



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, 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 seeks:

- A Monetary Order for unpaid utilities under sections 26 and 67 of the Act;
- 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 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 seeks:

- 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.

The Landlord and the Tenant attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Service of Notice of Dispute Resolution Proceeding and Evidence

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Proceeding Package (the Materials) and the other's evidence. Based on their testimonies I find that each party was served with the Materials and evidence as required under sections 88 and 89 of the Act.

Preliminary Issues

Amendment

The Tenant listed the Landlord's sibling as a Respondent in their Application. The Landlord testified that whilst their sibling's details are provided on the written tenancy agreement in case of an emergency, they were not an agent of theirs, nor were they party to the tenancy. Given this, under section 64(3)(c) of the Act I amend the Tenant's Application to remove the Landlord's sibling.

Particulars of the Landlord's Claim

The Landlord indicated in their Application they sought compensation for "Utilities (Internet & BC Hydro)" in the amount of \$517.37 under their claim for unpaid utilities. Under their claim for monetary loss or other money owed under the Act, Regulation or tenancy agreement, they sought the amount of \$928.33, did not provide any supporting evidence and indicated that they "will provide a list within 3 days".

On July 4, 2024, fifteen days before the hearing took place, the Landlord submitted a request to amend their application. The request form did not reference losses besides utilities. The Landlord submitted a separate document which referred to costs of finding a replacement tenant, and the Landlord wished for this to be discussed at the hearing. The Tenant indicated they did not anticipate this being raised at the hearing or that the Landlord was seeking compensation associated with this issue.

Rule 2.5 of the *Rules of Procedure* states that to the extent possible, the applicant must submit with their application a detailed calculation of any monetary claim being made. Section 59(2)(b) of the Act also states that an application must include the full particulars of the dispute. Whilst it is not compulsory, a party seeking compensation from another may also include a Monetary Order Worksheet (form RTB-37) to ensure a

monetary claim is clear and organized. This is to ensure that, in the interest of procedural fairness, the other party knows the claim being made against them.

Though the Landlord submitted a separate document to the Residential Tenancy Branch and to the Tenant on July 5, 2024 referencing claims other than those for unpaid utilities, but from reviewing this document I find it is not clear the total amount claimed by the Landlord, or what exactly is being claimed, besides unpaid utilities as initially set out in their Application.

I find it very plausible that the Tenant did not reasonably believe the issues the Landlord sought to raise at the hearing, besides utilities, would be discussed. As such, in the interests of procedural fairness, I declined to hear these issues and render a decision on them. The Landlord is at liberty to raise the issues outside of unpaid utilities in a separate application, though is cautioned that failure to adhere to Rule 2.5 and Section 59(2)(b) of the Act may result in their application being dismissed.

Issues to be Decided

- Are either party entitled to the requested compensation?
- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit, or is the Tenant entitled to its return?
- Are either party entitled to recover the filing fee for their Applications from the other?

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 March 1, 2024 for a fixed term ending July 31, 2024, with a vacate clause for the Landlord's occupancy.
- The Tenant vacated the rental unit on March 25, 2024.
- Rent was \$2,300.00 per month due on the first day of the month.
- A security deposit of \$1,150.00 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 Landlord's Claim

During the hearing the parties reached a settlement on mutually agreed terms for the Landlord's claim for unpaid utilities during the Tenant's occupation of the rental unit.

The parties agreed the Tenant will pay to the Landlord the sum of \$102.92 for BC Hydro and internet usage for their period of occupancy of the rental unit, which ran until March 1 to March 25, 2024.

The Landlord also seeks to recover \$308.00 for internet usage and \$429.69 for BC Hydro use after the Tenant vacated on March 25, 2024, to the date the fixed term was set to run of July 31, 2024. The Landlord stated the Tenant vacated the rental unit before the end of the fixed term and though they were able to find a new tenant, they would not agree to pay for utilities and would only accept the tenancy if these charges were included in rent. One other prospective tenant was rejected due to a failed criminal background check and came across as aggressive in email communication.

The Tenant testified that they had an allergic reaction to something in the rental unit, possibly mould, soon after they began their occupation and ended the tenancy on this basis. The Tenant acknowledged the tenancy was not ended with the agreement of the Landlord and there had been no requests made to the Landlord for mould tests or any other remedy to the situation prior to the Tenant vacating the rental unit.

The Tenant stated they showed two prospective tenants around the rental unit, one who was willing to pay utilities and spoke with the Landlord for an hour, though the Landlord rented to a person who had lived in the rental unit before and was known to them already.

The Tenant's Claim

The Tenant seeks the reimbursement of \$519.33 from the Landlord which represents seven days of prorated rent for the period they paid rent, but did not occupy the rental unit, which was from March 25 to March 31, 2024.

The Tenant stated that as they paid the full \$2,300.00 due March 1, 2024, vacated March 25, 2024, and the Landlord's new tenant started a tenancy effective March 25,

2024, they are entitled to recover rent they paid beyond this date, as the Landlord has been compensated from their new tenant.

The Tenant indicated they had chest pain and issues with their throat after moving into the rental unit and was advised by a nurse to leave. The Tenant indicated they believed there was mould in the rental unit as they detected a bread-like smell.

The Landlord stated the Tenant had insisted they sign a mutual agreement to end tenancy, which they did not do. The Landlord indicated their new tenant started their tenancy the day after the Tenant vacated, and took the position that they did not have to return the rent paid by the Tenant. The Landlord also stated they did not believe there were any issues with the rental unit and they themselves have issues with allergies and never experienced any problems while occupying the rental unit.

Security Deposit

The Tenant provided their forwarding address in writing to the Landlord via email on April 2, 2024. Copies of the correspondence was provided into evidence by the Tenant. The parties provided email addresses for service on the tenancy agreement. The Landlord acknowledged receipt of the Tenant's forwarding on April 2, 2024.

The parties agreed that a condition inspection report was not prepared at either the start or at the end of the tenancy.

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 Landlord's Claim

As already noted in this Decision, the parties agreed to a settlement of the Landlord's claim for unpaid utilities during the Tenant's occupation of the rental unit. Therefore, under Section 64.2 of the Act I issue the Landlord a monetary order for \$102.92 to give effect to this settlement.

The Landlord also seeks to recover the cost of utilities for the remainder of the fixed term of the tenancy, after the Tenant vacated as the new tenant would not agree to pay these costs under their tenancy agreement. It was undisputed by the parties that the fixed term was set to run to July 31, 2024 and that the Tenant vacated the rental unit on March 25, 2024.

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. Another circumstance a fixed-term tenancy may be ended early is through mutual agreement of the parties.

Per the Tenant's testimony, I find though they were of the belief that there was a mould issue within the rental unit, they did not provide the Landlord written notice of the issue and a period to correct this before ending the tenancy, rather I find the Tenant ended the tenancy unilaterally and in breach of the fixed-term. Though I find the Tenant provided the Landlord the opportunity to sign a mutual agreement to end the tenancy, the Landlord did not accept, and there was no agreement to end the tenancy before the end of the fixed-term.

Based on the above, I find the Tenant was not entitled to end the fixed-term of the tenancy before July 31, 2024 through the Landlord's failure to comply with a material term, nor was there mutual agreement to end the tenancy or any other circumstance present whereby this fixed term could have been ended early.

Based on the above, I find the Tenant has breached the tenancy agreement by ending the tenancy before the end of the fixed term. However, I am not inclined to issue a monetary order in favour of the Landlord as I find they failed to establish their alleged losses stemming from the breach of the tenancy agreement on the Tenant's part were reasonably mitigated.

Though the Landlord testified their new tenant refused to accept a tenancy agreement whereby they would pay for utilities, this testimony was uncorroborated by evidence and was disputed by the Tenant's testimony, which I found to be equally as plausible as the Landlord's. Accordingly, I dismiss without leave to reapply the remainder of the Landlord's claim for unpaid utilities.

The Tenant's Claim

The Tenant seeks a partial reimbursement of the rent paid for the month of March 2024, for the period they ceased to occupy the rental unit, specifically March 25 to March 31, 2024, on a prorated basis.

As I have already noted in this Decision, I find the tenancy was ended due to a breach on the Tenant's part, not the Landlord's. Therefore, I find the Tenant has failed to establish on a balance of probabilities their loss was caused by a breach of the Act, Regulation, or tenancy agreement by the Landlord. As such, no compensation is due to the Tenant, and I dismiss their claim 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.

I find the tenancy ended on March 25, 2024 and the Tenant provided their forwarding address in writing to the Landlord via email April 2, 2024. The parties had an agreement to serve records to one another via email. The Landlord acknowledged receipt of the Tenant's forwarding address the same day it was sent, April 2, 2024. The Landlord

submitted their Application on April 17, 2024. Given this, the Landlord has applied within the fifteen day timeframe set out in section 38(1) of the Act.

Though the Landlord has extinguished their right to claim against the security deposit for damages under section 24(2) of the Act by failing to prepare a condition inspection report, they retain the right to claim for other losses such as those relating to unpaid utilities, as the Landlord has done in this case. Therefore, the doubling provisions of section 38(6) of the Act do not apply. Had the Landlord's Application been made up solely of a claim for damages to the rental unit, the doubling provisions would have applied since the Landlord extinguished their right to make such a claim.

As I have made a payment order in favour of the Landlord, as outlined previously in this Decision, I authorize the Landlord to retain \$102.92 from the Tenant's security deposit in satisfaction of the payment order under section 72(2)(b) of the Act. The Landlord must return to the Tenant the remainder of the security deposit, plus interest.

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 \$14.17 using the Residential Tenancy Branch interest calculator using today's date.

Filing Fees

As the Tenant was not successful in their Application for compensation, the request to recover the filing fee from the Landlord under section 72 of the Act is dismissed, without leave to reapply. Though the Tenant's claim for the return of their security deposit was partially successful, it was not necessary for the Tenant to raise this issue since it would have been address as part of the Landlord's Application.

As the Landlord has been at only partially successful in their Application, I am not inclined to award the recovery of the full \$100.00 filing fee. I order the Tenant to pay the Landlord the amount of \$50.00 in respect of the filing fee in accordance with section 72 of the Act.

Conclusion

The parties agreed to the settlement of part of the Landlord's Application relating to unpaid utilities. The remainder of the Landlord's Application is dismissed without leave to reapply.

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

The Tenant is issued a Monetary Order for the return of their security deposit and interest, less the monetary award in favour of the Landlord agreed by settlement and \$50.00 for the filing fee. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenant's obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below:

Item	Amount
Return of security deposit, plus interest	\$1,164.17
Less: unpaid utilities	(\$102.92)
Less: filing fee	(\$50.00)
Total	\$1,011.25

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: July 23, 2024

Residential Tenancy Branch