



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT, MNRL-S, MNDCL-S, FFL

Introduction

This proceeding dealt with monetary cross applications, as amended. The tenant applied for monetary compensation related to unlawful eviction. The landlord applied for unpaid rent, cleaning, bailiff costs, and costs to install new locks or re-key. The landlord also requested authorization to retain the tenant's security deposit.

Both parties appeared or were represented at the hearing.

The hearing was held over eight dates. The first three hearings were presided over by a different Arbitrator before the applications were reassigned to me. Seven Interim Decisions were issued and should be read in conjunction with this decision.

It should be noted that I was provided a considerable amount of evidence and submissions, both orally and in the form of documentation; however, with a view to brevity in writing this decision, I have only summarized the parties' respective positions and referenced the evidence relevant to understand my decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent, cleaning costs, bailiff costs, and costs for new locks or new keys, as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Has the tenant established an entitlement to compensation from the landlord for an unlawful eviction, as claimed?
4. Award of the filing fee(s).

Background and Evidence

The tenancy agreement was executed on November 4, 2019 for a tenancy set to commence on December 16, 2019. The landlord collected a security deposit of \$775.00 and the tenant was required to pay a monthly rent of \$1550.00 on the first day of every month according to the tenancy agreement. In addition to rent, the tenant was also required to pay \$55.00 per month for parking.

The legality of the ending of the tenancy was under dispute. Below, I have summarized the parties' respective positions.

Ending of tenancy

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") dated October 5, 2020. The tenant filed to dispute the 10 Day Notice and a hearing was held on December 14, 2020. The Arbitrator presiding over that proceeding upheld the 10 Day Notice and issued an Order of Possession to the landlord on December 16, 2020. The tenant applied for a "stay" in the BC Supreme Court ("BCSC") and filed for Judicial Review. The Judicial Review proceeding was held on February 18, 2021 and the justice dismissed the tenant's petition to set aside the Arbitrator's decision and Order of Possession. The justice further ordered that the tenant would be required to vacate the rental unit by February 28, 2021. The tenant filed to appeal the BCSC decision to the BC Court of Appeal ("BCCA") on February 22, 2021. The landlord's lawyer applied for a Writ of Possession on March 2, 2021, affirming among other things, that the tenant has sought Judicial Review, the remedies sought by the tenant under the Judicial Review were dismissed and a "stay" was no longer in place. The court issued a Writ of Possession on March 8, 2021 and the court bailiff executed the Writ on March 15, 2021.

The landlord also served the tenant another 10 Day Notice to End Tenancy for Unpaid Rent dated November 9, 2020. In November 2020, the tenant filed another Application for Dispute Resolution to dispute the 10 Day Notice and request other remedies. The landlord also filed an Application for Dispute Resolution in November 2020 seeking monetary compensation for unpaid rent. The applications were joined and a hearing was scheduled for February 8, 2021. The Arbitrator presiding over the February 8, 2021 hearing declined to accept jurisdiction on February 8, 2021, taking the position that since the tenant had filed for Judicial Review of the of the decision issued on

December 16, 2020 in relation to the October 5, 2020 10 Day Notice, the matter was linked to a matter before the BCSC, as seen below:

“In the cross Applications currently before me, the parties seek relief related to the October 5, 2020 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. As the continuation of this tenancy, and the validity of the October 5, 2020 10 Day Notice is squarely before the Supreme Court, I decline jurisdiction to hear this matter. As such, these matters are adjourned until such time as the Judicial Review Proceedings conclude and direction is provided to the Residential Tenancy Branch from the B.C. Supreme Court.”

These cross applications were adjourned to May 20, 2021 and subsequently adjourned multiple times while the tenant filed to appeal the BCSC decision to the BCCA and then the Supreme Court to Canada. These cross applications, as amended to monetary cross applications, are before me to decide.

On December 5, 2020 the tenant filed another Application for Dispute Resolution seeking to dispute a 10 Day Notice he indicated was served to him on November 27, 2020 although a copy of the 10 Day Notice was not provided by either party. On March 2, 2021 the hearing was held and the Arbitrator presiding over the hearing dismissed the tenant's application and wrote, in part:

“While I am not able to decline jurisdiction to hear this matter, as section 58 of the Act references the B.C. Supreme Court only, I find the Court of Appeal Proceedings to be relevant to matters before me for the following reasons.

In the event the Court of Appeal upholds my December 16, 2020 Decision, this tenancy will have ended. In that case, the Tenant's request to cancel a subsequent notice to end Tenancy (whether the notice was issued pursuant to section 46 (unpaid rent) or 49.1 (cease to qualify) of the Act) is moot as are the Tenant's requests relating to the Landlord's entry to the rental unit or compliance with the legislation or tenancy agreement.

If the Court of Appeal remits the matter back to the Residential Tenancy Branch, the validity of the October 5 Notice to End Tenancy will be resolved in a new hearing. In the event the Court of Appeal quashes my Decision, the tenancy will continue at which time the current Application may be relevant. Of course, that is provided the notice to end tenancy is not the October 5, 2020 10 Day Notice to

End Tenancy which is the subject of the matter which is currently before the B.C. Court of Appeal.

As noted, neither party submitted a copy of the Notice which is the subject of the dispute before me on this date. Whether this Notice relates to the October 5, 2020 Notice, the validity of which is before the B.C. Court of Appeal, or unpaid rent during the same time period, which would be substantially linked to the prior proceedings, or relates to a 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for a Subsidized Unit is not clear based on the materials before me.”

The tenant argued that based on what the Arbitrator wrote on February 8, 2021 and March 2, 2021, the tenant remained entitled to occupy the rental unit while he pursued the matter with the higher courts and the landlord should not have obtained a Writ of Possession. The tenant stated the landlord’s agent lied to a clerk at the BCSC to obtain the Writ of Possession based on a conversation he had with a clerk at the BCSC. The tenant did not call the clerk as a witness or provide an affidavit of the court clerk in support of his allegation.

The landlord’s agent argued that the “stay” the tenant had obtained in December 2020 came to an end when the Judicial Review decision was issued on February 18, 2021 and the tenant did not apply to extend the “stay” when he took the BCSC decision to the BCCA. The BCSC issued the Writ on March 8, 2021 because the tenant did not vacate by February 28, 2021 as ordered in the BCSC decision and he longer had a stay in place. As such, the landlord brought the tenancy to an end legally based on all of the proceedings which confirmed it had a right to end the tenancy, and the landlord legally obtained the Writ of Possession from the court, which was then executed by the court bailiff.

Below, I have summarized the parties respective claims against each other and the other party’s responses.

Tenant’s claim

The tenant is seeking compensation of \$35,000.00 from the landlord for the following things:

1. The landlord illegally evicted him causing him a great amount of stress.

2. The landlord evicted him during the Covid-19 pandemic lockdown, putting his health in jeopardy.
3. The tenant's possessions removed and stored by the bailiff were broken and damaged.
4. The tenant incurred costs to store his possessions after he was removed from the rental unit.
5. The tenant incurred costs to stay in temporary accommodation after he was removed from the rental unit illegally.

The tenant acknowledged that he did not submit images of damaged possessions or documentation to support the value of the damaged possessions. The tenant acknowledged he did not submit documentation to demonstrate the amount he has paid for storage or temporary accommodation after he was removed from the rental unit by the bailiff. Rather, the tenant explained he was seeking \$35,000.00 in general damages from the landlord as this is the maximum amount he can claim under the Act.

The landlord responded that the landlord did not illegally evict the tenant. Further, the Minister has lifted the moratorium on evictions due to Covid-19 pandemic when the 10 Day Notice was issued. The tenant's possessions were moved by movers hired by the bailiff and the landlord has not been presented evidence to demonstrate his possessions were damaged or broken. Nor, has the tenant provided documentation to support his claim for storage and temporary accommodation costs.

Landlord's claim

1. Unpaid rent and parking fees

The landlord submitted that the tenant made partial rent payments for August 2020 through November 2020 and no rent was received for the months of December 2020 through March 2021 even though he continued to occupy the rental unit.

The tenant testified that the landlord's ledger is incorrect. The tenant stated that he had paid the full amount of rent owed up to and including the month of December 2020 and suggested that a staff person working for the landlord did not record all of his payments. The tenant submitted that the BCSC decision shows that tenant did pay rent until the end of December 2020. When the landlord questioned where in the Judicial Review decision the justice made such a determination, the tenant changed his testimony to be that the BCSC decision does not make any such finding but that it was his testimony during the Judicial Review proceeding.

The tenant acknowledged he did not pay any rent for the months of January 2021 onwards. However, the tenant also argued that the landlord altered his tenancy agreement in January 2020 when the landlord had his roommate sign the tenancy agreement. The tenant submitted that under the Act, the landlord was required to gain his agreement to alter or change the tenancy agreement. As a result of the change to the tenancy agreement without his consent, the tenant argued the tenancy agreement became “null and void”. The tenant stated that the landlord must bear consequences or a penalty for altering the tenancy agreement without his agreement and such consequences would include losing of the right to seek rent from him. However, the tenant also took the position that he remained a tenant with all of the rights of a tenant despite the tenancy agreement becoming “null and void”.

The landlord’s agent acknowledged that the landlord had the tenant’s roommate sign the tenancy agreement but argued this was merely done so that the roommate was made aware that the rental unit was to be used to house the City’s employees.

The tenant acknowledged that the rental unit was to be used to house people working in the City.

2. Cleaning

The landlord requested recovery of the cleaning costs incurred after the tenant was removed by the Bailiff. The landlord submitted that the tenant did not intend to vacate the rental unit given his on-going efforts to dispute the eviction. As a result, the unit was not left as clean as a vacating tenant is required to leave a unit.

The tenant testified that he kept the rental unit “spotless” during his tenancy and that after his possessions were removed by the Bailiff there would have only been a small amount of cleaning to do; however, the tenant argued he should not have had his possessions removed since he was illegally evicted.

3. Bailiff costs

The landlord had to obtain the services of the court bailiff to remove the tenant and his possessions from the rental unit because the tenant did not vacate when ordered to do so.

The tenant was of the position that the landlord unlawfully obtained the Writ of Possession and he is not liable to pay the costs associated to his illegal removal from the rental unit.

4. New lock for rental unit

The landlord submitted that the Bailiff was authorized and intended to change the locks in executing the Writ but when the Bailiff arrived at the rental unit the tenant gave the bailiff one key. However, the tenant had been given two keys for the rental unit, meaning there was still one key that was not returned so the landlord charged the lock.

The tenant agreed he gave one key to the Bailiff and there was a second key but he was not asked for its return. Also, the tenant should not have been evicted so the tenant is not liable to pay for a new lock.

5. New keys for storage unit

The landlord submitted that the tenant had a storage locker and the tenant did not return the key.

The tenant responded that he was not asked for the storage locker key and he is not liable to pay for new keys.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The crux of the dispute revolved around the ending of the tenancy and whether that was done legally. I proceed to analyze this issue first as it is relevant to the landlord's claim for bailiff costs and the tenant's defence to much of the claims against him and his claim for unlawful eviction against the landlord.

Ending of the tenancy

Upon review of all of the materials before me, I find the tenancy came to an end based on the 10 Day Notice dated October 5, 2020. The 10 Day Notice dated October 5, 2020 was the subject of a proceeding before the Residential Tenancy Branch and the

Arbitrator upheld the 10 Day Notice and issued an Order of Possession to the landlord. The tenant applied for a stay, which was granted, pending the outcome of Judicial Review. The justice presiding over the Judicial Review dismissed the tenant's petition for the Arbitrator's decision and Order of Possession to be set aside. The tenant filed for an appeal to the BCCA and was unsuccessful. The tenant proceeded to make a petition to the SCC and that was also unsuccessful.

The landlord pointed out the tenant did not seek an extension of the "stay" when he sought further appeal of the BCSC decision, meaning a stay was not in place when the landlord applied for and obtained the Writ of Possession in early March 2021.

I find the bailiff's account of events of March 15, 2021 are consistent with the fact the tenant did not have a stay in place when the Bailiff came to execute the Writ. On April 9, 2021 the bailiff wrote to the landlord a summary of events, in part, as follows:

"Tenant was instructed to pack a personal bag and leave premises. Tenant stated he would attend courthouse to get a stay."

The tenant did not argue he had a stay in place from the court after the BCSC decision was issued. Rather, he relies on what the Arbitrator wrote on February 8, 2021 and March 2, 2021. However, upon review of those decisions, I am of the view the Arbitrator was explaining the possible outcomes for the appeal of her December 2020 decision and the subsequent Judicial Review decision in adorning the application before me and dismissing the tenant's later application. The Arbitrator's decision of February 8, 2021 and March 2, 2021 does not supersede the BCSC decision and does not grant the tenant the right to occupy the rental unit where the court has found the tenancy is over. In other words, the decision issued by the Arbitrator does not act as a "stay" and would prevent the landlord from obtaining a Writ of Possession.

Section 57 of the Act provides for how a landlord may regain possession of a rental unit when a tenant does not vacate despite the tenancy having ended and the tenant has been ordered to vacate. Section 57 of the Act provides, in part:

"overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

[My emphasis underlined]

In light of the above, I am satisfied the tenancy was lawfully ended and the landlord regained possession of the rental unit by way of a court order (Writ of Possession), as required under the Act. Therefore, I reject the tenant's position that he was unlawfully evicted.

Tenant's claim

Based on the analysis above, I have rejected the tenant's position that he was unlawfully evicted. Most of the tenant's claims were based on the premise the landlord unlawfully evicted him. The stress that was experienced due to the eviction proceeding and being removed from the premises by the bailiff is understandable but not a basis for compensation from the landlord given the lawfulness of the eviction. The same logic applies to the tenant's use of storage facilities and temporary living accommodation after he and his possessions were removed by the Bailiff.

As for the tenant's claim that some of personal possessions were damaged when they were moved by the Bailiff, I find the tenant failed to establish the landlord is liable for any such loss. The tenant did not provide sufficient evidence to establish his possessions were damaged, the value of any damaged possessions, or that the landlord is vicariously liable for any damage caused by the movers hired by the Bailiff.

In light of the above, I dismiss the tenant's monetary claim against the landlord in its entirety.

Landlord's claims

1. Unpaid rent and parking

It is undisputed that the tenant did not pay any rent or monies for use and occupancy of the rental unit or parking for the period of January 2021 through to March 2021, yet he occupied the rental unit until March 2021.

The parties were in dispute as to whether the tenant paid all of the rent and parking up to and including the month of December 2020. The landlord provided a copy of the tenancy agreement, communication with the tenant regarding his failure to provide

documents to support a rent subsidy, a ledger, and, 10 Day Notices issued in October 2020 and November 2020 in support of its position.

The tenant submitted he had paid all of the rent up to and including December 2020 but that the landlord's staff person did not record all of his payments. The tenant pointed to the Judicial Review decision of February 18, 2021 in support of his position; however, the Judicial Review decision does not reflect such a finding by the justice.

The tenant had provided images of his bank statements as evidence. There are a number of e-transfers visible on the bank statement; however, the recipient of the e-transfer is not visible. I also note that the landlord had also reflected a number of partial electronic payments in its ledger. Based on the evidence before me, I find the tenant provided insufficient detail to conclude the landlord failed to record all of his payments and the ledger is inaccurate.

The tenant submitted he should not be held liable to pay rent because the landlord had his roommate sign the tenancy agreement in January 2020, thus altering the tenancy agreement with his agreement and rendering it null and void. I reject that position for the following reasons.

The tenant stated that despite the landlord's alteration of the tenancy agreement, he was still a tenant entitled to possession of the rental unit as a tenant. I agree with that position as to disentitle a tenant to the right of possession and every other right conveyed to a tenant under a tenancy agreement by way of a one-sided alteration by a landlord would be unjust to the tenant. That being said, since the tenant maintains he was still a tenant despite the alteration, I reject his position that the tenancy agreement became null and void. Therefore, I find the signature of the tenant's roommate on the tenancy agreement on January 4, 2020 is in itself a nullity but it does not nullify the entire agreement.

Section 26 of the Act provides that a tenant is required to pay rent, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a lawful right under the Act to withhold rent. Under section 26 of the Act, I find the tenant remained obligated to pay rent and there is no provision in the Act that provides the tenant the right to withhold the rent because the tenant's roommate signed the tenancy agreement.

In light of the above, I grant the landlord's request for unpaid rent and parking, as claimed.

2. Cleaning

Section 37 of the Act requires a tenant to leave a rental unit “reasonably clean” at the end of the tenancy.

The landlord seeks to recover the cost of a cleaning company who performed a “move-out clean” on March 18, 2021. The landlord provided a copy of the invoice which shows the cleaner charged for 3 people for 2.75 hours for a “move-out clean” of the rental unit. I note that I was not provided any photographs or a move-out inspection report prepared by the landlord.

The tenant was of the position the rental unit was very clean when he left the rental unit although a small amount of cleaning may have been required when his possessions were removed.

Given the disputed evidence concerning the state of cleanliness when the Bailiff removed the tenant, and the lack of photographs and a move-out inspection report, I find I am unsatisfied the landlord is entitled to recover the entire cost to perform a “move-out clean” from the tenant. It is not uncommon for a landlord to have the unit cleaned beyond “reasonably clean” during a move-out clean, and the cost associated to bringing the rental unit to a level of cleanliness beyond “reasonably clean” is not the tenant’s cost to bear.

In recognition that the tenant acknowledged some additional cleaning was likely required, I limit the landlord’s award to a nominal amount of \$100.00 and dismiss the balance.

3. Bailiff costs

For reasons provided previously in this decision, I am satisfied the landlord lawfully ended the tenancy and regained possession of the rental unit, lawfully, by way of a court bailiff after obtaining a court order (Writ of Possession). The landlord provided a copy of the Bailiff’s invoice which supports the amount claimed against the tenant. Therefore, I grant the landlord’s request to recover the bailiff fees from the tenant, as claimed.

4. Rent unit lock

Section 37 of the Act requires the tenant to return all means of access to the rental unit and residential property to the landlord at the end of the tenancy. It is not upon the landlord to request return of all keys since the Act already puts the onus on the tenant to return them.

It is undisputed that the tenant had been provided two keys for the rental unit and he only returned one, to the Bailiff, on March 15, 2021. With one key not returned, I am of the view it was reasonable on part of the landlord to have the locks changed.

Therefore, I grant the landlord's request to recover the cost to install a new lock on the rental unit door.

5. New keys for storage locker

The tenant had been provided a storage locker and the tenant did not return the for the storage locker at the end of the tenancy despite the requirement to do so under section 37 of the Act. Therefore, I grant the landlord's request to recover the cost for new keys for the storage unit.

6. Filing fee and Security deposit and Monetary Order

The landlord was successful in its claims against the tenant and I further award the landlord recovery of the \$100.00 filing fee it paid for its application.

I authorize the landlord to retain the tenant's security deposit of \$775.00 plus interest that I calculate to be \$8.53 as of today's date, in partial satisfaction of the awards made to the landlord.

Given all of my findings and awards described above, I provide the landlord with a Monetary Order to enforce against the tenant, calculated as set out below:

Unpaid Rent and parking	\$ 7,864.99
Cleaning (partial award)	100.00
Bailiff costs	3,899.00
New lock for rental unit	165.24
Keys for storage unit	123.24
Filing fee	100.00
Less: security deposit and interest	<u>(783.53)</u>
Monetary Order for landlord	\$11,468.94

Conclusion

The tenant's monetary claim against the landlord is dismissed in its entirety.

The landlord was largely successful in its monetary claims against the tenant. The landlord is authorized to retain the tenant's security deposit and interest in partial satisfaction of the amounts awarded to the landlord in this decision and the landlord is provided a Monetary Order for the balance remaining of \$11,468.94 to serve and enforce upon the tenant.

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: July 25, 2023

Residential Tenancy Branch