which the Tenant advised she was vacating the rental unit on the morning of August 7, 2022. The Tenant acknowledged she sent the Tenant's Notice by text. Although text messages are not a method of service permitted by section 88 of the Act, the JJ admitted the Landlords received the Tenant's Notice. As such, I find the Tenant's Notice was sufficiently served on the Landlords pursuant to section 71(2)(b) of the Act. The parties agreed the Tenant vacated the rental unit on August 7, 2022. JJ stated this did not give the Landlords the opportunity to schedule a move-out inspection of the rental unit. JJ stated the Landlords performed and completed a move-out Condition Inspection Report for the rental unit on their own on August 7, 2022 after the Tenant vacated the rental unit.

JJ stated the Landlords were seeking a total of $3,878.78 in compensation from the Tenant, calculated as follows:

Purpose	Amount
Loss of Rental Income August 15, 2022	$2,900.00
Pest Control Service	$393.75
Carpet Cleaning	$90.00
Replacement of Key Fob and other keys	$85.00
Replacement of entrance key and Mailbox key	$210.00
Strata Move-Out fee	$200.00
Total:	**$3,878.76**

The Application states the Landlords are seeking compensation of $3,678.76 from the Tenant. As such, the amount of compensation claimed by the Landlords at the hearing is $200.00 more than the amount of compensation claimed by the Landlords in the Application. As the Landlords did not amend the Application to seek compensation of $3,878.76, I find that the maximum amount of compensation they are entitled to is $3,678.76. In the event I find the Landlords prove damages exceeding $3,676.76, then I will only order the Tenant to pay the Landlords $3,678.76 as claimed in the Application.

JJ stated the Landlords were seeking loss of rental income as a result of the Tenant not providing the Landlords with at least one clear months' notice that she would be vacating the rental unit. JJ stated the Landlords paid $393.72 for pest extermination services that were made at the request of the Tenant. JJ stated the Landlords were seeking $90.00 for carpet cleaning as the Tenant did not clean the carpets before she vacated the rental unit. JJ referred to paragraph 9 of the addendum to the tenancy agreement which stated the Tenant was responsible for professional cleaning as needed when the tenancy ends.

JJ stated the Landlords were seeking $85.00 for rekeying the FOB and other keys and $210.00 for replacement of the entrance key and the mailbox key because the Tenant did not return the keys to the rental unit. JJ submitted into evidence copies of the invoices for the carpet cleaning and locksmith.

JJ claimed the Tenant owed the Landlords for $393.75 for pest extermination services. JJ argued that they would not have arranged for the extermination services if they had known the Tenant was vacating the rental unit. As noted above, the invoice for the pest control services was not admitted into evidence because the Landlords did not submit it to the RTB at least 7 days before the hearing.

JJ stated the Landlords sought $200.00 for move-out fees. JJ referred to section 9 of the addendum to the tenancy agreement that stated the Tenant was responsible to pay the move-in and move-out fee.

The Tenant stated she suffered from a severe skin rash on her body as a result of bugs in the carpeting of the bedroom. The Tenant stated she requested the Landlords to perform a pest inspection. There was no evidence the Tenant returned the FOB, keys to the entrance or the rental unit or the keys for the mailbox to the Landlords.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

> **6.6 The standard of proof and onus of proof**
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> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 37 of the Act states:

> 37(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.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement *must do whatever is reasonable to minimize the damage or loss.*
>
> [emphasis in italics added]

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that it suffered a quantifiable loss as a result of this breach, and that it acted reasonably to minimize its loss.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

> 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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied. However, before I can consider the Landlord's testimony and evidence regarding the unpaid rent and damages claimed, I must firstly consider whether the Landlord complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to sections 23 and 35 of the Act.

Sections 23, 24, 35, 36, 38(1), 36(6) and 38 of the Act state:

23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) 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.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage *deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) 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.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

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.

[…]

(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.

[emphasis in italics added]

The Tenant did not submit any evidence that she provided the Landlords with her forwarding address. As such, I find the Landlords were not required, by the provisions of section 38(1) of the Act, to either return the security deposit to the Tenant or make an application for dispute resolution.

Under paragraph 2((B) of the tenancy agreement, the word “yearly” was inserted rather than a specific date on which the fixed term would end. I find this term is vague and unenforceable. As such, I find the tenancy commenced on July 14, 2022 and continued on a month-to-month basis until ended in accordance with the Act. Section 45(1) of the Act states:

45(1) A tenant may end a periodic 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, and

(b) 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.

[…]

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The Tenant’s Notice did not state the Landlord had failed to comply with a material term of the tenancy agreement and that if that material term was not corrected within a reasonable period after the Tenant gave the Tenant’s Notice, that the Tenant was ending the tenancy effective on a date that was after the date the Landlords received the Tenant’s Notice. As such, I find the Tenant did not have the right to end the tenancy pursuant to section 45(3) of the Act. In order to end the tenancy, the Landlord was therefore required to give the Landlords a notice to end the tenancy pursuant to section 45(1) of the Act. The Tenant’s Notice gave the Landlords less than 24 hours notice that

the Tenant would be vacating the rental unit. As such, I find the Tenant did not comply with section 45(1) of the Act to end the tenancy as she did not give the Landlords a notice to end the tenancy at least by the date required by section 45(1).

The Tenant provided the Landlords with less than 24 hours notice that she would be vacating the rental unit. I find that such short notice to the Landlords was tantamount to the Tenant abandoning the rental unit. As such, I find the Landlords' right to claim against the security deposit was not extinguished by the provisions of section 36(2) of the Act on the basis the Tenant abandoned the rental unit. I also find the Landlord was entitled to perform the move-out condition inspection without the Tenant present pursuant to section 35(5) of the Act.

Based on the foregoing, I find the Tenant is required to pay the Landlords $$2,900.00 for unpaid rent owing for the period August 1, to September 13, 2022 because she failed to provide written notice to the Landlords that she was vacating the rental unit in accordance with the provisions of section 45(1) of the Act. Accordingly, I find the Landlords have proven, on a balance of probabilities, they are entitled to recover $2,900.00 for loss of rental income. As such, I order the Tenant to pay the Landlords $2,900.00 for unpaid rent pursuant to section 67 of the Act.

JJ stated the Landlords paid $393.72 for pest extermination services that were made at the request of the Tenant. The Tenant stated she was suffering from a severe skin rash as there were bugs in the bedroom of the rental unit. The Tenant stated she requested the Landlords to perform a pest inspection. The Landlords did not submit any evidence that there was no infestation of bugs in the bedroom. Based on the foregoing, I find, on a balance of probabilities, that the Landlords have not proven a bug infestation did not exist in the bedroom. As such, I find the Landlords are not entitled to recover the $393.72 they have claimed for pest extermination services.

The Landlords stated the Tenant did not clean the carpeting and submitted into evidence a copy of an invoice for $90.00 for carpet cleaning services. *Residential Tenancy Policy Guideline 1* (PG 1) provides guidance on the responsibilities of the landlord and tenancy regarding maintenance, cleaning and repairs of residential property. Under the heading "Carpets", PG 1 states:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets *after a tenancy of one year.* Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. *The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.*

The tenancy commenced on July 14, 2022 and ended on August 7, 2022. As such, the tenancy lasted for less than one month. PG 1 requires a tenant to clean the carpet after one year of occupancy or, alternatively, where the tenant has deliberately or carelessly stained the carpet. Although paragraph 9 of the addendum to the tenancy agreement required the Tenant to pay for professional cleaning as needed when the tenancy ends, I find the standard of cleaning required to be performed by the Tenant at the end of the tenancy is governed by the provisions of PG 1. The Landlords did not provide any evidence the Tenant deliberately or carelessly stained the carpet. As such, I find the Landlords have not proven, on a balance of probabilities, that the Tenant was responsible for cleaning the carpet. Based on the foregoing, I find the Landlords are not entitled to recover the $90.00 they have claimed for carpet cleaning.

JJ stated the Landlords were seeking $85.00 for rekeying the FOB and other keys and $210.00 for replacement of the entrance key and the mailbox key because the Tenant did not return the keys to the rental unit. The Tenant did not provide any evidence that she returned the keys for the rental unit to the Landlords. Section 37(2) of the Act states:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find the Tenant did not return the keys or FOB for the common areas and the rental unit as required by section 37(2)(b) of the Act. As such, I find the Landlords have proven, on a balance of probabilities, that they are entitled to recover the amounts they paid for locksmith services. Based on the foregoing, I order the Tenant to pay the Landlords $85.00 to for rekeying the FOB and other keys and $210.00 for replacement of the entrance key and the mailbox key.

Based on the foregoing, I find the Landlords have proven, on a balance of probabilities, that they are entitled to compensation of $3,395.01, calculated as follows:

Purpose	Amount
Loss of Rental Income for August 14, to September 13, 2022	$2,900.00
Replacement of Key Fob and other keys	$85.00
Replacement of Keys for Rental Unit & Mailbox	$210.01
Move-Out fee	$200.00
Total:	$3,395.01

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlords $3,395.01. Pursuant to section 72(2)(b), the Landlord may deduct the Tenant's security deposit of $1,450.00 from $3,395.01, leaving a balance of $1,945.01.

As the Landlords have been substantially successful in the Application, I order the Tenant pay the Landlords $100.00 for the filing fee for the Application pursuant to section 72 of the Act.

Conclusion

I order the Tenant to pay the Landlord $2,045.01 calculated as follows:

Reason	Amount
Loss of Rental Income	$2,900.00
Compensation for Damages	$495.01
Filing Fee for Application	$100.00
Less: Tenant's Security Deposit	-$1,450.00
Total:	**$2,045.01**

The Landlords must serve the Monetary Order on the Tenant as soon as possible. If the Tenant fails to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 15, 2023

Residential Tenancy Branch