



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the Landlords: MNDL-S, FFL
 For the Tenant: MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The Landlords' application pursuant to the Act is for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit) under Section 38; and
- an authorization to recover the filing fee, pursuant to section 72.

The Tenant's application pursuant to the Act is for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement, pursuant to section 51(2); and
- an authorization to recover the filing fee, pursuant to section 72.

Landlords KB and NB and witness EZ, tenant AS (the Tenant) and witness JC attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties each confirmed receipt of the notices of hearing and the evidence (the Proceeding Package).

Based on the testimonies I find that each party was served with the Proceeding Package in accordance with section 89 of the Act.

Preliminary Issue – named landlords and rental unit's address

The Landlords' application lists landlords KB, NB and LY.

KB affirmed the owners of the rental unit are KB, NB and EZ and that EZ's legal name was LY.

The parties agreed the named landlords in the tenancy agreement are only KB and NB and that the rental unit was the basement suite in the address recorded on the cover page of this decision.

Pursuant to section 64(3)(a) of the Act, I have amended the Landlord's application to exclude EZ, as this person is not a landlord in the tenancy agreement and to correct the rental unit's address.

Hereinafter, I will refer to KB as the Landlord and KB and NB collectively as the Landlords.

Issues to be Decided

Are the Landlords entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Is the Tenant entitled to:

1. a monetary order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?
2. an authorization to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agreed the tenancy started in February 2019 and ended on February 28, 2023. Monthly rent when the tenancy ended was \$1,000.00 excluding utilities, due on the first day of the month. The Landlords collected and hold in trust a \$500.00 deposit.

Both parties stated they did not inspect the rental unit when the tenancy started.

The Tenant served and the Landlords received the forwarding address in writing in the first week of March 2023.

The Tenant did not authorize the Landlords to retain the deposit.

Both parties also agreed the Tenant received the 2 Month Notice to End the Tenancy for Landlords' Use (the Notice) dated December 15, 2022 on December 19 and that the effective date was February 28, 2023 (the effective date). The Landlord served the Notice to allow her mother EZ to live in the rental unit.

The Landlords live on the rental property's main floor and the rental unit was the basement suite.

The Tenant is claiming \$12,000.00, as EZ did not occupy the rental unit.

The Landlord testified that EZ purchased a new home and expected to move to her new home in September 2022. As EZ could not move to her new home she moved to the rental property's playroom, a living space independent from the rental unit, in December 2022.

The Landlord said that EZ moved from the playroom to the rental unit on March 1, 2023 and lived there until August 31, 2023.

The Landlord affirmed that EZ's new home developer delayed the new home delivery five times, did not inform when EZ's new home would be completed and EZ only received possession on June 15, 2023. The Landlord stated that EZ's new home had deficiencies and EZ could only move to the new home on September 1, 2023. The Landlord submitted an email dated August 17, 2023 from the developer stating that EZ's new home floor was scheduled to be repaired on August 23, 2023.

The Landlord submitted into evidence photographs from the rental property's security camera showing EZ's vehicle parked on the rental property's driveway on August 19, 20, 22, 23 and 24, 2023.

The Landlord submitted into evidence a letter dated August 21, 2023 from EZ's social worker stating that she advised EZ to move the rental unit in December 2022:

In December of 2022, due family dynamics and EZ occupying KB's main living space, it was causing KB concerning clinical levels of stress, anxiety and depression. Therefore, was my opinion that in order to stabilize her mental health, the best solution and most ethical decision would be for mother move out of her main floor and into the tenanted suite where her tenant AS was living. We agreed that since EZ is a vulnerable senior and assisting with childcare, it was not ethical to ask EZ to leave KB's house. It was my professional opinion based on 16 years experience as social worker helping clients secure housing, it would be very difficult to have a senior secure alternate housing for a 6 month to one year time frame. It is much easier for a young professional with secure employment to find alternate housing.

The Landlord submitted a photograph dated January 7, 2023 showing the playroom with EZ's belongings including a bed and clothing.

The Landlord submitted into evidence 7 photographs dated August 26, 2023. They show the rental unit with a couch in the living room, cleaning supplies, a refrigerator with food, a kitchen with a microwave and a bathroom with 3 soap bottles.

The Landlord submitted into evidence an affidavit dated November 3, 2023 from her neighbour HK. It states:

1. From the end of November 2022 to the end of August 2023, KB's mother, EZ, resided at [rental property address];
2. EZ's grey [vehicle] was parked at [rental property address] during this time;
3. EZ would often take her grandson and my younger son to the park;
4. EZ would often pick up her grandson from preschool when I would pick up my son; and
5. I would frequently see EZ at [rental property address] when I would walk past or go to the residence.

The Landlord testified HK and the social worker never entered the rental unit.

The Tenant said the affidavit and the social worker letter do not indicate that EZ moved to the rental unit.

The Landlord affirmed that EZ did not have mail or a driver's license showing her address as the rental unit or rental property's address because she only intended to live in the rental unit for a few months until her new home was completed.

EZ stated that she moved to the rental unit on March 1, 2023 and lived there until September 1.

The Tenant submitted into evidence the rental unit's rent listing published on Facebook on July 21, 2023.

The Landlord testified she listed the rental unit to re-rent it in late July 2023, signed a new tenancy agreement on August 6, 2023 and the new tenancy started on September 1. The Landlord submitted an email from the new tenant dated August 28, 2023: "I do recall when I came to view the suite on August 5, 2023 that there was belongings of the previous tenant and you and NB had mentioned you would be painting and doing some touch up to the walls."

The Tenant submitted into evidence messages from the Landlord replying to her friend named LI messages on July 26, 2023 regarding the rental unit's rent listing:

LI: Hello! I'm interested in viewing your place if it's still available. I'm a single person working full time with no pets. I'm wondering when this place is available for rent.
Landlord: It's empty now.
LI: Oh perfect! I'm looking for something as soon as August 1st, is that possible?
Landlord: We need to paint but maybe be possible.

The Tenant submitted into evidence messages from the Landlord replying to her friend FVMI messages on August 2, 2023 regarding the rental unit's rent listing:

FVMI: I know it's already August 1, but is it still available?

Landlord: It is available. Unfortunately we aren't able to show it until Saturday. If that works, please let me know.

The Landlord said she sent the messages dated July 26, 2023 and August 2 by mistake, as the rental unit was not empty back then.

The Tenant submitted into evidence messages from the Landlord to a Facebook group named "BC Landlords":

Landlord: Being sued for 12k! 2 month notice for landlord use. Tenant left February 28/23. My elderly mom moved in until her unit was built. Moved out end of July. I now found a tenant for September 1st. I was served as she saw my advertise on Facebook Market Place. What am I missing here?

Comment from PG: Your mom is still living there while she is setting up her apartment. She has slept there and occupied it on and off so you couldn't rent for 6 months. Right?! There is a picture of her bed in there right?! Again how could it be rented??!! Plan was for her to be totally moved out by September 1st right??!! You have a dated picture of her belongings in there right??!! And yes you wanted to be sure to get a good tenant so needed to advertise as early as there are too many professional tenants. If RTB goes again with tenant make sure you file for Supreme Court review.

Comment from CC: What did you mention in the ad? Did you mention it's available for August 15? What if your mom still have belongings in the unit? If she still does (e.g. a box of clothing or a suitcase), then she is not considered to be moved out yet. She could have had her belongings there and still occupy the unit until August 31. I would say have some U-Haul boxes and take a photo on the night of August 31st or early morning of September 1st to show your mom is moving out September 1st at 12pm.

The Landlords are seeking \$300.00, as the Tenant did not clean the 2 bedroom, 750 square feet rental unit when the tenancy ended. The Landlord affirmed that she cleaned the unit for 6 hours at the hourly rate of \$50.00, as the Tenant did not clean the refrigerator, stove and bathroom. The Landlord submitted 27 photographs taken on March 1, 2023 showing dirty windows and hair in the bathtub.

The Tenant stated she cleaned the rental unit, but she did not notice the hairs in the bathtub. The Tenant agrees to pay \$100.00 for cleaning.

The Landlord submitted the move out inspection report signed by both parties. It indicates the Tenant does not agree it fairly represents the condition of the rental unit.

The Landlords are seeking \$200.00, as the Tenant damaged the rental unit's drywall. The Landlord testified that she painted the walls for 5 hours at the hourly rate of \$40.00,

as the Tenant did not fill or patch holes in the drywall and that the Tenant is also responsible for stains on the windows frames. The Landlord submitted photographs 0705 (showing holes in the drywall), 0712 and 0713 (showing stains on the windows frames).

The Tenant said the damages mentioned are regular wear and tear, as she lived in the rental unit for 4 years.

The Landlords are seeking \$100.00, as the Tenant damaged the bathroom counter. The Landlord affirmed that she paid the amount claimed to purchase a bottle of acetone cleaning solution.

The Tenant stated that contractors hired by the Landlord damaged the bathroom counter during the tenancy and she forgot to inform the Landlord. The Tenant does not believe that the acetone cleaning solution costs \$100.00.

The Landlord submitted into evidence a monetary order worksheet.

Analysis

I will analyze individually each of the claims in this cross application.

12 month compensation

Per Rule of Procedure 6.6 and section 51(2) of the Act, the landlord has to onus to prove that the stated purpose for ending the tenancy was accomplished.

Section 51(2) of the Act states that a landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the stated purpose for ending the tenancy was accomplished.

Policy Guideline 2A states that: "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

Based on the Notice and the Landlord's testimony, I find the Landlord served the Notice to allow her mother EZ to live in the rental unit. The Landlord must prove that EZ occupied the Unit for 6 months after the Notice's effective date of February 28, 2023.

I accept the uncontested testimony that the Landlords live on the rental property's main floor, the rental unit was the basement unit and EZ moved to the rental property's playroom in December 2022, as EZ's new home developer delayed the delivery of EZ's

new home five times after September 2022 and did not inform when EZ's new home would be ready.

I find the photographs showing EZ's vehicle parked on the rental property's driveway on August 19, 20, 22, 23 and 24, 2023 do not prove that EZ occupied the rental unit, because EZ could park her vehicle on the driveway and live on the main floor, playroom or rental unit, as all these units are located in the same building.

The social worker letter dated August 21, 2023 does not indicate EZ occupied the rental unit.

I accept the Landlord's testimony that the HK never entered the rental unit. I find the Landlord failed to explain how HK can attest that EZ occupied the rental unit, as HK never entered the rental unit. Furthermore, as EZ moved to the rental property's playroom in December 2022 she could interact with neighbour HK easily from November 2022 to August 2023 without occupying the rental unit.

I find the Landlord's testimony about EZ not having mail or a driver's license showing her address as the rental property's address not credible, as EZ did not know when she would be able to move to her new home.

I find the Landlord's messages dated July 26 and August 2, 2023 prove that EZ was not occupying the rental unit in July 2023. I find the Landlord's testimony that she sent the messages on both dates by mistake is vague and not credible. I find these messages are corroborated by the new tenant's email dated August 28, 2023, as this email indicated that on August 5 the rental unit was vacant and not currently being lived in: "I do recall when I came to view the suite on August 5, 2023 that there was belongings of the previous tenant".

I find the photographs dated August 26, 2023 do not prove that EZ occupied the rental unit, as these photographs show very few belongings and furniture in the rental unit. The January 7, 2023 photograph shows clothing and a bed and these items are missing in the August 26, 2023 photographs. Furthermore, I highlight that the Landlord asked questions in a public Facebook group about tenancy legislation and PG and CC suggested the Landlord take photographs to prove that her mother occupied the rental unit until August 31, 2023.

I find EZ's testimony about occupying the rental unit does not outweigh the Tenant's testimony and the Facebook messages sent by the Landlord denying this fact.

The post in the Facebook group does not indicate that EZ lived in the rental unit from March 1 to August 31, 2023, the messages sent by the Landlord explicitly admit that EZ was not living in the rental unit in July 2023. Furthermore, considering all the above, I find the Landlord's overall testimony was not credible and contradictory.

Considering all the above, I find the Landlord failed to prove, on a balance of probabilities, that EZ ever occupied the rental unit after February 28, 2023.

I note the Landlord did not claim that extenuating circumstances prevented EZ from occupying the rental unit and insisted that EZ occupied the rental unit from March 1 to September 1, 2023.

I accept the uncontested testimony that monthly rent when the tenancy ended was \$1,000.00.

As such, per section 51(2) of the Act, the Tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the Tenant a monetary award in the amount of \$12,000.00 (12 x \$1,000.00).

Deposit

Section 23 of the Act states the Landlord must inspect the rental unit and complete an inspection report when the tenancy starts.

Section 24(2)(c) of the Act states: "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 does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations."

I accept the uncontested testimony the Landlords did not inspect the rental unit when the tenancy started.

I find the Landlords extinguished their right to claim against the deposit, per section 24(c) of the Act, as the Landlords did not inspect and complete the move in report when the tenancy started.

Section 38(1) of the Act requires the landlord to either return the deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

I accept the uncontested testimony the Landlords received the forwarding address in writing in March 2023 and retained the deposit.

In accordance with section 38(6)(b) of the Act, as the Landlords extinguished their right to claim against the deposit and did not return it within the timeframe of section 38(1) of the Act, the Landlords must pay the Tenant double the amount of the deposit retained.

Policy Guideline 17 states: “Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act”.

According to the deposit interest calculator (available at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>), the interest accrued on the deposit is \$8.96.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the Tenant is entitled to \$1,008.96 (double the \$500.00 deposit plus the interest accrued).

Landlord's claims

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states the applicant has to prove the respondent failed to comply with the Act, the applicant suffered a loss resulting from the respondent’s non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Pursuant to Rule of Procedure 6.6, 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 the case is on the person making the claim.

Cleaning

Section 37(2)(a) of the Act states the tenant must reasonably clean the rental unit when the tenancy ends.

Policy Guideline 1 states “the tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.”

Based on the photographs and the testimony from both parties, I find the Landlords proved, on a balance of probabilities, that the tenant breached section 37(2)(a) of the Act by not cleaning the rental unit and the landlord suffered a loss for 6 hours of cleaning.

I find the Landlords did not prove that \$50.00 is a reasonable rate for one hour of cleaning, as they did not explain why this is a reasonable amount. I find reasonable to award \$20.00 per hour for cleaning, as this amount is more than the minimum wage in British Columbia.

Thus, I award the Landlords compensation for cleaning expenses in the amount of \$120.00 (6 hours at \$20.00 per hour).

Drywall damage

Section 32(3) of the Act states: “A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.”

Policy Guideline 1 states: “2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. 3. The tenant is responsible for all deliberate or negligent damage to the walls.[...] The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises),”

I find photographs 0705, 0712 and 0713 show small damages and that these damages are likely consequence of normal usage for 4 years. I find these damages are reasonable wear and tear.

I dismiss the Landlords’ claim.

Bathroom counter

I find the Landlord’s testimony about the amount of the loss vague. The Landlords did not submit a receipt or estimate to prove the amount of their alleged loss. The Tenant disputed the amount of the loss. I find the Landlords failed to prove, on a balance of probabilities, the amount of the alleged loss.

I dismiss the Landlords' claim.

Filing fee and summary

As both parties were at least partially successful with their applications, each party will bear their own filing fee.

In summary, the Tenant is entitled to:

12 month compensation	\$12,000.00
Deposit	\$1,008.96
Total:	\$13,008.96

The Landlords are entitled to \$120.00.

Policy Guideline 17 states that "the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order."

Thus, the Tenant is entitled to \$12,888.96.

Conclusion

Pursuant to sections 38 and 51(2) of the Act, I grant the Tenant a monetary order in the amount of \$12,888.96.

The Tenant is provided with this order in the above terms and the Landlords must be served with this order in accordance with the Act. Should the Landlord fail 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 Act.

Dated: December 1, 2023

Residential Tenancy Branch