Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding PEMBERTON HOLMES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, LRSD, FFL / MNSDS-DR

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 Landlord seeks:

- 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;
- Authorization to retain the Tenants' security deposit under section 38 of the Act; and
- To recover cost of the filing fee for the Application from the Tenants under section 72 of the Act.

The Tenants seek:

- A Monetary Order for the return their security deposit under sections 38 and 67 of the Act.

The first hearing took place on February 10, 2025, which was adjourned to allow for issues with service of the Notice of Dispute Resolution Proceedings for both Applications and the evidence for both parties to be dealt with. This Decision should be read in conjunction with the interim decision dated February 10, 2025.

Service of Notice of Dispute Resolution Proceeding and Evidence

At the reconvened hearing, the parties each confirmed receipt of the Notice of Dispute Resolution Proceeding Package for the other's Application and the other's evidence. No issues with service were raised. Given this, I find that these records were served as required under sections 88 and 89 of the Act.

Neither party wished to provide further evidence having received the other's records.

Preliminary Issue – Amendment

Section 64(3)(c) of the Act permits me to amend an application subject to the Residential Tenancy Branch *Rules of Procedure*. Rule 7.12 of the *Rules of Procedure* permits me to amend an application at the hearing when the amendment can be reasonably anticipated by the respondent.

Under the claim for damage to the rental unit, the Landlord requested compensation for cleaning and removal of items left in the rental unit. Strictly speaking, these claims are not considered damage. I therefore amend the Application under section 64(3)(c) of the Act so that the Landlord's claims for cleaning and removal of items are considered under a claim for a Monetary Order for compensation for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 67 of the Act, which would encompass these claims.

I find the claims are clearly outlined in the Application. As such, I find this amendment does not unfairly prejudice the Tenants.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to a Monetary Order for loss under the Act, Regulation, or tenancy agreement?
- Is the Landlord entitled to retain the Tenants' security deposit?
- If not, are the Tenants entitled to a Monetary Order for the return of their security deposit?
- Is the Landlord entitled to recover the cost of the filing fee for their Application from the Tenants?

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 May 22, 2024 for a fixed term ending on April 30, 2025 and was set to continue on a month-to-month basis after that.
- Rent was $1,595.00 per month due on the first day of the month throughout the tenancy.
- A security deposit of $797.50 was paid by the Tenants on June 12, 2024.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The tenancy ended because of a 10 Day Notice to End Tenancy for Unpaid Rent, from which the Landlord obtained an Order of Possession and a Monetary Order, both dated September 26, 2024.
- The Landlord served the Order of Possession to the Tenants via email on September 27.
- The Tenants received an interim stay on the Order of Possession on October 8, though vacated the rental unit on or around October 31.

The Landlord's claim

As noted previously in this Decision, the Landlord obtained a Monetary Order for unpaid rent due on September 1 and an Order of Possession ending the tenancy. The file number for the previous dispute is included on the front page of this Decision for reference.

The Tenants continued to occupy the rental unit for the month of October under an interim stay granted by the Supreme Court, so the Landlord seeks compensation of one month's rent totalling $1,595.00 for use and occupancy, plus a further $50.00 for late payment of rent.

Per the Landlord's Agent, the Tenants did not try to make payment for occupancy of the rental unit in October, and had they done, receipts for "use and occupancy" would have been issued.

The Landlord takes the position the Tenants abandoned the rental unit since they did not provide written notice, though acknowledged the Tenants had provided notice through a phone call some time before November 4 – precise date unknown – that they would be vacating the rental unit and leaving the keys behind.

An end of tenancy condition inspection was carried out by the Landlord on November 4. The Tenants were not present and had not been provided an opportunity to attend, given it was the Landlord's belief the rental unit was abandoned by the Tenants.

The Landlord seeks to recover $992.11 from the Tenants for costs associated with cleaning the rental unit and removal of a mattress and a barbecue left behind. An itemized invoice for these costs from the Landlord's in-house maintenance staff was provided as evidence.

The Landlord's Agent testified the counters, appliances, flooring and bathroom were left in a dirty state by the Tenants. I was also referred to photographs which accompanied the condition inspection report.

The Tenants provided their forwarding address in writing in an email to the Landlord on November 11, 2024, which the Landlord's Agent acknowledged receiving the same day. The parties have an agreement to serve one another using email.

The Tenants' response

The Tenants did not dispute that they continued to occupy the rental unit until October 31 under the interim stay of the Landlord's Order of Possession, though testified that they had tried to pay the Landlord twice in October and the payments were rejected each time. Given this, they were under the impression the Landlord had given them grace and waived their right to rent for this month. The Tenants stated that whilst this was not a clear agreement, from their viewpoint it was an implied one.

The Tenants testified they cleaned the rental unit before they left and disputed it was dirty when they vacated. I was referred to photographs of the rental unit provided as evidence by the Tenant which they testified were taken on October 31.

The Tenants testified they took the mattress and barbecue with them when they left, and did not leave these items behind. The Tenants indicated their belief that the

photographs provided by the Landlord which show these items in the rental unit were taken during an inspection a month or so before they vacated.

The Tenants disputed they abandoned the rental unit and testified they made it clear in their phone call, which took place on October 30 or 31, that they would be vacating and leaving behind the keys as instructed. The Tenants took the position the Landlord had means of contacting them, such as by email, so they could have offered them a chance to attend the inspection on November 4.

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(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.

In order to be successful in their claim, a party must prove on a balance of probabilities that the other party breached the Act, Regulation, or tenancy agreement, that this breach caused a loss, and that reasonable steps were taken to mitigate this loss.

As set out in Policy Guideline 16 - *Compensation for Damage or Loss*, a 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.

Landlord's claim for unpaid rent

The claim is more accurately characterized as a claim for overholding costs. 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. A tenant's obligation to pay rent ends with the tenancy, though

as set out in section 57 of the Act, if a tenant overholds and continues to occupy a rental unit after the tenancy ends, a landlord may claim compensation for this.

In this case, I find the tenancy ended on September 19, 2024 under a 10 Day Notice to End Tenancy for Unpaid Rent, as set out in the decision dated September 26, following the Landlord's previous application to the Residential Tenancy Branch. The Landlord was also issued a Monetary Order taking into account the rent due for September.

It was undisputed the Tenants continued to occupy the rental unit after the tenancy ended, doing so under an interim stay of the Order of Possession, though ultimately, they vacated on October 31. Whilst the Tenants argued the Landlord had implicitly given up their right to claim any rent or overholding costs for October, I found insufficient evidence to support this. I found the Tenants' evidence which spoke to this issue to be vague and to carry little weight.

Based on the above, I find the Landlord has established their claim for compensation for the Tenants overholding in the rental unit after the tenancy ended for the entirety of October. I issue the Landlord a monetary award for $1,595.00 accordingly. I am not inclined to grant the Landlord's request for late fees and returned payments. Whilst paragraph 10 of the tenancy agreement provides for these fees up to $25, as is permitted under section 7(1)(d) of the Regulation, I find the term is intended to apply to rent, not overholding fees.

Landlord's claim for cleaning and removal of items

Section 37(2)(a) of the Act requires tenants to leave the rental unit reasonably clean when they vacate. The standard of cleaning imposed by the Act is not one of perfection. The itemized invoice submitted by the Landlord as evidence provides for costs of $552.50, plus taxes, for deep cleaning of the rental unit.

Whilst the condition inspection report prepared at the end of the tenancy was done so in the absence of the Tenants, which causes me to question its reliability, it is accompanied by photographs which I find are date stamped and include metadata including the location the image was taken, which matches that of the rental unit. Given this, I afford the photographic evidence of the Landlord significant weight.

From a review of the images, I find the majority of the rental unit is seen in be in a reasonably clean condition. There are some exceptions, namely the toilet, kitchen sink,

microwave, and very occasional areas of the kitchen counter which I find are not reasonably clean. In these circumstances, I find the Landlord has established their claim for cleaning costs, but the full amount claimed is not justified. I find nominal damages of $100.00 to be appropriate in this case.

The parties took conflicting positions on the question of whether a barbecue and a mattress were left behind in the rental unit by the Tenants. The Landlord's photographic evidence shows the items are clearly there. I have already noted why I give this evidence of the Landlord significant weight. Whilst the Tenants stated the Landlord's photographs could have been taken during an inspection in the months leading up to the end of the tenancy, I do not find this notion plausible as the images clearly show a vacant rental unit and not one consistent with ongoing occupancy. Whilst the Tenants' images do not show the mattress and barbecue, I find these items could have been moved out of shot.

Based on the above, I find the Landlord has established their claim for the cost of removal of items in the amount of $411.97, which is made up of the haulage costs, disposal fees and trip charge, plus taxes, per the invoice provided as evidence. I find these costs to be reasonable in the circumstances.

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. However, section 38(3) of the Act allows a landlord to retain an amount from a security deposit the director has previously ordered the tenant to pay to the landlord, and remains unpaid at the end of the tenancy.

As already noted in this Decision, the tenancy was ended on September 19, 2024 per the previous decision and the Landlord was issued a Monetary Order dated September 26 for a total of $1,695.00 for unpaid rent and the filing fee. This exceeds the security deposit held by the Landlord.

Given the above, I find the Landlord already had authority to retain the Tenants' security deposit under section 38(3) of the Act and therefore the timeframe set out in section 38(1) of the Act was not engaged. Therefore, the Landlord's request to retain the security deposit was not necessary and the Tenants' request for its return is dismissed without leave to reapply. The fact the Landlord submitted their Application 16 days after receipt of the Tenants' forwarding address in writing is also of no consequence.

Since the Landlord had the authority to retain the security deposit under the previous decision, they were entitled to hold the security deposit of $797.50, plus accrued interest of $5.88 as of September 19, in partial satisfaction of the Monetary Order dated September 26. As the Landlord is entitled to apply the security deposit and interest against their previous monetary award, I will not set it off against the award under this Decision.

Filing fee

As the Landlord was at least partially successful in their Application, I find they are entitled to recover the $100.00 filing fee from the Tenants under section 72 of the Act.

Conclusion

The Landlord's Application is granted in part. The Tenants' 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 Tenants as soon as possible. It is the Landlord's obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	**Amount**
Overholding costs for October 2024	$1,595.00
Cleaning costs	$100.00
Removal of items	$411.97
Filing fee	$100.00
Total	**$2,206.97**

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 1, 2025

Residential Tenancy Branch