



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, LRSD, FFL / MNDCT, MNSD, FFT

Introduction

The hearing was convened following Applications for Dispute Resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Landlord requests:

- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act;
- Authorization to retain all, or a portion, of the Tenant's security deposit under section 38 of the Act; and
- To recover cost of the filing fee for their Application from the Tenant under section 72 of the Act.

The Tenant requests:

- A Monetary Order for loss under the Act, Regulation, or tenancy agreement, under section 67 of the Act;
- A Monetary Order for the return their security deposit under sections 38 and 67 of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

Both parties attended the hearing and were each assisted by an Agent, and a translator.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) for the

other's Application and the other's evidence. Based on their testimonies I find that each party was served with these Materials and evidence as required under sections 88 and 89 of the Act.

Issues to be Decided

- Are either party entitled to the requested compensation?
- Is the Landlord entitled to retain the Tenant's security deposit, or is the Tenant entitled to its return?
- Are either party entitled to recover the filing fees for their Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on September 1, 2023 for a fixed term ending August 31, 2024 and continuing on a month-to-month basis thereafter.
- The Tenant vacated the rental unit on December 28, 2023.
- Rent was \$3,800.00 per month, due on the first day of the month throughout the tenancy.
- A security deposit of \$1,900.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.

Landlord's Claim

In their Application, the Landlord indicated they seek \$3,800.00 in compensation, though during the hearing they indicated a total of \$5,850.00 comprising of lost rental income and move-out fees was sought from the Tenant.

The Landlord argued the Tenant breached the tenancy agreement by ending the tenancy before the end of the fixed term, and a loss of rental income was incurred as a result. The Landlord's Application was submitted one day after the Tenant vacated the rental unit and the Landlord indicated the precise loss of rental income was not known

at this time. The Landlord seeks one and a half months in unpaid rent, totalling \$5,700.00, plus \$150.00 in unpaid move-out fees charged by the strata corporation.

The Landlord testified that the Tenant had contacted them on December 10, 2023, asking if they could end the tenancy, effective February 29, 2024, as the Tenant wanted to move closer to the school their children attend. The Landlord stated they agreed to end the tenancy as requested by the Tenant, though they believed they did not have to do to this.

The Landlord testified the Tenant then notified them via email on December 17, 2023 that they would be vacating the rental unit on December 31, 2023. The Landlord had started to look for a new tenant already by this point, but as it was the holiday season they were unable to find a new tenant until March 15, 2024. A copy of an online posting advertising the rental unit dated December 11, 2023 was entered into evidence.

The Landlord stated they did not wish to claim the full two months of rental income loss, nor the half a month's rent fee for breaking the tenancy early, as referenced in paragraph 8 of the tenancy agreement. However, some time after the Tenant vacated, the manager of the residential property informed the Landlord that a move-out fee was unpaid, and the Landlord seeks to recover this from the Tenant. The Landlord testified this move-out fee was \$150.00 and was referenced in email correspondence submitted into evidence.

The Tenant did not dispute the parties came to an agreement on December 10, 2023 whereby the tenancy would be ended before the end of the fixed term, on February 29, 2024. The Tenant testified that after this agreement was made, rats were discovered in the rental unit, and they ended the tenancy on this basis.

The Tenant stated that in November 2023 they discovered holes in the walls of the rental unit which they believed were made by rodents. They asked the Landlord and their realtor if they knew of any rodent issues within the rental unit and were informed there were none. They then caught mice making holes in food bags their children had eaten from, could hear the mice chewing at night, and their family struggled to sleep as a result.

The Tenant confirmed that they had not notified the Landlord they intended on ending the tenancy due to rodent-related issues prior to December 17, 2023 and no deadline to remedy the issue had been given to the Landlord. Copies of the email correspondence sent by the Tenant to the Landlord on December 17, 2023 were entered into evidence.

The Tenant acknowledged they understood the Landlord's claim related to loss of rental income and the amount claimed had changed since the Application was submitted, though stated they had not been aware the Landlord sought to recover the move-out fee until the Landlord mentioned this during the hearing.

Tenant's Claim

The Tenant seeks compensation of \$3,800.00 which they stated was the equivalent of one month's rent, as they had to move out early due to the previously mentioned rodent issues in the rental unit.

The Tenant argued that as the holes in the wall of the rental unit had been closed off, the Landlord knew the rodents were already there. They were concerned about the health of their family and did not use the kitchen once rats were discovered in December 2023. The Tenant argued that the rental unit was not suitable for habitation for the month of December 2023, so sought the return of rent paid for this month.

The Landlord testified that the Tenant had first mentioned the issue of rodents to the property manager on November 24, 2023 who had wanted to send a person round to check the rental unit for rodents, but the Tenant had said they wanted more time to observe the issue before action was taken.

The Landlord stated they never had any issues with rodents when they and their family had lived in the rental unit themselves and argued that they had responded to any issues raised by the Tenant promptly and referred me to a pest control invoice dated December 16, 2023 entered into evidence.

The Landlord stated the stuffing for the holes was put there following a leak within the building which was fixed by the strata corporation.

Security Deposit

The parties agreed that the Tenant had provided their forwarding address in writing to the Landlord on December 28, 2023 on the end of tenancy condition inspection report, a copy of which was entered into evidence.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the party making the claim must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Landlord's Claim

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. It was undisputed by the parties that the Tenant paid rent for the first four months of the tenancy, though vacated the rental unit on December 28, 2023, before the end of the fixed term, which was set to run until August 31, 2024 and the tenancy would continue on a periodic basis after that.

Fixed-term tenancies can be ended by a tenant before the end of the term is reached, but only in certain circumstances. Whilst one of these circumstances is if the landlord has breached a material term of the tenancy agreement, in this context the tenant is still required to give written notice of the landlord's failure to comply with the material term in question and provide a reasonable period to correct the situation, as set out in section 45(3) of the Act. If this is done, and the landlord does not correct the issue, the tenant may end the tenancy on a date that is after the date the landlord received notification of

the issue. A landlord and tenant may also end a tenancy before the end of the fixed term through mutual agreement.

I find the parties had mutually agreed to end the tenancy on February 29, 2024, before the end of the fixed term though soon after this agreement was made the Tenant vacated the rental unit and sought to end the tenancy effective December 31, 2023 owing to reports of rodents in the rental unit.

Based on the evidence before me, I find the Tenant did not provide notice to the Landlord that the issue of rodents within the rental unit was in their view a breach of a material term of the tenancy agreement or provide a reasonable deadline for the Landlord to correct the situation. Therefore, I find the Tenant was not entitled to end this tenancy before the agreed upon date of February 29, 2024, and has breached the tenancy agreement by doing so. Per section 7(1) of the Act, the Tenant must therefore compensate the Landlord for this breach.

I find that the Landlord advertised the rental unit on December 11, 2023, the day after the agreement to end the tenancy on February 29, 2024 was made, and by doing so has adequately mitigated their loss, as is required under section 7(2) of the Act.

Given the short notice period the Tenant provided to the Landlord and the time of year it was provided, I find it foreseeable a new tenant was not found until March 2024 and find the one and a half months of loss in rental income claimed by the Landlord to be reasonable in this case.

The Landlord's Application indicates the monetary amount requested is \$3,800.00, the equivalent of one month's rent, though during the hearing the Landlord indicated the amount requested increase to \$5,700.00 since the Application was submitted.

I find the Application was made a day after the Tenant vacated the rental unit so accept the extent of the total loss of rental income was not known then. Whilst the Landlord did not amend the Application ahead of the hearing, per the Tenant's acknowledgement during the hearing, I am satisfied they knew the Landlord's claim related to loss of rental income and the amount requested had changed.

Rule 7.12 of the *Rules of Procedure* allows applications to be amended at the hearing in certain foreseeable circumstances, and lists when rent owing has increased since the time the application was made as one of these circumstances. Given this, I amend the amount of compensation requested on the Landlord's Application.

Based on the above, I grant the Landlord's Application and I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$5,700.00.

The Landlord also sought to recover \$150.00 in unpaid move-out fees. Whilst section 7(1)(f) of the Regulation permits a landlord to charge a tenant for such fees, I find the Landlord did not request this amount as part of their Application and the amount of \$150.00 is not referenced in the Landlord's evidence.

Section 59 of the Act requires the full particulars of the dispute to be included in an application, which I find the Landlord has failed to do in the case of the claim for move-out fees. I also find the Tenant was not aware the Landlord was seeking to claim this amount until it was mentioned during the hearing, and this could not have been reasonably anticipated.

Given the above, I decline to amend the Landlord's Application to include a request for the \$150.00 move-out fee and find it would be procedurally unfair for me to determine this matter on the ground of procedural fairness since the Tenant was not aware of this claim before the hearing.

Tenant's Claim

The Tenant seeks \$3,800.00, which is the equivalent of one month's rent and argued the rental unit was not fit for habitation for the month of December 2023 owing to the presence of rodents and had to end the tenancy early.

Based on the pest control invoices and photographs appearing to show droppings and bite marks from bags of food, I find it more likely than not that rodents were present in the rental unit at some point. However, I find that the Tenant's allegation the rental unit was not habitable to be quite exaggerated and unsupported by evidence. I found nothing to indicate the Tenant suffered a loss in utility of the rental unit or, for example, damage to their personal property or illness caused by rodents, that would warrant the reimbursement of a month's rent.

Furthermore, I find that the Tenant has failed to establish the Landlord breached the Act, Regulation, or tenancy agreement in relation to the issue and find the Landlord appeared to respond in a reasonable timeframe once notified of the Tenant's concerns regarding rodents at the rental unit.

Given the above, I dismiss the Tenant's Application without leave to reapply.

Security Deposit

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, which ever is later.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the evidence before me and the testimony of both parties, I find that the Tenant provided their forwarding address on the condition inspection report completed on December 28, 2023. The Landlord submitted their Application the following day on December 29, 2023. Therefore, the Landlord has complied with section 38(1) of the Act and the doubling provisions of section 38(6) of the Act do not apply.

As I have made a payment order in favour of the Landlord under section 67 of the Act, as stated earlier in this Decision, I authorize the Landlord to retain the Tenant's security deposit, plus interest, in partial satisfaction of the payment order under section 72(2)(b) of the Act.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as \$28.36 using the Residential Tenancy Branch interest calculator using today's date.

Filing Fees

As the Landlord's Application was successful, I find they are entitled to recover the cost of the filing fee of \$100.00 from the Tenant under section 72 of the Act.

As the Tenant was not successful in their Application, their request to recover the filing fee from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Landlord's Application is granted.

The Tenant's Application is dismissed without leave to reapply.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Loss of rental income under section 67 of the Act	\$5,700.00
Filing fee	\$100.00
Less: security deposit, plus interest	(\$1,928.36)
Total	\$3,871.64

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: April 23, 2024

Residential Tenancy Branch