Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDCL-S, FFL, MNDCT, FFT

Introduction

A hearing was convened on January 07, 2020 in response to cross applications. There was insufficient time to conclude the hearing on January 07, 2020, so the hearing was adjourned. The hearing was reconvened on March 13, 2020. There was insufficient time to conclude the hearing on March 13, 2020, so the hearing was adjourned. The hearing was reconvened on May 25, 2020 and was concluded on that date.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

At the first hearing the Landlord stated that on August 26, 2019 his Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch in August of 2019 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for the first hearing.

At the first hearing the Tenant stated that his Dispute Resolution Package and the evidence the Tenant submitted to the Residential Tenancy Branch in October of 2019

were sent to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receiving the Dispute Resolution Package, but he did not acknowledge receiving the Tenant's evidence. As the Landlord did not acknowledge receiving the Tenant's evidence and there was insufficient evidence to establish it was served to the Landlord with the Dispute Resolution Package, this evidence was not accepted as evidence for the first hearing.

On September 02, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. At the first hearing the Landlord stated that this evidence was served to the Tenant, via registered mail, September 12, 2019 but it was not claimed by the Tenant and it was subsequently returned to the Landlord. The Tenant stated that he did not receive notice of this registered mail and that he did not, therefore, retrieve the mail. As the Tenant did not receive this evidence, it was not accepted as evidence for the first hearing.

On October 06, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenant. As the Tenant did not receive this evidence, it was not accepted as evidence for the first hearing.

In December of 2019 the Tenant submitted evidence to the Residential Tenancy Branch. At the first hearing the Tenant initially stated that this evidence was personally served to the Landlord on December 23, 2019. He subsequently stated that he placed it in the Landlord's mail box on December 23, 2019. The Landlord stated that he did not receive this evidence. As the Landlord did not receive this evidence, it was not accepted as evidence for the first hearing.

As the first hearing was adjourned, I directed each party to re-submit evidence and to re-serve evidence to the other party, in accordance with my interim decision of January 08, 2020.

The Landlord submitted evidence to the Residential Tenancy Branch on January 23, 2020. At the hearing on March 13, 2020 the Landlord stated that this package of evidence was served to the Tenant, by registered mail, on February 10, 2020. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings. This is the only evidence submitted by the Landlord that will be considered as evidence for these proceedings.

The Tenant submitted evidence to the Residential Tenancy Branch on January 27, 2020. At the hearing on March 13, 2020 the Tenant stated that this package of evidence was served to the Landlord, by registered mail, although he cannot recall the date of service. The Landlord acknowledged receipt of this evidence, although he does not recall when it was received. As there is no evidence that the Landlord had insufficient time to consider the evidence, it was accepted as evidence for these proceedings. This is the only evidence submitted by the Tenant that will be considered as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Preliminary Matter #1

In my interim decision of January 08, 2020, I granted each party the opportunity to submit one package of evidence to the Residential Tenancy Branch by January 24, 2020.

The Landlord submitted his package of evidence to the Residential Tenancy Branch on January 23, 2020, in accordance with my interim decision, and as has been previously stated, it was accepted as evidence for these proceedings.

The Tenant submitted his package of evidence to the Residential Tenancy Branch on January 27, 2020. Although this evidence was not submitted in accordance with the timelines establish by my interim decision, I find it reasonable to have accepted that evidence as the delay in submitting it to the Residential Tenancy Branch did not prejudice the Landlord in any way.

On February 28, 2020 and February 29, 2020, the Landlord submitted additional evidence to the Residential Tenancy Branch. As the hearing commended on January 07, 2020 and the Landlord was not granted permission to submit additional evidence in February of 2020, the evidence submitted by the Landlord in February of 2020 was not considered.

Preliminary Matter #2

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that the claim is limited to what is stated in the application.

In the Tenant's Application for Dispute Resolution the Tenant claimed compensation of $664.00. Although the Tenant did not submit a Monetary Order Worksheet that explains the details of this claim, he submitted an excel spreadsheet in December of 2019 in which he lists the following claims:

- 1st Application - $100.00
- Shaw Cable Debt - $209.71
- Moving - $120.00
- Mailing Police Request - $22.00
- Police Report Request - $12.50
- 2nd Application - $100.00

These are the Tenant's claims that were considered at these proceedings.

On January 27, 2020 the Tenant submitted a list of additional costs, which include cost for a title search, registered mail, and cleaning. The parties were advised that none of the additional costs would be considered at these proceedings. As these proceedings had commenced by the time the Tenant added these additional claims the Tenant did not have the right to amend his Application for Dispute Resolution to add additional claims.

I note that the Tenant submitted a receipt for cleaning costs prior to the original hearing. I find, however, that simply providing a receipt in a hearing package is not sufficient notice that the Tenant is claiming compensation for cleaning. Rather, I find that all costs must be clearly listed on a Monetary Order Worksheet or similar document.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?
Is the Tenant entitled to compensation for moving costs, cable fees, and/or the cost of a police report?
Is either party entitled to recover the cost of filing an Application for Dispute Resolution?

Background and Evidence provided at the hearing on January 07, 2020:

The Landlord and the Tenant agree that:

- the tenancy began in September of 2017;
- the tenancy is for a fixed term, the fixed term of which ended on August 01, 2019;
- rent of $2,300.00 was due by the first day of each month;
- the Landlord did not schedule a time to complete a condition inspection report at the start of the tenancy; and
- the Landlord did not complete a condition inspection report at the end of the tenancy.

The Landlord stated that the Tenant only paid $2,250.00 in rent for September of 2017 and he is seeking to recover the outstanding $50.00. The Tenant initially stated that he paid $2,300.00 in rent for that month. After being asked to view the receipt for that month, he acknowledged that he only paid $2,250.00.

The Landlord and the Tenant agree that the Tenant only paid $2,210.00 in rent for October of 2017 and he is seeking to recover the outstanding $90.00. The Tenant submits the $90.00 was withheld because he believed the rental unit needed cleaning, although he did not have permission from the Landlord to withhold this amount.

The Landlord and the Tenant agree that the Tenant sent $2,300.00 in rent for December of 2018 to the Landlord, but the funds were not received by the Landlord. They provided conflicting explanations for the funds not being received, which is not relevant to my decision. The Landlord is seeking compensation for rent for this month.

The Landlord and the Tenant agree that the Tenant sent $1,150.00 in rent for February of 2019 to the Landlord, but the funds were not received by the Landlord. They provided conflicting explanations for the funds not being received, which is not relevant to my decision. The Landlord is seeking compensation for rent for this month.

The Tenant stated that the rental unit was vacated on February 28, 2019. The Landlord stated that he does not know when the rental unit was vacated, although he received an email from the Tenant on March 04, 2019, in which the Tenant informed him the rental unit had been vacated. The Tenant agreed that he sent the Landlord an email on March 04, 2019, in which he informed the Landlord the rental unit had been vacated.

The Landlord stated that he did not complete a condition inspection report at the end of the tenancy as he did not know the rental unit was being vacated.

The Landlord is seeking compensation for lost revenue for March of 2019. He submits that he was unable to find a new tenant for March 02, 2019, as he was not aware the rental unit had been vacated until March 04, 2019.

The Landlord stated that the Tenant was required to pay a security deposit of $1,150.00 but he only paid $1,000.00 of the deposit. The Tenant initially stated that he paid a security deposit of $1,150.00. After viewing a receipt for the security deposit, the Tenant agreed that he only paid a security deposit of $1,000.00.

The Landlord is seeking compensation for lost revenue for March of 2019, as he did not receive proper notice to end the tenancy.

The Landlord and the Tenant agree that the Landlord has not returned any portion of the security deposit and that the Tenant did not give the Landlord written permission to retain any portion of the security deposit.

The Tenant stated that he provided the Landlord with a letter in which he provided his forwarding address, by leaving it inside the rental unit with the keys to the unit. The Landlord stated that he did not locate a letter with the Tenant's forwarding address in the unit at the end of the tenancy. The Tenant stated that he is unable to locate a copy of this letter in his evidence package.

The Tenant stated that he provided the Landlord with an email in which he provided his forwarding address, although he cannot recall the date he sent the email. The Landlord stated that he did not receive the Tenant's forwarding address by email. After viewing the email he was referring to, the Tenant stated that he now realizes he did not provide the Landlord with his forwarding address in the email.

The Landlord stated that he did not receive the Tenant's forwarding address until August 08, 2019, when it was provided to him with evidence for a previous dispute resolution proceeding.

The Landlord and the Tenant agree that this tenancy was the subject of a previous dispute resolution proceeding, the file number of which appears on the first page of this decision.

Residential Tenancy Branch records show that on June 12, 2018 the Landlord filed an Application for Dispute Resolution in which the Landlord applied, in part, to retain the Tenant's security deposit. Residential Tenancy Branch records show that this Application for Dispute Resolution was dismissed, with leave to reapply. Residential Tenancy Branch records also show that the Landlord was granted a substitute service order in regard to the first Application for Dispute Resolution, as he was unable to serve documents to the Tenant in accordance with section 89 of the *Residential Tenancy Act (Act*).

Background and Evidence provided at the hearing on March 13, 2020:

The Landlord stated that on July 29, 2018 he sent the Tenant an email informing him he would be inspecting the rental unit on July 31, 2018. The Landlord stated a copy of this email was not submitted as evidence for these proceedings. The Tenant stated that he did not receive this email.

The Landlord stated that on August 12, 2018 he sent the Tenant an email informing him he would be inspecting the rental unit, which did not provide the Tenant with a date or time of the inspection. The Landlord stated a copy of this email was not submitted as evidence for these proceedings. The Tenant stated that he did not receive this email.

The Tenant and the Landlord both testified that the Landlord entered the rental unit on August 26, 2019, using his key, and that the police were called to the unit on that date. There is no evidence that the Landlord gave the Tenant written notice of his intent to enter the unit on this date.

The Tenant and the Landlord both testified that the Landlord entered the rental unit on August 29, 2018, using his key, and that he stayed overnight in the room he uses for storage on that date. There is no evidence that the Landlord gave the Tenant written notice of his intent to enter the unit on this date.

The Tenant and the Landlord both testified that the Landlord again entered the rental unit on August 31, 2018, using his key. There is no evidence that the Landlord gave the Tenant written notice of his intent to enter the unit on this date.

The Tenant stated that on August 29, 2018 he served the Landlord with a letter, in which he informed the Landlord that he should not enter the rental unit without lawful authority. The Landlord acknowledged receiving this letter, dated August 29, 2018.

There is no evidence that the Landlord entered the rental unit without proper authority after August 31, 2018.

The Tenant stated that on February 01, 2019 he served the Landlord with a written notice to end tenancy, by placing it the Landlord's mail box at the rental unit. The Landlord stated that he did not locate this letter, as he does not reside or work at the rental unit.

The Tenant stated that on February 03, 2019 he served the Landlord with a written notice to end tenancy, by email. The Landlord stated that he received an email from the Tenant on February 03, 2019, but a letter to end the tenancy was not attached. A copy of the email was submitted in evidence, but there is nothing on that email that indicates the letter, dated February 01, 2019, was attached.

The Tenant submitted a letter, dated February 01, 2019, in which he informs the Landlord he will be ending the tenancy on March 01, 2019 because the Landlord has breached the tenancy agreement. The Landlord stated that he did not receive this letter until it was served to him as evidence for these proceedings.

In the letter of February 01, 2019, the Tenant alleges the following breaches:

- "trespassing" on several occasions;
- staying overnight and using facilities in the rental unit;
- harassing tenants in the property;
- storing items on the property;
- obstructing the search for new roommates;
- not repairing locks and other requests for repairs; and
- not complying with requests about rent pending.

The Tenant is seeking $120.00 for moving costs. He stated that he paid $120.00 to rent a van, which he needed to move from the rental unit.

The Tenant is seeking $209.71 for cable service. The Tenant submitted a cable bill in the amount of $208.71, in his name, for the period between March 12, 2019 to May 08,

2019. The Tenant stated that he did not cancel his cable service when he vacated the rental unit.

The Tenant is seeking $34.50 for the cost of obtaining and mailing a police report.

The Tenant is seeking to recover the cost of filing two Applications for Dispute Resolution. He stated that one of the filing fees related to a previous Application for Dispute Resolution.

The Landlord is seeking compensation, in the amount of $84.00, for replacing keys to the locks on the interior bedroom doors. The Tenant stated that he was only given keys to the exterior locks at the start of the tenancy, he was not given keys to the interior doors, and that he returned all of the keys he was given, by leaving them in the rental unit at the end of the tenancy. The Landlord stated that he located three keys inside the rental unit at the end of the tenancy, but the keys the Tenant had been given to the interior bedroom doors were not returned.

Background and Evidence provided at the hearing on May 25, 2020:

The Landlord stated that he did not return to Canada until June 27, 2019; that he did not advertise the rental unit until August of 2019; and that he re-rented the unit for September 01, 2019.

The Landlord is seeking compensation, in the amount of $150.00, for repairing the screen door. The Landlord stated that the screen door was in good condition at the start of the tenancy and that it was bent at the end of the tenancy. The Tenant stated that the screen door was in the same condition at the end of the tenancy as it was at the start of the tenancy.

The Landlord is seeking compensation, in the amount of $100.00, for repairing a desk. The Landlord stated that the desk was in good condition at the start of the tenancy and that it was missing two legs at the end of the tenancy. The Tenant stated that the desk was in the same condition at the end of the tenancy as it was at the start of the tenancy. The Landlord provided a photograph of the damaged desk.

The Landlord stated that he purchased the desk, used, approximately 10-15 years ago. He stated that he paid $200.00 for the desk, although he did not submit a receipt for the desk.

The Landlord is seeking compensation, in the amount of $330.00, for cleaning the rental unit. The Landlord stated that the rental unit required cleaning at the end of the tenancy and that he had to discard furniture left in the house by the Tenant. The Tenant stated that the rental unit did not require cleaning at the end of the tenancy and that he did not leave personal property in the unit. In an email, dated March 04, 2019, the Tenant declared that he left a sofa in the rental unit.

The Landlord submitted photographs of the rental unit, which he stated were taken on August 27, 2019, after he returned to Canada and was beginning to repair the rental unit. The Tenant stated that the photographs submitted by the Landlord do not represent the cleanliness of the rental unit at the end of the tenancy.

The Landlord submitted a receipt to show that he paid $280.00 for cleaning the unit and $50.00 for disposing of property left in the rental unit.

The Landlord is seeking compensation, in the amount of $10.00, for replacing a portable heater, which was approximately 10 years old. He stated that the heater was provided to the Tenant at the start of the tenancy and that it was missing at the end of the tenancy. The Tenant stated that he was not provided with a portable heater at the start of the tenancy.

The Landlord is seeking compensation, in the amount of $200.00, for replacing a table and chairs, which were approximately 18 years old. He stated that the table/chairs which can be seen in photograph 31 were provided to the Tenant at the start of the tenancy and that they were missing at the end of the tenancy. The Tenant stated that he was not provided with a table/chairs at the start of the tenancy.

The Landlord is seeking compensation, in the amount of $120.00, for replacing a sofa, which was approximately 19 years old. He stated that the sofa was provided to the Tenant at the start of the tenancy and that it was missing at the end of the tenancy. The Tenant stated that he was not provided with a sofa at the start of the tenancy.

The Landlord is seeking compensation, in the amount of $70.00, for replacing a microwave, which was approximately 10-15 years old. He stated that the microwave was provided to the Tenant at the start of the tenancy and that it was missing at the end of the tenancy. The Tenant stated that he was not provided with a microwave at the start of the tenancy.

The Landlord is seeking compensation, in the amount of $70.00, for replacing a mirror. He stated that the mirror was provided to the Tenant at the start of the tenancy and that it was missing at the end of the tenancy. The Tenant stated that there was a mirror in the rental unit at the start of the tenancy, which he left it in the unit at the end of the tenancy.

The Landlord is seeking compensation, in the amount of $160.00, for replacing two mattresses, which were approximately 15 years old. He stated that the mattresses were provided to the Tenant at the start of the tenancy and that they were missing at the end of the tenancy. The Tenant stated that two mattresses were provided at the start of the tenancy and they were left in the unit at the end of the tenancy.

Analysis

On the basis of the undisputed evidence, I find that:

- the parties entered into a fixed term tenancy agreement, the fixed term of which ended on August 31, 2019;
- the Tenant was required to pay monthly rent of $2,300.00;
- rent was due by the first day of each month; and
- the Tenant paid a security deposit of $1,000.00, which has not been returned.

On the basis of the Landlord's testimony and the absence of evidence to the contrary, I find that the rental unit was vacated on February 28, 2019. I find it reasonable to rely on the Tenant's testimony in this regard, as the Landlord does not know when the rental unit was vacated and the Tenant's testimony is corroborated, to some degree, by an email the Tenant sent on March 04, 2019.

On the basis of the undisputed evidence, I find that the Tenant still owes $50.00 in rent for September of 2017; $90.00 in rent for October of 2017; $2,300.00 in rent for December of 2018; and $2,300.00 in rent for February of 2019.

Section 26(1) of the *Residential Tenancy Act (Act*) requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. As the Tenant did not submit evidence of a legal right to withhold rent, I find that the Tenant must pay the outstanding rent of $4,740.00.

I find that there is insufficient evidence to conclude that the Tenant left his forwarding address in the rental unit when the unit was vacated. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that a letter providing the address was left in the unit. Conversely, the fact that the Landlord applied for a substitute service order when he initially applied to retain the security deposit, corroborates the Landlord's testimony that a letter containing the address was not located in the rental unit.

On the basis of the Landlord's testimony and the absence of any evidence to the contrary, I find that the Landlord received a forwarding address for the Tenant on August 08, 2019 when it was provided to him with evidence for a previous dispute resolution proceeding. Service of the forwarding address on August 08, 2019, in my view, cannot be considered service of a forwarding address for the purpose of the return of the security deposit, as the matter was already before the Residential Tenancy Branch on August 08, 2019.

On the basis of the undisputed evidence, I find that the Landlord entered the rental unit, using his key, on August 26, 29, and 31 of 2018.

Section 29(1)(a) of the *Act* authorizes a Landlord to enter a rental if the tenant gives permission at the time of the entry or not more than 30 days before the entry. There is no evidence that the Tenant gave the Landlord permission to enter the rental unit on August 26, 29, or 31 of 2018, and I therefore find that he did not have authority to enter the unit on those dates pursuant to section 29(1)(a) of the *Act*.

Section 29(1)(b) of the *Act* authorizes a Landlord to enter a rental if at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
(i) the purpose for entering, which must be reasonable;
(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

There is no evidence that the Landlord gave the Tenant written notice that he intended to enter the rental unit on August 26, 29, or 31 of 2018, and I therefore find that he did not have authority to enter the unit on those dates pursuant to section 29(1)(b) of the *Act*.

Section 29(1)(c) of the *Act* authorizes a Landlord to enter a rental if the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms. There is no evidence that the Landlord provides these types of services and I therefore find that he did not have authority to enter the unit on August 26, 29, or 31 of 2018, pursuant to section 29(1)(c) of the *Act*.

Section 29(1)(d) of the *Act* authorizes a Landlord to enter a rental if the landlord has an order of the director authorizing the entry. There is no evidence that the Landlord had such on Order and I therefore find that he did not have authority to enter the unit on August 26, 29, or 31 of 2018, pursuant to section 29(1)(d) of the *Act*.

Section 29(1)(e) of the *Act* authorizes a Landlord to enter a rental if the tenant has abandoned the rental unit. There is no evidence that the Tenant had abandoned the unit in August of 2019 and I therefore find that the Landlord did not have authority to enter the unit on August 26, 29, or 31 of 2018, pursuant to section 29(1)(e) of the *Act*.

Section 29(1)(f) of *Act* authorizes a Landlord to enter a rental if an emergency exists and the entry is necessary to protect life or property. There is no evidence that there was an emergency in the rental unit on August 26, 29, or 31 of 2018 and I therefore find that the Landlord did not have authority to enter the unit on those dates, pursuant to section 29(1)(f) of the *Act*.

On the basis of the undisputed evidence I find that on August 29, 2018 the Tenant served the Landlord with written notice that he should not enter the rental unit without lawful authority. I find that there is no evidence that the Landlord entered the rental unit without proper authority after August 31, 2018.

Section 45(2) of the *Act* permits a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As this was a fixed term tenancy, the fixed term of which did not end until August 01, 2019, I find that the Tenant did not have the right to end this tenancy, pursuant to section 45(2) of the *Act* until August 01, 2019. I therefore find that the Tenant's written

notice to end the tenancy on February 01, 2019 would not serve to end the tenancy pursuant to section 45(2) of the *Act,* even if the Landlord had received the letter.

Section 45(3) of the *Act* permits a tenant to end a fixed term tenancy 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.

Even if I accepted that the Tenant had grounds to end this tenancy because the Landlord had breached a material term of the tenancy and did not correct it within a reasonable period after receiving written notice of the failure, the Tenant had an obligation to serve the Landlord with written notice of his intent to end the tenancy, pursuant to section 45(3) of the *Act.*

Section 88 of the *Act* required the Tenant to serve the Landlord with notice of his intent to vacate the rental unit, pursuant to section 45(3) of the *Act*, through one of the following methods:
(a) by leaving a copy with the person;
(b) if the person is a landlord, by leaving a copy with an agent of the landlord;
(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
(i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
(j) by any other means of service prescribed in the regulations.

As there is no evidence that the Tenant personally served the Notice to End Tenancy to any person, I find that the Notice to End Tenancy, dated February 01, 2019, was not served to the Landlord in accordance with section 88(a), 89(b), or 88(e) of the *Act.*

As there is no evidence that the Notice to End Tenancy was mailed to the Landlord, I find that the Notice to End Tenancy, dated February 01, 2019, was not served to the Landlord in accordance with section 88(c) of the *Act.*

On the basis of the undisputed testimony of the Tenant, I find that the Notice to End Tenancy, dated February 01, 2019, was placed in a mail box at the rental unit. I find that there is no evidence that the Landlord resides at the rental unit. Although the evidence shows that the Landlord has a storage room at the rental unit, there is no evidence that he regularly accesses this room. I therefore cannot conclude that the Landlord conducts his business from this rental unit. I therefore find that the Notice to End Tenancy was not served to the Landlord in accordance with section 88(f) of the *Act.*

As there is no evidence that the Notice to End Tenancy was posted on the Landlord's door or other conspicuous place, I find that the Notice to End Tenancy, dated February 01, 2019, was not served to the Landlord in accordance with section 88(g) of the *Act.*

As there is no evidence that the Notice to End Tenancy was sent to the Landlord by fax, I find that the Notice to End Tenancy, dated February 01, 2019, was not served to the Landlord in accordance with section 88(h) of the *Act.*

As there is no evidence that the Tenant had authority to serve the Landlord with the Notice to End Tenancy in an alternate manner, I find that the Notice to End Tenancy, dated February 01, 2019, was not served to the Landlord in accordance with section 88(i) of the *Act.*

On the basis of the evidence before me, I am satisfied that the parties communicated by email. Had the Tenant served the Landlord with the notice to end tenancy, dated February 01, 2019, to the Landlord by email AND the Landlord acknowledged receiving the notice by email, I may have concluded that it had been sufficiently served to the Landlord, in accordance with section 71(2) of the *Act.* As the Tenant has submitted insufficient evidence to establish that the letter dated February 01, 2019 was attached to the email he sent to the Landlord on February 03, 2019 or on any other date, AND the Landlord does not acknowledge receiving the letter with the email that was allegedly

sent on February 03, 2019, I am unable to conclude that the letter was served to the Landlord by email on February 03, 2019.

As the Tenant has submitted insufficient evidence to establish that the letter dated February 01, 2019 was sufficiently served to the Landlord prior March 01, 2019, I find that the Tenant did not have the right to end the fixed term tenancy on March 01, 2019, pursuant to section 45(3) of the *Act.*

As the Tenant did not comply with section 45 of the *Act* when he ended this fixed term tenancy and the Landlord experienced lost revenue for the period between March 01, 2019 and March 14, 2019 that he would not have experienced if the tenancy continued, I find that the Tenant must compensate the Landlord for lost revenue for that period, in the amount of $1,150.00*,* pursuant to section 67 of the *Act*. Given that the Landlord was not aware the unit was vacant until March 04, 2019, I find it would have been impossible to the Landlord to find a new tenant for March 01, 2019.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In regard to lost revenue, a landlord has an obligation to mitigate lost revenue by advertising the rental unit in a reasonably timely manner. As the Landlord did not advertise the rental unit until August of 2019, I find that he did not properly mitigate any of the lost revenue he experienced after March 14, 2019. Had the Landlord advertised the rental unit in early March of 2019, I find it entirely possible he could have re-rented the unit for March 15, 2019. As the Landlord did not take reasonable steps to minimize the lost revenue he experienced after March 14, 2019, I dismiss his claim for lost revenue for any period after March 14, 2019.

As the Tenant has failed to establish that he had the right to vacate the rental unit prior to the end of the fixed term tenancy, I cannot conclude that he is entitled to compensation for any costs associated to vacating the rental unit prior to the end of the fixed term. I therefore dismiss the Tenant's claim for moving costs.

On the basis of the undisputed evidence I find that the Tenant was charged $208.71 for cable service for the period between March 12, 2019 to May 08, 2019. As the Tenant could have mitigated these costs by simply cancelling his own cable service when he vacated the rental unit, I find that the Landlord is not obligated to compensate the Tenant for these charges. I therefore dismiss the Tenant's claim for cable fees.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim to recover the cost of obtaining and mailing a police report, as that is an expense he incurred to participate in the dispute resolution process.

I find that the Tenant has failed to establish the merits of his Application for Dispute Resolution and I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

I am unable to award compensation for a filing fee for any other Application for Dispute Resolution the Tenant may have filed, as I am not in a position to consider the merits of any previous Application for Dispute Resolution filed by the Tenant. I therefore dismiss his application to recover any other filing fee he may have paid to the Residential Tenancy Branch.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would typically fail to meet that burden.

I find that the Landlord submitted insufficient evidence to establish that the Tenant was given keys to interior doors at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, which corroborates the Landlord's testimony that the Tenant was given keys to the

interior doors or that refutes the Tenant's testimony that he was not given keys to the interior doors.

As the Landlord has failed to establish that the Tenant was given keys to the interior doors, I cannot conclude that the Tenant failed to comply with section 37(2) of the *Act* when he failed to return keys to the interior doors. As the Landlord failed to establish that the Tenant did not return all of the keys, I dismiss the Landlord's application for the cost of replacing keys.

I find that the Landlord submitted insufficient evidence to establish that the screen door was in good condition at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's testimony that it was in good condition at the start of the tenancy or that refutes the Tenant's testimony that it was not in good condition at the start of the tenancy. As the Landlord has failed to establish the door was in good condition at the start of the tenancy, I cannot conclude that it was damaged during the tenancy. I therefore dismiss the Landlord's application for compensation for repairing the door.

I favour the testimony of the Landlord, who stated that the Tenant was provided with an undamaged desk at the start of the tenancy, over the testimony of the Tenant, who stated that the desk he was given was missing two legs when it was provided to him at the start of the tenancy. I favoured the testimony of the Landlord because it is illogical for me to conclude that a Tenant would be provided with a desk that, based on the damage shown in the photograph, is essentially unusable. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the desk that was damaged during the tenancy.

I find the Landlord's claim of $100.00 for repairing the desk is reasonable, given the time and small amount of materials that would be required for the repair. I therefore grant the Landlord $100.00 for repairing the desk.

I favour the testimony of the Landlord, who stated that the rental unit required cleaning after it was vacated, over the testimony of the Tenant, who stated that the rental unit did not require cleaning at the end of the tenancy. I favoured the testimony of the Landlord because his testimony was corroborated by photographs submitted by the Landlord. Although the Tenant stated that the photographs do not represent the cleanliness of the rental unit at the end of the tenancy, I simply find his testimony in this regard to be less

credible than the Landlord's testimony. In my view the most logical explanation for the photographs submitted by the Landlord is that there was no attempt to clean this unit prior to the unit being vacated.

I favour the Landlord's testimony that furniture was left in the rental unit over the Tenant's testimony that furniture was not left in the rental unit. In reaching this conclusion I was heavily influenced by the email, dated March 04, 2019, in which the Tenant acknowledged leaving a sofa in the unit.

I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition and that the Landlord is entitled to compensation of $330.00 for cleaning the unit.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant was provided with a portable heater, a table/chairs, a sofa, and/or a microwave at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of clear evidence, such as a condition inspection report, that corroborates the Landlord's testimony that these items were provided to the Tenant at the start of the tenancy or that refutes the Tenant's testimony that the items were not provided at the start of the tenancy. As the Landlord has failed to establish the items were provided at the start of the tenancy, I cannot conclude that he is entitled to compensation for the items not being left in the unit at the end of the tenancy.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant took the Landlord's mirror or mattresses from the rental unit. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates the Landlord's testimony that the items were removed or that refutes the Tenant's testimony that the items left in the rental unit at the end of the tenancy. As the Landlord has failed to establish the items were removed from the rental unit at the end of the tenancy, I cannot conclude that he is entitled to compensation for the items.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed in its entirety.

The Landlord has established a monetary claim, in the amount of $6,420.00, which includes $4,740.00 in unpaid rent, $1,150.00 for lost revenue, $100.00 for repairing a desk; $330.00 for cleaning, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain the Tenant's security deposit of $1,000.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance $5,420.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: May 26, 2020

Residential Tenancy Branch