Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDL-S, MNDCL-S, FFL
For the Tenant: MNSDS-DR, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on July 10, 2021 seeking compensation for monetary loss to them, and for damage caused by the Tenant. Additionally, they are seeking reimbursement of the Application filing fee.

The Tenant filed their own Application on July 18, 2021 seeking the return of the security deposit, and reimbursement of the filing fee. They applied via the direct request method; however, with the Landlord's Application already in place, the Tenant's Application was crossed with that of the Landlord.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on January 25, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to compensation for damage caused by the Tenant, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Tenant entitled to the return of the security deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement, which they both signed on March 28, 2016. This was for the tenancy start date on June 1, 2016. The rent amount was $4,733.40, payable n the 1st day of each month. By the end of the tenancy, the rent was $5,190 per month.

The original agreement shows a fixed length of time for one year until May 31, 2017. The agreement also indicates "other periodic tenancy as indicated below", meaning "other" to be "Another year with both parties agreement: inflation rate". There is no indication that the tenancy would either end or continue on a month-to-month basis after the expiry of the initial one-year fixed term.

The parties signed a four-page addendum on the same date. The final page of the addendum contains the clause: "The tenant acknowledges that the premises are on a Brand new condition [*sic*]. The landlord is allowed to deduct any costs for loss, damages, utility charges or any other costs associated with the tenancy on the premises from the sum of the security deposits." The addendum also notes in clause 2: "Upon move out the place should be cleaned and is subject to a deep cleaning fee of $250."

The addendum also contains a clause that the Landlord referred to as "liquidated damages": "This is a fixed term tenancy, the tenant cannot break lease without the permission of the landlord. The tenant will be responsible to pay ½ month releasing costs plus any other losses incurred if they break lease with or without the landlord's permission."

The Tenant paid a security deposit of $4,600 on May 27, 2015. On their Application, the Tenant states: ". . . the landlord took advantage of us and violated clause 4.1a [of the tenancy agreement] and charged double for the security deposit, which we

unknowingly signed due to our limited knowledge in BC tenancy laws." In the hearing the Landlord described this amount as a "guarantee" where the Tenant was out-of-country often working. The Landlord provided a signed statement from a release estate agent who stated the Tenant "offered to pay one full month deposit to cover any damages and loss of rent if any".

The tenancy ended on June 30, 2021. In the hearing the Landlord set out that in April the Tenant had asked for renewal of the tenancy for another year but then gave notice they would end the tenancy by the end of June. The Landlord cited an email dated April 11, and they confirmed, in writing on April 13, the fixed-term extension starting from June 1 until May 31, 2022.

The Tenant presented their request to the Landlord via email on April 9: "As we have renewed the past leases on a year to year basis in the past. We want to give you notice to go on a month to month basis as of June 1st, 2021." The Landlord responded on that same day that the strata would not allow this: "because that building is not rental, and the strata requires me to have a long term rental agreement." The Tenant responded again, citing "Section 43.3 from Residential Tenancy Act" where the agreement reverted automatically to a month-to-month basis, with no other agreement signed since 2016.

The Landlord provided a copy of the Tenant's message from May 18 that states: "I want to give you notice that we will be leaving the apartment for June 30th, 2021."

The Landlord presented that there was no final meeting together with the Tenant to inspect the condition of the rental unit. By June 30th, the Tenant was gone. On this point, the Tenant stated they had already moved out by June 30, into their new other living arrangement. They tried to contact the Landlord to meet and review the condition; however, they could not coordinate this. The Tenant returned the key to the Landlord via courier.

The Tenant emailed to the Landlord on June 30, the final day. They asked why the Landlord would not answer calls, and advised they were sending the key to the Landlord via courier. They requested the full deposit of $4,600 to be returned: "Please send this before July 15th (15 days after tenancy end)". The Landlord also forwarded a form containing their forwarding address to the Landlord, dated June 30, 2021.

The Landlord completed the move-out inspection meeting unilaterally on July 2. They noted the condition throughout the entire rental unit in a Condition Inspection Report. This included "sticky oily substance" on the kitchen floor, damaged floor in living area,

and “Large damaged area on den and another on second bedroom hardwood flooring one damaged area in the living room hardwood floors & damaged fridge door (dents scratches)”. The Landlord provided photos showing the problematic flooring areas, and in the hearing described 3 places of damage. This was a “the floor sticky like oil.”

On their Application, the Landlord claims $7,500 for floor damage. As input on their Application: “Cost of refinishing hardwood floors. And cost of repairing fridge door, light bulb fixtures, cleaning fees, and wall dents touch up.” Also: “The hardwood flooring was custom made material. Strata has no spares left. The only cost effective option is to refinish the flooring.”

The Landlord provided the following records to show unit damage:

- photos and video show a discoloured floor area – allegedly these are areas that are sticky to the touch
- photos also show incidental cabinet scratching and wall damage dents
- an estimate for cabinet door replacement, at $180 per door – noting “it’s been 6 years, color and glossiness will be slightly different on new door even if we use same paint” – this is for 6 “glossy cabinets” in the unit as shown in a photo with “glossy cabinet doors that cannot be repaired”.

The Landlord notified the Tenant about the costs incurred to them for the Tenant ending the tenancy in the manner they did. Via email on July 10, the Landlord also informed the Tenant about the damaged areas on the floor, with pictures, and the need to refinish the flooring. They provided the total amount of $8,196.31, listing the floor estimate of $7507.50, a “deep cleaning fee” of $250, re-keying for $188.81, and “fridge door touch up fees” at $250. They asked for the Tenant’s signature on the Condition Inspection Report “to agree with the deductions and transfer the remaining sum of $3596.31.”

The Tenant responded to this message on the same day, to say “We have lived here for 6 years. These pictures all show natural wear and tear.” The Tenant requested the return of their security deposit.

For alleged damages and other expenses associated with this tenancy, the Landlord claims on their Monetary Order worksheet dated July 12, 2021 as follows:

#	Item(s)	$ claim
1	hardwood floors	7,507.50
2	hardwood floors	6,615.00

3	fridge door damage	210.00
4	mailbox lock, re-key unit	188.81
5	agent fee	2,000.00
6	cleaning fee as per addendum	250.00
7	liquidated damages	2,595.00
8	1 week rent loss	1,297.50
9	light bulb change	147.00
	Total	**13,644**

On their Application, the Landlord provided the amount $13,492.50.

Evidence for each line item above consists of the following:

1 an estimate dated July 7 for floor refinishing throughout: $7,507.50 total – In the hearing the Landlord described a floor company visiting on July 5. A July 7 message from the original builders who informed the Landlord they do not have replacement floorboards in stock. On their Application, the Landlord stated: "The hardwood flooring was custom made material. Strata has no spares left. The only cost-effective option is to refinish the flooring."

2 a second estimate dated July 10, for repair of hardwood floor areas $900 and refinish entire floors with stain and finish $6,300

3 the same estimate contains an estimate for touch-up dents in the fridge, for $200

4 The Landlord also claimed $188.81 for replacement locks in the rental unit, shown in an invoice dated July 7. The Landlord claimed the Tenant did not return all keys to them at the end of the tenancy, with the number of keys indicated on the Inspection Report. They asked the Tenant about this on July 7, and the Tenant replied they only ever received 1 fob, 1 suite key, 1 mailbox key, and 1 stair key, and not two as the Landlord claimed. The Tenant purchased extra fobs on their own.

5 a signed statement from an agent who assisted the Landlord with "showing, rental contract and finding a new tenant", stating they received $2,000 from the Landlord on July 8 for these services

6 cleaning fee as per addendum – this refers to the addendum clause 2, stating "subject to a deep cleaning fee of $250".

7 In the July 10 email, they notified the Tenant of the addendum clause 28 for liquidated damages, agreed to by the Tenant. This is for one-half month rent amount for "releasing costs plus any other losses incurred if they break lease with or without landlord's permission." They listed this amount as $2,595.

8 In their email to the Tenant on July 10 the Landlord stated the Tenant had ended the fixed-term tenancy early. This meant "the tenant must reimburse the landlord for costs of re-renting the unit, like advertising and lost rent." They stated: "Up until now, I lost one week of rent which is the amount of $1297.50."

9 a July 12 electrical repair service and parts estimate for $147 to replace 2 lightbulbs

The Tenant responded to these claims by the Landlord in the hearing. They presented they were trying to contact the Landlord to schedule a move-out inspection, to no avail. They returned keys to the Landlord via courier because they could not co-ordinate a meet-up to hand the keys back to the Landlord. At the very end of the tenancy, the Tenant returned from out-of-country specifically to close this tenancy out, and they were unable to schedule a meeting with the Landlord. In their evidence, the provided the record of their email messages to/from the Landlord on June 29-30. This shows their attempts at scheduling a meeting with the Landlord.

On the issue of the floors, the Tenant presented that they lived in the rental unit for 6 years. They had carpet on the floors so were not aware of what was happening. Prior to their move-out on June 25, they touched-up the paint throughout the rental unit. The Tenant presented their own photos of the rental unit, dated June 4 (showing the set-up in the rental unit with carpets), and June 30, showing an empty rental unit.

The Tenant also presented that the Landlord had retained a copy of each of the keys for the rental unit and the mailbox since the start of the tenancy. Proof of this was the Landlord requesting their own pickup of mail – in 2016, showing they had access to the mailbox entirely on their own.

The Tenant made their Application solely for the return of the amount they paid as a security deposit at the start of the tenancy. This amount was the $4,600 amount they paid at the start of the tenancy. The Tenant provided their Notice of Forwarding Address document that they signed on June 30, presenting it to the Landlord on that same date via registered mail.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of

compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or monetary loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Landlord's losses for the end of the tenancy

I find the tenancy agreement was a month-to-month agreement at the time the Tenant advised the Landlord of their desire to end the tenancy. The dialogue between the parties in early April confirmed the Tenant's desire to continue on a periodic basis, confirming with the Residential Tenancy Branch that the agreement at the time was periodic, and not on a fixed term. The Tenant attempted to confirm with the Landlord that the Tenant could end the tenancy with a one-month notice; however, the email exchange between the party was unclear, though the Landlord did state: "You can send me a notice".

The Residential Tenancy Policy Guideline 30 on 'Fixed Term Tenancies' gives a statement of the policy intent of the legislation:

> A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms.

Further, the *Act* itself provides in s. 44(3):

> If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Here, the Landlord did not produce any subsequent agreement between the parties to show another agreement was signed on a fixed-term arrangement. If there was a tacit agreement between the parties in the past for continued fixed terms over the

subsequent years, the Landlord did not produce any evidence of that. Further, the original agreement contains the indications for both b) a fixed length of time *and* c) other period tenancy. I find the original agreement referred to the original one-year fixed term, and the intention of the Landlord was to use the indication for c) as a means to ensure each year fixed-term subsequent agreements. That is a contraindication in that place in the agreement; I find the indication for c) has no effect and is not valid.

The addendum clause 29 provides that both parties may agree to another fixed-term tenancy. This clause runs counter to s. 44(3) in that another agreement must be signed between the parties. The clause 29 refers to "both parties agreement" which is ambiguous; more properly, the clause should strictly require a new signed tenancy agreement between the parties.

As per the policy guideline and s. 44(3), I find the agreement as it existed in April 2021 was a month-to-month agreement, and this did not ever change or revert to a fixed-term, minus a new tenancy agreement. The requirement of the strata for a "long-term" is a claim by the Landlord of dubious origin, and has no import into the Landlord-Tenant agreement and the applicability of the *Act*. With the agreement being a month-to-month arrangement, the Tenant was not prevented from ending the tenancy with one month notice, as per s. 45(1). I find they did so here on a valid, legal basis.

Because of this, the Tenant is not subject to the liquidated damages clause set out in the addendum. At that time, there was a fixed-term agreement; however, that term expired on May 31, 2017 and the addendum was no longer valid after that time. Again, there was no new tenancy agreement signed, and no new addendum signed either. The addendum clause is not valid because the tenancy as it existed in 2021 was not a fixed-term tenancy agreement at that time. For this reason, I negate the Landlord's claim for liquidated damages. Moreover, given that the Landlord claims for agent's fees, in addition to this clause, I find this is an attempt by the Landlord to impose an arbitrary penalty, and not a genuine pre-estimate of the cost of re-renting the unit.

The Tenant ended the tenancy in a proper legal fashion. There was no breach of the *Act* by the Tenant; therefore, they are not liable for the Landlord acquiring new tenants in the rental unit. I dismiss the Landlord's claim for the cost of agent's fee ($2,000) as claimed by the Landlord. The Tenant also afforded the Landlord ample time to find new tenants, so I also dismiss the Landlord's claim for one week's equivalent of rent. That is in no way attributable to the Tenant ending the tenancy in the legally valid manner they did here.

In sum, the Tenant did not breach the *Act* or the tenancy agreement by giving the Landlord notice on April 11, 2021 of their desire to end the tenancy. There is no compensation to the Landlord for these pieces of their claim associated with the Tenant's notice to them.

Claims for damages in the rental unit

Concerning damages within the rental unit, the *Act* s. 25 sets the Landlord's obligation to schedule a meeting together with the Tenant to inspect the condition of the rental unit. There must be at least 2 opportunities. The Tenant here did not abandon the rental unit, giving the Landlord adequate notice that they were ending the tenancy, so there is no exception to the Landlord's obligation in these circumstances.

The record does not show the Landlord scheduled a move-out inspection with the Tenant prior to the end of the tenancy. The Tenant provided sufficient evidence to show there was no communication with the Landlord prior to the very end of the tenancy. On June 29, 2021, the Landlord merely asked the Tenant to deposit rent for the month of July. As they stated in the hearing: "I didn't have time to look at the empty unit with the Tenant." I find the Landlord was not accepting calls from the Tenant. By s. 36(2)(a), the Landlord's right to claim against the security deposit is extinguished for this reason. That is an automatic return of the security deposit to the Tenant, minus any valid claim the Landlord may still hold for damages.

Concerning floors, I am not satisfied of damage attributable to the Tenant, beyond reasonable wear and tear. For a compensation amount, the Landlord made repeat claims on their Monetary Order Worksheet for the floors. Both of their estimates are listed, and it is unclear what the final amount of their claim -- $13,644 – consisted of.

Further, in one estimate, the contractor included a "Kitchen Fridge touching up as a complimentary service", and this is the estimate total of $7,507.50. However, in their worksheet, the Landlord included $210 from a separate estimate provided to them. I am not clear on which items from which estimates the Landlord is including for their claim. If relying on one estimate that includes a complimentary service, yet claiming from another, that does not represent an effort at minimizing the claimed amounts.

This is not a situation where the Landlord is entitled to proffer amounts for my consideration; rather, they must positively prove damage or loss, and establish a clear amount for compensation. For this reason, I dismiss the claimed portion listed as a separate item for $6,615. That is a number that is not reflected anywhere in the Landlord's evidence.

Aside from this, nowhere in the Landlord's evidence does the amount of $210 for fridge refinishing appear as an estimate. I dismiss this piece of the Landlord's claim because the amount does not appear in the Landlord's evidence in the estimates. In addition, the evidence they provided is insufficient to show actual damage to the fridge door; therefore, I am not satisfied that damage existed.

The Landlord claimed the exact amount of $7,507.50. The source of this amount is a July 7 estimate from a flooring company. It is an amount reflective of a set rate multiplied by the rental unit square footage. The Landlord chose this option to refinish the floor because they could not find the original floorboard material. There is no record from the technician who visited that the floors required refinishing based on alleged stains in three areas. I find the images and videos show discoloured areas. I am not satisfied of a "sticky" consistency to those areas. This is not an instance of damage that is measurable beyond what would normally require a thorough cleaning and there is no record of the Landlord attempting to clean the floors on their own before receiving estimates for refinishing the entirety of the rental unit.

I am not satisfied a complete refinishing job is attributable to any acts of neglect by the Tenant. I find it more likely than not, after six years of a tenancy, that the areas in question show reasonable wear and tear. Because of this, there is no damage and the Tenant is not obligated to pay for a complete rental unit refinishing job. In sum, I dismiss the Landlord's claim for damage to areas of the floor. There is insufficient proof of damage, and the Landlord did not make an effort at minimizing their claim.

In the Landlord's own presentation of events, they did not accommodate a return of the keys from the Tenant. They responded to the Tenant on July 29 to say "at the moment key exchange is not my concern." They also instructed to keep the key. I find this shows the Landlord did not assist the Tenant to return the keys in a timely fashion, and did not accept this responsibility for their own rental unit. The Tenant shall not be faulted for this. A move-out inspection meeting would more likely than not have rectified the return of keys and alleviated the need for lock replacement. This is a lack of communication that rests solely with the Landlord, and I dismiss their claim for lock replacement for this reason.

The Landlord provided photos that purportedly show the need for a "deep cleaning" at the cost of $250 as the addendum provided for. I find the photos show absolutely no need for further cleaning and the Tenant here has complied with the standard for the unit to be "reasonably clean, and undamaged" as per s. 37(2)(a). I dismiss this portion of the Landlord's claim, and the term in the addendum is unenforceable as it is unnecessary.

Finally, the Landlord claimed for the replacement of two lightbulbs. I find the claim for an electrician to come to replace two lightbulbs is egregious. There is no evidence showing the need for this. This is clearly not an effort a minimizing their loss. I dismiss this piece of the Landlord's claim.

In sum, I dismiss all pieces of the Landlord's claim for compensation. They have not provided ample evidence of damage or monetary loss, or grossly inflated the cost to them. The Landlord did not accept the responsibility of scheduling a final move-out inspection with the Tenant and did not accommodate the Tenant trying to return the rental unit keys directly. The Landlord's claim for compensation is dismissed, without leave to reapply. Because the Landlord was not successful in their claim, they are not entitled to reimbursement of the Application filing fee.

Tenant application for security deposit

The *Act* s. 38(1) provides that a landlord must either repay a security deposit or apply for dispute resolution to make a claim against that deposit. This must occur within 15 days after the later of the end of the tenancy or the tenant giving a forwarding address.

Following this, s. 38(4) sets out that a landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office.

Further, s.38(6) sets out the consequences where a landlord does not comply with s. 38(1). These are: a landlord may not make a claim against the deposit; and the landlord must pay double the amount of the deposit.

I find the Landlord completed their initial Application for compensation, withholding the security deposit for those purposes, on July 10, 2021. This is within 15 days that they received the Tenant's forwarding address. The Landlord thus complied with s. 38(1) and the Tenant is not entitled to double the security deposit amount.

Above I found the Landlord was not eligible for any monetary award for damage to the rental unit, or other monetary loss. There is no further holding of the security deposit by the Landlord, and I order its return, in full, to the Tenant. I grant this full amount of $4,600 in a monetary order to the Tenant.

Because the Tenant was successful in their Application, I find they are eligible for the Application filing fee, and I add this amount to the monetary order to them.

Conclusion

I order the Landlord to pay to the Tenant the amount of $4,700. I grant the Tenant a monetary order for this amount. The Tenant may file this monetary order at the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: February 17, 2022

Residential Tenancy Branch