Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing was convened in response to an application by the tenant filed October 11, 2019 pursuant to the *Residential Tenancy Act* (The Act). The tenant applied for:

- a monetary order for money owed or compensation for loss under the *Act*, *Regulation* or tenancy agreement, pursuant to Section 67; and
- a monetary order for the cost of emergency repairs (locks) pursuant to Sections 33 and 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to Section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to Section 72.

Both parties attended the hearing. The parties were provided opportunity to mutually resolve their dispute to no avail. The hearing proceeded on the merits of the tenant's application. The parties acknowledged receipt of evidence as submitted by the other, and to this proceeding. The parties were given a full opportunity to be heard, to present their testimony, make submissions, call witnesses and to cross-examine one another. I have reviewed all evidence and testimony before me meeting the requirements of the Rules of Procedure; however, solely the relevant evidence to the facts and issues respecting the claim is referenced in the decision.

The landlord informed they filed a late application February 06, 2020 for which they have a pending hearing date in July 2020.

Issues to be decided

- Is the tenant entitled to a monetary order for compensation for loss under the Act, regulation or tenancy agreement?

- Is the tenant entitled to a monetary award of double the amount of the security deposit pursuant to the provisions prescribed in Section 38 of the Act?
- Is the tenant entitled to a monetary order in compensation for an amount paid by them for emergency repairs as prescribed within Section 33 of the Act?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The *undisputed* relevant evidence in this matter is as follows. On October 01, 2017 the parties entered into a one year fixed-term tenancy agreement with a start date of October 13, 2017. Under the contractual agreement the monthly rent of $1100.00 was payable in advance on the 1st of each month. At the outset of the tenancy, the landlord collected a security deposit in the amount of $550.00 which the landlord retains in trust. The parties' standard tenancy agreement contained a hand-written addendum initialled by the parties which states as follows;

> *Entry door (metal door) will be installed.*
> *New door, closet door will be fixed.*
> *Bed room door will be replaced new one.*
> *Metal security bar installed on front door.* - *as written*

The tenant took possession of the rental unit October 13, 2017. At the start of the tenancy the landlord did not conduct a condition inspection of the rental unit.

The tenancy subsequently ended October 21, 2017 upon the tenant vacating the rental unit of possessions and returning the key of the rental unit. On the date the tenant vacated they provided the landlord with their Tenant's Notice to end the tenancy dated October 21, 2017 pursuant to Section 45 of the Act citing a breach of material terms. The notice also stated a forwarding address for the security deposit. Additionally, the tenant provided the landlord with a letter also dated October 21, 2017 titled Loss of Quiet Enjoyment citing the tenant's right to seek remedies via Dispute Resolution, "Should the matter not be resolved"; as well as a request of reimbursement for emergency repairs (locksmith service).

On taking possession of the rental unit October 13, 2017 they requested the landlord change the rental unit entry door, as it was the same door viewed on October 01, 2017. The parties agreed the door was repaired to functionality following it being compromised on September 08, 2017, and which the parties had agreed would be replaced with a new metal door.

The landlord told the tenant the door would indeed be replaced by a new entry door as agreed as soon as the new door arrived, on order. The tenant requested the landlord replace the entry door and the landlord obliged, supplying and installing a replacement door on October 14, 2017 as an interim remedy until arrival of the door on order. On this day the tenant was without an entry door for six hours. The landlord left the rental unit at 6:30 p.m. for a personal event.

It is further undisputed that the parties agreed the landlord was in possession of the tenant's forwarding address and request for return of the security deposit on October 21, 2017. However, the landlord acknowledged they did not administer the deposit in accordance with Section 38 of the Act and retains it in trust.

The *disputed* relevant evidence is as follows. The tenant claims their agreement with the landlord was that the unit entry door would be replaced with a new metal door by the date of possession of October 13, 2017. Instead, on October 13, 2017 the same door viewed at the time of signing the tenancy agreement remained, so the tenant requested it replaced. The landlord testified it was not agreed a new door would be installed by the tenant's possession date as it had been ordered in September and was beyond their control, being in the hands of the Strata. None the less, the landlord testified they sought an immediate replacement for the door to satisfy the tenant.

The tenant presented witness LC, a friend with the tenant at the time of entering into the tenancy agreement. Under affirmation they testified that in their opinion the rental unit was unsafe, generally, and that it was agreed the entry door would be replaced by start of tenancy, however the matter was with the Strata.

The tenant claims that before leaving the rental unit on October 14, 2017, the landlord struggled to make the entry door secure with requisite hardware and deadbolt. The tenant claims the replacement door was ultimately left by the landlord with no locking hardware, solely the related holes. In contrast, the landlord asserted the appropriate securing hardware was present when they left and, "the door was secure". The tenant testified the landlord told them to hire a locksmith for which the landlord would pay for the service over the phone and left. Upon the attendance of a locksmith the tenant attempted to contact the landlord to pay for the service to no avail, therefore the tenant paid for the service in the amount of $388.19 for which they submitted a receipt. The landlord denies authorizing the tenant to hire a locksmith and that they would pay for it.

The tenant presented witness TM, a friend with the tenant on October 14, 2017. Under affirmation they testified they were at the rental unit and that prior to the landlord leaving

they heard the landlord say to the tenant they agreed to pay for a locksmith.

Witness JM for the tenant, the tenant's mother, also with the tenant and witness TM on October 14, 2017, testified they heard the landlord say to the tenant they could call a locksmith and for which they would pay.

The tenant testified that subsequent to the locksmith's attendance they noted the replacement door had an obvious 2-inch gap at its bottom which, as one issue, allowed light. The tenant submitted a photo image of the door with a standing tape measure indicating a gap of 1 3/4 inch. The tenant testified this alone left her feeling unsafe, speculating that the gap could potentially be exploited. The tenant testified it also concerned them that the residential property was the same property within which the infamous 'Surrey Six murders' had once taken place. Also, the tenant came to learn that the original entry door had previously been compromised by a targeted attack, albeit repaired by the Strata.

The landlord's witness and employee, CM, also in attendance at the rental unit on October 14, 2017, stated that when the landlord left, the replacement entry door "was secure", albeit the replacement door was not new, however was a solid wood door.

The tenant testified that the following day on October 15, 2017 they met with Police to report the landlord had threatened them and made sexual advances. The tenant submitted a Police report dated October 15, 2017, identifying that the tenant reported to Police a veiled threat from the landlord, marked unfounded, and that the landlord had asked her out. The Police report indicates the tenant's complaint as not investigated. The landlord testified first learning about the tenant's report to Police many months after the tenancy ended and were concerned by the report, the contents of which they denied.

As a result of the above, the tenant and their mother felt unsafe in the rental unit therefore went to a hotel for that night. The tenant testified that on the following day of October 16, 2017 their mother suffered a heart attack while with them, followed by a period of hospitalization. The tenant again stayed in a hotel the nights of October 19 and 20, 2017, in which time they also rented moving equipment and removed all their possessions from the rental unit prior to October 21, 2017.

The tenant makes the following claim(s) on application based on their testimony that the landlord is responsible to compensate them for all move-in, move-out costs, storage costs, an agreed locksmith cost, loss of paid work to file for dispute resolution, breaching a material term of the contractual agreement, not provide them with a safe

tenancy, and not administering the security deposit as prescribed by the Act.

Locksmith cost	$388.19
Move-in expenses	$680.80
Hotel costs – 3 nights	$439.00
Move-out expenses	$262.22
Missed work – pay for 5 days	$1115.39
Security deposit – $550.00 doubled per RTA	$1100.00
total claim on application	**$3985.60**
Filing fee for this application	$100.00

Analysis

The full text of the Act, sections of the Act stated herein, and other referenced resources, can be accessed via the Residential Tenancy Branch website at: ***www.gov.bc.ca/landlordtenant***

On preponderance of the relevant evidence in this matter, I have reached a Decision upon the following findings.

I find that a *material term* is a term that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Simply because one or more terms are stated within a tenancy agreement does not make them *material terms*.

In respect to the terms of the tenancy agreement in dispute, I find that **Section 6(3)(c)** of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Additionally, I find the *Parol Evidence Rule* is a legal principle that preserves the integrity of *written documents and written agreements, or contracts* by prohibiting the parties from attempting to alter the meaning of the written document through the use of prior and contemporaneous oral or written declarations that are not referenced in the written contractual document itself. While it is clear the parties contracted for the entry door to be replaced by a new metal door, I find that the oral evidence claiming the parties agreed the replacement of the door was to occur before the start of the tenancy, does not operate to amend the written tenancy agreement and is of no effect. I find sufficient evidence that both parties were aware that a new metal door had been ordered and that its installation was not in the complete control of the landlord. If one or both parties had intended to make this term of the agreement as vital and important, and as material, as the tenant portrays it the parties could have done so. I find the foregoing also applies to the remainder of the addendum, with the effect that it cannot be said the landlord breached terms of the tenancy agreement.

Section 45(3) of the Act states as follows;

Tenant's notice

> **45** (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

It must be noted that even if it were established the landlord breached a material term of the agreement, I find all written communication identifying breaches of the tenancy agreement were provided to the landlord *after* the tenant had already removed all possessions from the unit and were handing back their keys. Section 45(3) of the Act prescribes that the tenant was obligated to allow the landlord a "reasonable period" to correct a breach of a material term "after" the provision of written notice of the breach, before exercising the entitled remedy of ending the tenancy.

I find the tenant has provided sufficient evidence that the landlord authorized the tenant to obtain the services of a locksmith, as a result I grant the tenant their claim for the cost of a locksmith, in the amount claimed of **$388.19**, without leave to reapply.

In respect to the deposits of a tenancy, I find **Section 38(1)** of the Act provides that the landlord must return the deposits of the tenancy or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. In this matter I find the landlord received the tenant's forwarding address in writing on October 21, 2017 on the day the tenancy ended, and the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days as prescribed by Section 38(1) of the Act. As a result, **Section 38(6)** of the Act prescribes the landlord must pay the tenant *double* the amount of the security deposit. The landlord currently holds the security deposit in the amount of $550.00 and I find that they are obligated under Section 38 to return *double* this amount. Therefore, I grant the tenant the amount of **$1100.00**, without leave to reapply.

Section 7 of the Act *provide* as follows in respect to claims of loss such as in the tenant's application.

Liability for not complying with this Act or a tenancy agreement

> **7**(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The inherent test of **Section 7** is that the tenant's claim for loss requires they must satisfy each component of the test below:

1. Proof of the existence of a loss
2. Proof the claimed loss occurred *solely* because of the actions or neglect of the landlord, in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the tenant followed their statutory duty pursuant to Section 7(2) to do whatever was reasonable to minimize or mitigate the loss.

Additionally, I find that **Section 32** of the Act states that a landlord must provide residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. **Section 64** of the Act compels the Director, and by extension the Arbitrator, to make each decision on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions.

In respect to the tenant's claim they felt unsafe and were not provided a safe tenancy I find that I have not been presented evidence the tenant was provided substandard accommodations in contravention of Section 32. While I may accept the tenant did not feel safe, I do not accept the landlord was solely to blame for the tenant feeling unsafe. I find the tenant chose and determined, on their volition, to leave the rental unit and stay in a hotel and ultimately then abandon the tenancy. In so doing the tenant incurred discretionary expenses for which the tenant now seeks reimbursement from the landlord. I find the tenant did not do what was reasonable to minimize their loss pursuant to Section 7(2). I find the remaining balance of the tenant's claims do not fully meet the test imposed by Section 7 of the Act. As a result, I must **dismiss** the tenant's claims for all moving-related expenses as well as all hotel-related costs, without leave to reapply.

Other than repayment of a fee from one party to the other as permitted by **Section 72** of the Act, all parties to dispute resolution proceedings are responsible for their own discretionary costs or litigation costs, sometimes also referred to as court costs. As a result, the tenant is not entitled to compensation for missed pay due to time taken from

work (in this case 5 days) to file this application or attend to preparation for this hearing. The landlord is not responsible for such costs. Therefore, this portion of the tenant's claim is hereby **dismissed**, without leave to reapply.

As the tenant was in part successful in their application, they are entitled to recover their filing fee for this application from the landlord.

Calculation for monetary order is as follows.

Locksmith cost	$388.19
Move-in expenses	0
Hotel costs – 3 nights	0
Move-out expenses	0
Missed work – pay for 5 days	0
Security deposit – $550.00 doubled per RTA	$1100.00
total award to tenant	***$1488.19***
Filing fee for this application	$100.00
monetary order to tenant	**$1588.19**

Orders

I grant the tenant a Monetary Order in the amount of **$1588.19**. If necessary, this Order may be registered in the Small Claims Court and enforced as an Order of that court.

Conclusion

The tenant's application was in part granted and the balance dismissed. The tenant is given a monetary Order in the above terms.

This Decision is final and binding.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: February 27, 2020

Residential Tenancy Branch