



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT / MNRL, MNDCL, FFL

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 Tenant requests the following:

- A monetary order for compensation for damage or loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act; and
- To recover the cost of the filing fee for their Application from the Landlord 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 loss under the Act, Regulation, or tenancy agreement, under section 67 of the Act; and
- To recover the cost of the filing fee for their Application from the Tenant under section 72 of the Act.

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 Package (the Materials) for the other's Application. The Landlord acknowledged receipt of the Tenant's evidence and

did not provide any documentary evidence of their own for consideration in relation to either Application.

Based on their testimonies and mutual confirmation of receipt, and as no objections on this issue were raised, I find that the Materials for both Applications and the Tenant's evidence was served as required under sections 88 and 89 of the Act.

Issues to be Decided

- Are either party entitled to the requested compensation?
- Are either party entitled to recover the filing fees for their respective 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 to the following:

- The parties agreed to terms of a tenancy agreement starting August 1, 2024 for a fixed term of a year.
- Under the agreement, rent was \$2,950.00 per month due on the first day of the month.
- A security deposit of \$1,400.00 was paid by the Tenant, which the Landlord has returned in full.
- The Tenant took occupancy of the rental unit, a three-bedroom townhouse, on August 1, 2024 and their occupancy ended on August 2, 2024.

The Tenant testified they signed a written tenancy agreement but were not provided with a copy by the Landlord. The Landlord testified that there was no written tenancy agreement.

The Tenant's claim

The Tenant testified rent due on August 1, 2024 went unpaid as they had issues with internet connection which meant e-transfers would not go through. Per the Tenant, they notified the Landlord of this. On August 2, 2024, they returned to the rental unit to find

their belongings had been removed and left on the lawn by the Landlord. The Landlord stated they would call the police if the Tenant did not leave.

The Tenant indicated they were aware they could have disputed the matter, requested an Order of Possession, and potentially preserved the tenancy but did not wish to do so given the Landlord's conduct.

Per the Tenant, they were made homeless on August 2, 2024 by the Landlord's actions and lived in a tent for a few days, then stayed in hotels. They seek to recover from the Landlord the costs of the hotels, totalling \$753.36 per the receipts provided as evidence, as well as fees incurred for the removal and storage of their belongings, which totalled \$315.00 and \$163.94 respectively.

The Tenant also seeks to recover \$810.00 for taking two days off work to deal with the issue, and \$800.00 for food going to waste, though no evidence to support these claims was provided as evidence. They also seek compensation of a month's rent of \$2,950.00 as part of their Application, though acknowledged this amount was never paid to the Landlord.

The Landlord did not dispute the circumstances surrounding the Tenant's occupancy of the rental unit coming to an end put forward by the Tenant. They testified the Tenant had told them on August 1, 2024 the e-transfer for rent had already been sent, and provided the keys to the rental unit on this basis.

When the e-transfer did not arrive, they called the Tenant but there was no answer, and on August 2, 2024 they attended the rental unit to find it unlocked and proceeded to remove the Tenant's belongings. The Tenant then attended with their daughter and the Landlord asked them to leave because of the unpaid rent.

The Landlord did not issue a 10 Day Notice to End Tenancy for Unpaid Rent. Per the Landlord, they believed the Tenant was never going to pay rent as they had only paid part of the security deposit agreed upon. The Landlord disputed the notion they were responsible for the hotel, moving and storage costs claimed by the Tenant as they believed the Tenant was able to stay with their daughter's mother instead.

The Landlord's claim

The Landlord seeks to recover one month's rent from the Tenant in the amount of \$2,950.00, stating they never received the rent due on August 1, 2024 and that they were only able to re-rent the rental unit from mid-September 2024.

The Landlord also seeks to recover \$171.50 from the Tenant for taking a day off work on August 2, 2024 to attend the rental unit and remove the Tenant's belongings.

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, Regulation, 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.

As set out in Policy Guideline 16 - *Compensation for Damage or Loss*, the party seeking compensation should present compelling evidence of the value of the damage or loss in question. Also, 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 claims

It was undisputed by the parties that one day after the tenancy started, the Landlord entered the rental unit without notice and removed the Tenant's belongings. I find the Landlord's actions breached multiple sections of the Act as follows:

- Section 26(3) of the Act, which states that whether or not a tenant pays rent per the tenancy agreement, a landlord must not seize any personal property of the tenant, or prevent or interfere with the tenant's access to the tenant's personal property.

- Section 28 of the Act, which confirms a tenant's right to quiet enjoyment which includes, but is not limited to, freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the Act.
- Section 29 of the Act, which states that a landlord must not enter a rental unit unless certain conditions apply, including when a tenant gives permission at the time of entry, or the landlord has given written notice in accordance with this section.
- Section 30 of the Act, which states that a landlord must not unreasonably restrict access to a residential property by a tenant.
- Sections 44 and 57 of the Act which set out the ways a tenancy ends and that a landlord must not take actual possession of a rental unit unless the landlord has a writ of possession.

In these circumstances, I find the Tenant was reasonable for not wanting to continue the tenancy and occupation of the rental unit, and the costs associated with their hotel stay, storage and removal of their belongings were justified and were incurred as a result of the Landlord's breaches of the Act as outlined above. I also find the amounts claimed are reasonable and supported by evidence. Given this, I find the amounts are recoverable in full from the Landlord. I issue the Tenant a monetary award as follows:

Item	Amount
Storage costs	\$163.94
Moving costs	\$315.00
Hotel stay	\$753.36
Total	\$1,232.30

I find the Tenant's claims for spoiled food and loss of income was uncorroborated by any evidence and I declined to make any monetary award for these issues. I dismiss these claims without leave to reapply.

The Tenant also seeks the equivalent of one month's rent in compensation from the Landlord. It was undisputed this amount was not paid to the Landlord and the Tenant received a full refund of the security deposit. Given this, I find this is not a case where the Tenant paid rent for a period where they were prevented from using the rental unit. However, I find the Tenant outlined in their Application the amount claimed was for "nowhere to live and now I have to wait until rentals are available for next month".

Keeping in mind the dispute resolution process is set up for lay parties who may not be aware of an arbitrator's authority to award aggravated damages, I find the Tenant has nevertheless outlined sufficiently they intended to seek compensation stemming from the manner in which they were removed from the rental unit by the Landlord and that tenancy ended abruptly. In these circumstances, I find it appropriate to award compensation of \$1,000.00 to the Tenant under my authority set out at section 67 of the Act.

The Landlord's claim

The Landlord seeks one month's rent of \$2,950.00 from the Tenant, which was due August 1, 2024. Section 26 of the Act requires tenants to pay rent when it is due, whether or not the landlord complies with the Act, the Regulation, or the tenancy agreement unless they have a legal right to withhold some, or all, of the rent.

It was undisputed the Tenant did not pay rent on August 1, 2024. The events of August 2, 2024 were not in dispute and have already been set out earlier in this Decision so I do not feel the need to repeat them. The Landlord had the option to issue a 10 Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act as soon as rent was late, though did not do so. Had this been done, and the outstanding rent remained unpaid five days after the Tenant's receipt of the notice, the Landlord would have had a clear pathway to end the tenancy in accordance with the Act and recover the amount of rent due on August 1, 2024 in full.

I find the Landlord ended this tenancy outside of the provisions of the Act, which are set out in full at section 44 of the Act. As previously noted, I find the Landlord's breaches of the Act to be numerous and significant. In these circumstances I find it justified to exercise my authority under section 44(1)(f) of the Act and order this tenancy ended on August 2, 2024. The Tenant's obligation to pay rent after this date ceased.

Based on the above, I am not inclined to issue a monetary award to the Landlord for unpaid rent, not even on a *per diem* basis for August 1 and 2, 2024. I find the conduct of the Landlord, including their return of the security deposit in full, the lack of any Notice to End Tenancy for Unpaid Rent and their disregard of the Act amounts to a waiver of any right to recover rent due under the tenancy agreement from the Tenant. I dismiss the Landlord's claim without leave to reapply. I also dismiss the Landlord's claim for loss incurred for taking time off work since I find this was not necessary and whilst the Tenant breached the tenancy agreement by failing to pay rent when it was due, there

were other options open to the Landlord which were compliant with the Act that would not have required them to take time off work, as outlined above.

Filing fee

As the Tenant was at least partially successful in their Application, I grant their request to recover the \$100.00 filing fee from the Landlord under section 72 of the Act. As the Landlord was unsuccessful in their Application, they must bear the cost of the filing fee.

The Landlord's conduct

Because I am concerned that the Landlord acted outside of the Act in a serious manner, I am sending a copy of this Decision to my manager. My manager will review this Decision and if they are of the opinion that these circumstances could reasonably lead to administrative penalties, then they will send a copy of this Decision along with any other relevant materials from the dispute resolution file to the Compliance and Enforcement Unit. This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither I nor my manager play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of the dispute resolution file, they can also consider additional evidence that was not before me. They are not bound by the findings of fact I have made in this Decision.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

The Tenant is issued a Monetary Order. 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
Compensation for moving, storage and hotel costs	\$1,232.30
Other compensation under section 67 of the Act	\$1,000.00
Filing fee	\$100.00
Total	\$2,332.30

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: November 20, 2024

Residential Tenancy Branch