



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, MNETC, FFT
MNRL-S, MNDL-S, MNDCL-S, LRSD, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords, that have been joined to be heard together.

The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for return of all or part of the security deposit or pet damage deposit; a monetary order for compensation required under the *Act* for the landlords ending the tenancy with a Two Month Notice to End Tenancy For Landlord's Use of Property; and to recover the filing fee from the landlords for the cost of the application.

The landlords have applied for a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant.

The tenant and both landlords attended the hearing, and the tenant was accompanied by the tenant's son for assistance. The tenant and both landlords gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions. Both parties have uploaded evidence to the Residential Tenancy Branch portal later than the time required, and neither party agreed that the late evidence should be considered. Therefore, all evidence except late evidence has been reviewed and the evidence I find relevant to the applications is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent?

- Has the tenant established a monetary claim as against the landlords for return of all or part of the security deposit?
- Has the tenant established a monetary claim as against the landlords for compensation required by law after the issuance of a Two Month Notice to End Tenancy For Landlord's Use of Property?
- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The tenant testified that this fixed-term tenancy began on November 1, 2019 and expired on October 31, 2020. The tenancy agreement, a copy of which has been provided for this hearing states that at the end of the fixed term the tenant must vacate the rental unit for owners or a close family member to reside in the rental unit, selecting regulation 13.1. However, the tenancy continued. Rent in the amount of \$5,500.00 was payable on the 1st day of each month. At the commencement of the tenancy the landlords collected a security deposit from the tenant in the amount of \$2,750.00 which is still held in trust by the landlords, and no pet damage deposit was collected.

The tenant further testified that the tenant vacated the rental unit on September 30, 2023, after the landlords served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) and a copy has been provided for this hearing. It is dated August 9, 2023 and contains an effective date of vacancy of October 31, 2023. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord/s spouse. The tenant was not given 1 month's rent as compensation, and the tenant claims \$6,500.00.

The tenant also testified that rent was increased by \$1,000.00 per month starting in November, 2022 until September, 2023, with no Notice of Rent Increase served, just a phone call. The tenant paid all of the rent without delay, and now the landlord claims October, 2023 rent as well as saying it was a fixed term. The tenant disagrees, and

testified that it was a month-to-month tenancy. The tenant moved out a month earlier than the effective date of the Notice and gave notice by email and a copy in the landlord's mailbox, both on September 22, 2023. All communication was done by email. The tenant provided the landlord with a forwarding address by email on September 30, 2023.

With respect to the landlords' claim for damages, the tenant testified that there were so many problems with the building: cabinets needed repair and traces of leaks were never repaired. The tenant made some repairs, but the landlords never repaired anything. The tenant asked for an inspection at move-out and the landlords were at the rental unit many times and there was no notice of damage during the tenancy. The landlord also accused the tenant of not returning a key, but video evidence has been provided. It all started when the tenant requested 1 month compensation, and the landlord said that because the parties were friends, the tenant was not entitled.

The first landlord (NBS) testified that the landlords gave the tenant a \$1,000.00 deduction in rent because he was a very good tenant; the rental unit had been advertised for \$6,500.00 per month. Every year the tenant gave 12 post-dated cheques. In November, 2023 the other landlord explained increases in expenses and the tenant said he would agree to the increase, but not in writing. By giving the post-dated cheques, the tenant had agreed to the increase. The landlords also claim \$1,100.00 for unpaid utilities, and have provided a copy of an email addressed to the tenant dated September 30, 2023 seeking payment of that amount for Gas, Hydro and, City Utilities for the months of June through September, 2023. Previous email requests for the payment of utilities have also been provided.

The tenant's notice to end the tenancy was not in the mailbox, but by email only, and the tenant did not have permission to serve legal documents by email. The tenant also sent his forwarding address to the landlords by email.

The landlords' property manager said that there was no need to complete a move-in condition inspection report because it was a new house. Cabinets were damaged and the tenant said it was bad quality. The landlords have provided a spreadsheet entitled "Damage Repairs" setting out costs associated with the repair after the tenancy ended, totaling \$8,374.52. A 12-page Property Inspection Report dated September 30, 2023 has also been provided, as well as numerous photographs, invoices and receipts.

The tenant rented a portion of the rental unit on Air BNB without the landlords' permission, perhaps for 2 years.

The landlords have provided a Monetary Order Worksheet setting out the following claims totaling \$13, 224.00:

- - \$2,750.00 for the security deposit;
- \$8,374.52 for damage repairs;
- \$1,100.00 for unpaid utilities; and
- \$6,500.00 for October, 2023 rent.

The landlords have also provided a breakdown of damage repairs. It includes \$900.00 for cleaning; \$333.76 for a front display damage and missing key; \$79.12 for a broken fridge door compartment; \$245.87 for a damaged bathroom faucet; \$112.00 for another damaged faucet; \$145.59 for a damaged and discolored laundry sink; \$194.18 for a water pump because the tenant shut off the heat pump water valve; \$2,709.00 for cabinets, flooring and master bedroom drawers repairs and materials; \$1,975.00 for installation and repairs to 2 faucets, laundry sink, smart-lock, blinds, garbage removal, heat pump and bathroom sink stoppers; and \$1,680.00 for main floor ceiling and wall patches due to overflow of water from the upstairs bathroom.

The second landlord (HA) testified that there were 2 houses side by side and the landlords sold 1 of them, then moved into the basement of the other, where the tenant lived. After the tenant left, the landlords did some repairs for about a month and then at the end of November, 2023 the landlords moved in.

The landlord also testified that the tenant collected about \$100,000.00 from Air BNB rentals and admitted to that, but the landlords didn't know about it until after the tenancy ended.

Analysis

Firstly, neither party has complied with the *Residential Tenancy Act*.

The tenancy agreement shows a fixed-term expiring on October 31, 2020 then the tenant must vacate. However, the tenant didn't vacate until September 30, 2023 and continued to pay rent to the landlords, without signing a new tenancy agreement. Therefore, I find that the tenancy continued on a month-to-month basis.

Regardless of whether or not the landlords gave the tenant a deal on the amount of rent payable at the beginning of the tenancy, having listed it for rent at \$6,500.00 and entering into a tenancy agreement for \$5,500.00 per month, the contract specifies \$5,500.00 per month. The law specifies that to increase the amount of rent, the landlord must serve the tenant with a Notice of Rent Increase in the approved form no

less than 3 months before the increase takes effect. The law also specifies the amount of the increase, not \$1,000.00 per month. I accept the undisputed testimony of the tenant that the landlords increased rent illegally by \$1,000.00 from November, 2022 until September, 2023, I find that the tenant has established a monetary claim as against the landlords for the overpayment of **\$11,000.00**.

Where a landlord gives a Two Month Notice to End Tenancy For Landlord's Use of Property, the landlord must compensate the tenant the equivalent of 1 month's rent payable under the tenancy agreement, which I find is **\$5,500.00**. A tenant may end the tenancy earlier than the effective date of the landlord's Notice by giving the landlord no less than 10 days notice and paying rent to the end of that notice, and the landlord is still required to compensate the tenant 1 month of rent.

In this case, the tenant testified that he gave notice to end the tenancy by placing a copy in the landlord's mailbox and by email. There is no evidence before me that either party has agreed to exchange of legal documents by email. The landlord disputes that the tenant's notice was in the mailbox, and I am not satisfied that the tenant has established that. Therefore, the tenant is liable for the rent to the effective date of the landlords' Notice, which is October 31, 2023, or **\$5,500.00**.

The landlords' property manager gave some poor advice to the landlords indicating that a move-in condition inspection report didn't need to be completed because it was a new house at the beginning of the tenancy. The law states that if a landlord fails to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, the landlord's right to claim against a security deposit or pet damage deposit for damages is extinguished, and I so find.

However, the landlord's right to claim against the security deposit for unpaid rent or utilities is not extinguished, nor is the landlord's right to make a claim for damages.

A landlord must return a security deposit and/or pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application to keep the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. If the tenant fails to provide a forwarding address in writing within a year after the tenancy ends, the tenant's right to claim the security deposit from the landlord is extinguished.

In this case, the tenant provided a forwarding address in writing to the landlords on September 30, 2023 by email and testified that it was also left in the landlord's mailbox, but there is no evidence to support that and it is disputed by the landlords. The tenant

testified that all communication was done by email, but unless the parties agreed in writing that documents can be served by email, that cannot be considered. I have reviewed all of the evidence, with the exception of late evidence, which includes a tenant's statement. It only indicates that the forwarding address was provided to the landlords by email.

The landlords have applied to keep the **\$2,750.00** security deposit, and I so order to offset the unpaid rent of **\$5,500.00**. Having found that the tenant has not proven that he provided a forwarding address to the landlords in writing except by email, the tenant is not entitled to double the amount.

With respect to the landlord's damage claim, the *Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, and the regulations go into detail how that is to happen. Since neither report was done in accordance with the regulations, no such evidence exists. However, I have also reviewed the Property Inspection Report from what appears to be a qualified home inspector dated September 30, 2023, and the Invoices, statements and Estimates. The tenant testified that the tenancy ended on September 30, 2023.

In order to be successful, the landlords must establish that the landlords suffered damages, and I am satisfied that repairs were justified. The landlords must also establish the amount of damages, and that the damage is beyond normal wear and tear. I also refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements.

The landlord's Monetary Order Worksheet claims \$8,374.52 for damage repairs, and a breakdown has also been provided for this hearing.

The tenant disputed all claims for damages, testifying that there were many problems with the building, including cabinets and traces of leaks that the landlords never repaired. There is no evidence to support a finding that the tenant ever made the landlords aware of any problems with the building throughout the tenancy.

I have also reviewed the statements marked with the amounts that the landlords have claimed from the tenant, which includes cleaning on October 23, 2023 and November 2 and 6, 2023. I am not satisfied, considering that the cleaning bills were paid well more than a month after the tenancy ended, that the landlords can claim any amount from the tenant for cleaning.

The bank statement also shows \$2,709.00 paid for flooring and cabinets. I have reviewed the Home Inspection report showing that damage exists. The tenancy began on November 1, 2019, and the useful life of cabinets is said to be 15 years. Flooring is between 10 and 20 years. Therefore, I deduct 4 years from that cost, and I find that the landlords have established a claim of **\$1,986.60** ($\$2,709.00 / 15 = \$180.60 \times 4 = \722.40; $\$2,709.00 - \$722.40 = \$1,986.60$).

The landlords have also provided a copy of a Mastercard statement which includes a charge of \$79.71 for a fridge door compartment, and a receipt in the amount of \$218.41 including tax for a faucet. Also provided is a statement claiming \$145.59 for a new laundry sink, and \$503.99 for a lock, and another for a water pump in the amount of \$194.18. There is no mention of the fridge, laundry sink or water pump in the Home Inspection Report, and absent a move-in/out condition inspection report, I cannot find that the landlords have established those claims. The faucet and I find that the landlords have established a claim of **\$218.41**.

Another statement has been provided for a faucet costing **\$245.87**, also mentioned in the Home Inspection Report, and I find that the tenant is responsible for the repair.

The bank statement also shows a cost of \$2,205.00 for paint and patching, of which the landlords claim \$1,680.00 from the tenant. The useful life of interior paint is 4 years, and since the tenancy lasted just under 4 years, I dismiss the landlord's claim for painting.

With respect to the landlords' claim for unpaid utilities, I have reviewed the tenant's lengthy statement regarding a ratio. I have also reviewed the tenancy agreement and Addendum, as well as the tenant's evidence respecting being over-charged. In order to be successful in claiming any amount, the onus is on the landlord to provide copies of the bills. The landlords have only provided copies of emails demanding payment of utilities. Therefore, I dismiss the landlords' \$1,100.00 claim.

Having found that the tenant has established a monetary claim of **\$11,000.00** for overpayment of rent and **\$5,500.00** for compensation required by the law, and credit of **\$2,750.00** for the security deposit, for a total of **\$2,450.88**, and having found that the landlords have established a monetary claim of **\$5,500.00** for October, 2023 rent and **\$2,450.88** for damages, I set off those amounts and I grant a monetary order in favour of the tenant for the difference in the amount of **\$11,299.12**.

DESCRIPTION	AMOUNT DUE TO LL	AMOUNT DUE TO TNT
Rent Overpayment		\$11,000.00

Compensation for ending the tenancy		\$5,500.00
Unpaid rent for Oct/23 and security deposit	\$5,500.00	\$2,750.00
Damages	\$2,450.88	
TOTAL	\$7,950.88	\$19,250.00
DIFFERENCE		\$11,299.12

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fee from the other party.

I grant a monetary order in favour of the tenant as against the landlords in the amount of **\$11,299.12**. The landlords must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$11,299.12.

This order is final and binding and may be enforced.

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: March 07, 2024

Residential Tenancy Branch