



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding BRIZO HOLDINGZ INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RPP, FFT / MNRL-S, MNDL-S, MNDCL-S, LRSD, FFL

Introduction

This reconvened hearing dealt with applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant requests the following:

- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 67 of the Act;
- An order for the Landlord to return the Tenant's personal property under section 65 of the Act; and
- To recover the cost of the filing fee for their Application under section 72 of the Act.

The Landlord requests the following:

- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- A Monetary Order for damage to the rental unit under section 67 of the Act;
- A Monetary Order for loss under the Act, 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 the cost of the filing fee for their Application under section 72 of the Act.

The first hearing took place on February 22, 2024 and was adjourned with the mutual agreement of the parties to allow both parties to serve their evidence to the other. This

Decision should be read in conjunction with the interim decision dated February 22, 2024 (the Interim Decision).

The Tenant and the Landlord attended both hearings. The Tenant was also assisted by their Agent at both hearings.

Service of Notice of Dispute Resolution Proceeding and Evidence

Service of the Notice of Dispute Resolution Proceeding was addressed in the Interim Decision.

As both parties were present, service of evidence was confirmed at the reconvened hearing. The parties each confirmed receipt of the other's evidence. Based on their testimonies I find that each party was served with the other's evidence as required under section 88 of the Act.

Issues to be Decided

- Is the Tenant entitled to a Monetary Order?
- Is the Tenant entitled to an order for the return of their personal property?
- Is the Landlord entitled to a Monetary Order for unpaid rent, damage to the rental unit, or other loss?
- Is the Landlord entitled to retain some, or all of the Tenant's security deposit in partial satisfaction of the Monetary Order?
- Are either party entitled to recover the filing fee 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 April 6, 2023 for a fixed term ending April 30, 2024, then continuing on a month-to-month basis thereafter.
- The Tenant vacated the rental unit on November 17, 2023 after a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) was issued by the Landlord.
- Rent was \$1,300.00 per month due on the first day of the month.

- A security deposit of \$650.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement, a copy of which was entered into evidence.

The Tenant's Claims

The Tenant's Agent testified as follows. The Tenant was laid off from work they were unable to pay rent. The Notice was issued with an effective date of November 20, 2023, which was not disputed, and the Tenant packed their belongings and began a move to Alberta on November 17, 2023.

The Tenant advised the building manager, PS, of this and that multiple trips from the rental unit, located in Chilliwack, to Alberta would be needed. The Tenant left the keys to the rental unit with another tenant of the residential building, NL, to pass onto a friend who had been asked to clean the rental unit.

The Tenant's friend attended the rental unit on November 18, 2023 to find it had been "ransacked" and they notified both the Tenant via a facetime call, and the police. It was alleged that NL had caused damage to the rental unit, and this would have been shown on security footage, which the Landlord would not provide to the Tenant.

The Tenant's Agent indicated the rental unit had been in a good condition before November 17, 2023 and I was referred to photographs of the balcony taken in the summer of 2023, though the precise date was not known. The Tenant also submitted extensive records of text message communication into evidence.

The Tenant seeks compensation of \$14,185.82 for the loss of items they allege were in the rental unit, or left in the parkade awaiting collection upon their return. Copies of receipts for over 50 items including household appliances, clothes, a tanning bed, a scooter, and a games console were entered into evidence. It was indicated a Monetary Order for compensation would be preferable to an order for the return of the items.

The Landlord's Agent testified as follows. Rent due November 1, 2023 went unpaid, they asked the Tenant if they were going to pay and when no reply was received, they issued the Notice themselves as PS was on vacation at the time. They then noticed on CCTV the Tenant moving items to their vehicle including furniture and tools. Copies of still images from the CCTV footage were entered into evidence. After this, they asked the Tenant to leave the access fob in the rental unit, but there was no reply.

They received the key to the rental unit from NL, who is a tenant living in the same residential property and has no other connection to the Landlord, on November 18, 2023. NL and another tenant of the residential property had indicated to the Landlord's Agent that they saw the Tenant take their belongings and said they were not coming back. They entered the rental unit and found it had been left a mess, with evidence of drug use, the smoke detector removed, patches in the wall where holes had been drilled, and a cat shelter built on the balcony without permission.

The Landlord's Agent testified that there were a few items left behind by the Tenant such as an old television and a couch, which were moved into storage in January 2024. Beyond this, they were unsure what else was left. The Landlord's Agent estimated the total value of the items to be under \$500.00 and indicated the Tenant can collect them if they want.

The Landlord's Claim

The Landlord seeks unpaid rent of \$1,300.00 due November 1, 2023, and a further \$2,600.00 for a loss of two months' rental income.

The Landlord's Agent testified they were unable to rent out the rental unit due to the damage caused by the Tenant, and they were ultimately able to find a new tenant who entered into a tenancy effective February 1, 2024.

There was a five week gap in moving the items left behind by the Tenant out of the rental unit as they were communicating with the Tenant's Agent to try and negotiate an agreement for repairs to the rental unit and discussing a pendant the Tenant alleged was left behind in the rental unit.

As the walls of the rental unit had been drilled into to hang pictures, the drywall needed repair. The deck had to be repainted, and the carpet required steam cleaning owing to damage caused by the Tenant's cat.

The Landlord provide a quote for repairs and removal of items for \$4,935.00 and \$945.00 respectively into evidence. The quotes cover cleaning, painting and repair of the walls, though the Landlord's Agent stated they did the work themselves to save money and the repairs took two weeks.

The Landlord also submitted into evidence photographs of the rental unit, a copy of the condition inspection report and records of communication with the Tenant's Agent.

The Tenant's Agent argued that the Landlord waited until December 28, 2023 to obtain a quote for repairs, and communication had stopped by November 25, 2023, and if the repairs only took two weeks to complete, two months of rental income was unreasonable to claim.

The Tenant's Agent indicated they believed NL caused the mess in the rental unit, and though it was acknowledged the Tenant did have a cat without the permission of the Landlord, as the Tenant had started to patch up holes in the wall themselves, this was evidence they intended to fix the holes.

The parties agreed that the Tenant had not provided their forwarding address in writing to the Landlord. The Landlord's Agent stated they relied on the address for service listed in the Tenant's Application for the purposes of their Application, and had thought the Tenant had abandoned the rental unit.

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.

Section 7 of the Act provides the basis of claims for compensation relating to breaches of the Act or a tenancy agreement. Section 7(1) states that if a landlord or tenant does not comply with the Act, the Regulation, or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 7(2) of the Act also requires the claiming party to take reasonable steps to minimize their loss.

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.

The Tenant's Claim

The Tenant seeks monetary compensation for the loss of an extensive list of personal items. Whilst receipts and order confirmation records for a significant amount of these

items were entered into evidence by the Tenant, I am not satisfied on a balance of probabilities that all of these items were indeed present in the rental unit on November 17, 2023, or that the Landlord took possession of these personal items in a manner which is prohibited under section 26(3) of the Act.

Further, I find the Tenant failed to establish exactly which, if any of the items referenced in their Application were left behind in the rental unit. The Tenant's position was also unsupported by any evidence besides records of receipts, some of which date back many years and I did not find the testimony of the Tenant's Agent alone to be sufficiently compelling in this regard. Also, based on the records of CCTV footage entered into evidence by the Landlord, I find the Tenant moved a significant amount of personal items from the rental unit into their vehicle before vacating the rental unit which I find is supportive of the Landlord's Agent's testimony.

Section 24(2)(b) of the Regulation states that a landlord may consider that a tenant has abandoned personal property if in this situation if the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property. Based on the records of communication entered into evidence by both parties, I find it was not at all clear from the Landlord's point of view that the Tenant was returning to collect the items left behind.

Having considered the evidence before me, I find the Landlord was entitled to reasonably assume the Tenant had abandoned the personal property, given the Notice had been served, effective November 20, 2023, which was not disputed by the Tenant. The Tenant was observed moving belongings out of the rental unit and the key was left behind with little in the way of clear communication regarding the Tenant's purported plans to return to the rental unit.

I find there were a very small number of the items referenced in the Tenant's Application left behind in the rental unit, which as stated above, I find were reasonably assumed to be abandoned by the Landlord. The items left behind were not recorded in an inventory by the Landlord, though per the testimony of the Landlord's Agent I find at least a television and a couch remained after the Tenant abandoned the rental unit. Beyond this, I found the vague and unreliable evidence and submission from both parties on this subject mean it is impossible for me to determine what other items were abandoned by the Tenant and remained in the rental unit on November 17, 2023.

Given the above, I dismiss the Tenant's request for a Monetary Order without leave to reapply. Further, since the Tenant has abandoned their personal property, I dismiss

without leave to reapply their request for an order for the Landlord to return personal property also.

However, given the Landlord's Agent acknowledged at least some of the items abandoned by the Tenant were still in storage, as is required by section 25(1)(a) of the Regulation, but no inventory has been prepared, under the authority afforded to me under section 62(3) of the Act, I order the Landlord to comply with the remainder of part 5 of the Regulation in respect of abandonment of personal property.

This means the Landlord must do the following:

- Keep a written inventory of the property, per section 25(1)(b) of the Act.
- Keep particulars of the disposition of the property for 2 years following the date of disposition, per section 25(1)(c) of the Act and;
- Advise the Tenant or their representative who requests the information either that the property is stored or that it has been disposed of.

Parties are reminded that per section 25(2) of the Regulation, the Landlord may dispose of the property in a commercially reasonable manner if they reasonably believes that:

- The property has a total market value of less than \$500,
- The cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- The storage of the property would be unsanitary or unsafe.

The Landlord's Claim

The following was undisputed by the parties:

- Rent due November 1, 2023 went unpaid by the Tenant
- The Notice was issued and the outstanding rent of \$1,300.00 remains unpaid.
- The fixed term of the tenancy was set to run until April 30, 2024.

Given the above, I find the Tenant is in breach of Section 26 of the Act which requires tenants to pay rent on time and the Landlord has established their claim for \$1,300.00 for the rent due November 1, 2023.

The Landlord also seeks an additional \$2,600.00 representing a further loss of income as the rental unit was in a condition where it was not possible to re-rent, owing to the alleged damage caused by the Tenant.

As set out in Policy Guideline 3 - Claims for Rent and Damages for Loss of Rent, in sections C and D, a landlord may claim losses if a tenant's actions, including non-payment of rent result in a tenancy ending early, or if damage caused by the tenant renders the property un-rentable. Both of these scenarios are possible in this case.

Though the Tenant took the position that some of the damage was caused by another tenant of the residential property, I find it was acknowledged the holes in the wall which were partially repaired were caused by the Tenant and required repairs. Additionally, given the fixed term was ended early due to the Tenant's conduct, namely non-payment of rent, and the Tenant abandoned the rental unit on November 17, 2023 it is entirely foreseeable that it would not be possible to re-rent the rental unit by December 1, 2023.

Based on the above, I find the Landlord has established their claim for a loss of rental income, though I am not inclined to award the full two months requested. I find there was a significant delay in the rental unit being emptied of the Tenant's abandoned items, with the process not starting until 5 weeks after November 17, 2023. Further, per the quote for repairs entered into evidence by the Landlord, the process of repairing the rental unit was only commenced in late December 2023, so I find the loss of rental income for January 1, 2024 is as a result of the Landlord failing to adequately mitigate their losses. I therefore issue a Monetary Order for one month's rent of \$1,300.00 to the Landlord.

The Landlord also seeks \$5,880.00 in compensation for repairs and removal of garbage from the rental unit. A quote for \$945.00 for removing garbage and furniture and a quote for \$4,935.00 for cleaning, and repairing the deck and walls of the rental unit were entered into evidence.

Based on the photographic evidence of the Landlord, I find there was a significant amount of garbage, drug paraphernalia and abandoned items left in the rental unit after the Tenant vacated. Though the Tenant took the position that the garbage and mess was caused by another tenant, NL, who they gave the key to, I find this notion to be implausible and lacks a ring of truth. Further, since the Tenant acknowledged giving the key to the rental unit to NL, rather than an agent of the Landlord, they would be responsible for any damage caused by NL, since they were permitted or allowed on into the rental unit by the Tenant.

I find the time needed to spend removing the garbage and items abandoned by the Tenant would be reasonably significant, based on the extensive amount of debris shown in the photographic evidence. I find the photographs further indicate the Tenant breached section 37 of the Act by failing to leave the rental unit reasonably clean and the Landlord has established their claim for cleaning costs.

However, I am not inclined to award the full amount requested in respect of cleaning and repairs. Per the condition inspection report, the walls are recorded as “fair” condition at the start of the tenancy and based on the pre-tenancy photographs the finish was a significant way through its useful life.

Additionally, the Landlord’s Agent confirmed the amount seen on the quotes was not paid, and they carried out the work themselves to save money. I note in the records of text message correspondence between the parties that the Landlord’s Agent is seen to indicate they carried out the work for cheaper.

Given the above, to award the full amount requested would result in betterment for the Landlord and I determine compensation of \$1,500.00 to be appropriate in this case and issue a monetary award under section 67 of the Act accordingly.

Security Deposit

I find the Tenant had not provided their forwarding address in writing to the Landlord when the Application was made. Therefore, the fifteen day period set out in section 38(1) of the Act whereby the Landlord would have to either return the security deposit and pet damage deposit to the Tenant, or make an application claiming against them had not started, and the provisions of section 38(6) of the Act whereby the deposits may be doubled do not apply in this case.

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 deposits was calculated as \$17.65 using the Residential Tenancy Branch interest calculator using today’s date.

Filing Fees

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act. As the Tenant's claims were dismissed, they must bear the cost of the filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply, though the Landlord is ordered to comply with part 5 of the Regulation in respect of abandoned property.

The Landlord's Application is granted.

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
Unpaid rent	\$1,300.00
Loss of rental income	\$1,300.00
Repairs, removal of items and cleaning	\$1,500.00
Filing fee	\$100.00
Less: security deposit, plus interest	(\$667.65)
Total	\$3,532.35

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: June 19, 2024

Residential Tenancy Branch