



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: MNRL-S, FFL
Tenant: MNDCT, MNSD, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's application was made on November 12, 2022 (the Landlord's Application). The Landlord applied for the following relief pursuant to the Act:

- a monetary order for unpaid rent;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant's application was made on August 6, 2023 (the Tenant's Application). The Tenant applied for the following relief pursuant to the Act:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlords return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

The Landlord testified that the Landlord's Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. The Tenant acknowledged receipt of these documents. The Tenant testified that the Tenant's Notice of Dispute Resolution Proceeding package was served on the Landlord by email. The Landlord acknowledged receipt of these documents.

Neither party raised any issues with respect to service or receipt of the above documents and evidence during the hearing. The parties attended the hearing and were prepared to proceed. Pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
5. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
6. Is the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on October 30, 2019, and ended on June 30, 2022. Rent of \$1,800.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$900.00 which the Landlord holds.

The Landlord's Claim

The Landlord claim for \$1,800.00 is based on unpaid rent due on July 1, 2022. The Landlord testified that on June 21, 2022, the Tenant gave notice that he intended to move out of the rental unit on June 30, 2022. However, the Landlord testified that rent was not paid when due on July 1, 2022. The Landlord testified that he was able to re-rent the unit effective August 1, 2022. A copy of the new tenancy agreement was submitted in support.

In reply, the Tenant confirmed rent was not paid on July 1, 2022. The Tenant testified it was not paid because he had already moved out. The Tenant testified that he gave notice on June 21, 2022, because of issues with the hot water in the rental unit. Specifically, the Tenant testified that hot water in the rental unit was inconsistent. In addition, the dishwasher and washing machine also did not work for a few days.

In reply, the Landlord acknowledged house did not have consistent hot water from May 21, 2022, until the end of the tenancy. According to the Landlord, parts for the repair were difficult to obtain parts due to the impacts of the Covid-19 pandemic. However, the Landlord testified that he reimbursed the Tenant for the cost of a water heater and offered the use of a vacant unit at the rental property so the Tenant and his family had access to hot water.

In addition, the Landlord testified that when the Tenant gave notice on June 21, 2022, the reasons given were to move to a location closer to his employment, and so his daughter would be in a more desirable school catchment.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Tenant's Application and requested an order permitting him to retain the security deposit held in partial satisfaction of the Landlord's claim.

The Tenant's Claim

The Tenant's claim for \$16,800.00 is set out in a Monetary Order Worksheet dated August 5, 2023.

First, the Tenant claims \$900.00 for the return of the security deposit. The Tenant testified he gave the Landlord his forwarding address in writing in person on October 28, 2022. The Tenant also testified that he and the Landlord made an agreement to return the security deposit in text messages, copies of which were submitted into evidence.

In reply, the Landlord acknowledged receipt of the Tenant's forwarding address. The Landlord testified that he initially agreed to return the security deposit but subsequently decided to make a claim against it because of the demeanour of the Tenant and his spouse.

Second, the Tenant claims \$900.00 as a reimbursement of half the rent for the month of June 2022. The Tenant again testified that he did not have consistent hot water from May 21, 2022, until the end of the tenancy. He was, however, using a downstairs unit occupied by another tenant.

In reply, the Landlord acknowledged there were issues with the hot water. The Landlord testified that he offered to let the Tenant and his family use a vacant upper unit so they had access to hot water.

Third, the Tenant claims \$15,000.00 for “mental distress compensation.” The Tenant testified he was distressed because Landlord did not honour the alleged agreement to return the security deposit. In addition, the Tenant testified that he did tasks around the rental property for free. He also noted that although the dishwasher broken for a month during the tenancy, he never made a claim. The Tenant also testified that he needs the funds to pay the higher rent at his new home.

Further, the Tenant also claimed that the Landlord did not offer compensation. The Tenant also testified the Tenant needed hot water to help treat an elbow injury sustained at work.

The Tenant also said it was embarrassing not to have access to hot water and that the women in his household needed it for hygiene.

In reply, the Landlord testified that he does not believe the Tenant suffered mental distress.

Finally, the Tenant sought to recover the \$100.00 filing fee paid to make the Tenant's Application.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

The Landlord's Claim

With respect to the Landlord's claim for unpaid rent due on July 1, 2022, section 26 of the Act confirms that a tenant must pay rent when due whether or not the landlord complies with the Act or the tenancy agreement, unless the tenant has a right under the Act to deduct rent.

Further, section 45 of the Act permits a tenant to end a tenancy by giving notice effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable. In other words, notice given in one month is not effective until the last day of the following month.

In this case, the parties agreed that notice was given to the Landlord on June 21, 2022. Accordingly, the notice to end tenancy was effective on July 30, 2022, and rent became due on July 1, 2022. I accept the undisputed evidence that rent was not paid when due on July 1, 2022. While I accept that the issues with the hot water were inconvenient for the parties, I do not accept that they entitled the Tenant to deduct rent. As a result, I grant the Landlord a monetary award of \$1,800.00 for unpaid rent.

In addition, considering my findings with respect to the Tenant's claim for the return of the security deposit, below, I find the Landlord is entitled to retain the security deposit in partial satisfaction of the Landlord's claim.

Considering the above, I grant the Landlord a monetary order for \$900.00, which has been calculated as follows:

Unpaid rent:	\$1,800.00
LESS security deposit:	(\$900.00)
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TOTAL:	\$900.00

The Tenant's Claim

With respect to the Tenants' claim for \$900.00 for the return of the security deposit, section 38(1) of the Act confirms that a landlord must repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I accept that the Tenant provided a forwarding address in writing on October 28, 2022. However, at that time, the Landlord had already made a claim against the security deposit and there was no obligation for the Landlord to return it before this proceeding was decided. I have permitted the Landlord to retain the security deposit in partial satisfaction of the Landlord's claim. This aspect of the Tenant's application is dismissed without leave to reapply.

With respect to the Tenants' claim for \$900.00 for a partial reimbursement of rent paid for June 2022, section 65 of the Act confirms that past or future rent may be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. I accept the undisputed testimony that the hot water to the rental unit was inconsistent from May 21 to June 30, 2022. However, I also accept that the Landlord provided the Tenant with access to hot water in another rental unit. On balance, I find the reduction in the value of the tenancy agreement to be \$250.00 and grant the Tenant a monetary award in that amount.

With respect to the Tenants' claim for \$15,000.00 for "mental distress compensation", I find there is insufficient evidence to grant the relief sought. While I accept that the inconsistent access to hot water was an inconvenience, I do not accept that the feelings of embarrassment, or of frustration at the Landlord's refusal to return the security deposit after promising to do so gave rise to significant mental distress. I note the Tenant's claims were not supported by medical or other corroborating evidence. This aspect of the Tenant's claim is dismissed without leave to reapply.

I find the Tenant has demonstrated an entitlement to a monetary award in the amount of \$250.00.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$900.00. The Tenant has demonstrated an entitlement to a monetary award in the amount of \$250.00. Setting off the parties' claims, I find the Landlord is entitled to a monetary order in the amount of \$650.00.

As both parties have had some success, I decline to grant recovery of the filing fee to either party.

Conclusion

The Landlord is granted a monetary order in the amount of \$650.00. The 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: August 22, 2023

Residential Tenancy Branch