# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SIXTEEN SIXTEEN HOLDINGS LTD. and [tenant name suppressed to protect privacy]

**DECISION**

Dispute Codes MNDCL-S FFL

Introduction

The landlord seeks compensation against a former tenant pursuant to the *Residential Tenancy Act* (the "Act"). An arbitration hearing was convened, by way of teleconference, on November 17, 2022. Attending the hearing were the tenant and two representatives for the landlord. The parties were affirmed and no service issues were raised.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below. For brevity, while the landlord is a corporation, a husband-and-wife team run the company, and references to "the landlord" refers to either the corporation or to the husband who testified during the hearing.

The tenancy was a fixed-term tenancy beginning September 1, 2021 and slated to end August 31, 2022. The tenancy would then continue as a periodic, or month-to-month, tenancy thereafter. However, the tenant gave notice to end the tenancy early and vacated the rental unit on February 26, 2022.

Monthly rent was $1,900.00 and the tenant paid a $950.00 security deposit which the landlord holds in trust pending the outcome of this application. A copy of the written *Residential Tenancy Agreement* was in evidence there was no dispute as to the terms.

In this application the landlord seeks $2,235.00 in compensation for “Hours worked to find and secure new tenant for [rental unit address]” according to a document listing hours and activities, submitted into evidence by the landlord. In addition, the landlord seeks $100.00 to recover the cost of the application filing fee.

The landlord testified that the tenant was unable to fulfill the fixed-term tenancy and had to leave seven months early. The tenant obtained a new job in Vancouver and had to move away from Victoria. The landlord then took steps to get the rental unit rented.

As to the events at the end of the tenancy, the tenant was supposed to vacate by 5 PM on February 26, 2022. However, when the landlord showed up at the property to conduct a walk-through condition inspection the place was not yet empty. Some of the tenant’s furniture and belongings were still there.

Not being able to conduct the inspection the landlord then left, hoping to come back the next day. (He did not want to drive across town from Esquimalt to Oak Bay later this evening.)

The tenant, however, wasn’t able to return the following day for an inspection as he was starting a new job over in Vancouver. He was packed up and departed about an hour and a half later, catching the ferry that evening. He put the keys in the mailbox.

On the morning of February 27, the landlord returned and the rental unit “didn’t look too, too bad.” A *Condition Inspection Report* (“Report”) was completed by both landlords, and a copy of this Report was submitted into evidence. I will refer in greater detail to this Report in the Analysis section below.

The tenant testified that the landlord did show up around 5 PM on the 26th, and that the place was not quite ready yet. Despite the landlord sending him an email about a second opportunity to attend for an inspection, the tenant had to start work at his new job the next morning and thus couldn’t be back on the 27th.

Nevertheless, the tenant testified that he did not leave any damage to the rental unit and that he “cleaned as best I could.” He is sorry, however, if the cleaning was not up to the landlord’s standards. He then didn’t hear anything further from the landlord until he received an email on March 4, 2022. The tenant argued that he was not given a second opportunity to participate in the inspection.

Last, the tenant called into question and disputed the amounts claimed by the landlord for finding a new tenant. He questioned the validity of the hourly rate, including the additional amounts claimed by the landlord for them undertaking new tenant-seeking opportunities during the landlord's vacation. The tenant questioned why the amounts claimed are for one-hour increments in communications with prospective tenants.

A sample of the entries on the document (a two-page email sent from one landlord's personal email to the landlord's corporate Gmail account) is worth reproducing:

> January 10 - communicated with several possible tenants and arranged showing of suite. 3 hours 4:30 to 7:30
>
> January 11 - communicated with several possible tenants to confirm viewing date of Jan 12. 2 hours 4:30 to 6:30

There are also entries for work done by the landlord during their vacation. For example:

> January 22 - communicated with several possible tenants. 1 hour vacation time and a half. 8:30 to 9:30

There are total of 31 entries on the document. The landlord's time spent is calculated at 61 hours and 45 minutes at $30.00 per hour, plus an additional 8 hours and 30 minutes at a vacation rate of $45.00 per hour, for a total claim of $2,235.00.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent?

(2) Did the applicant suffer a loss because of a breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable to minimize the loss?

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.

In this dispute, the landlord seeks compensation arising from two breaches of the Act:

(1) the tenant ended the fixed-term tenancy early in breach of section 45(2) of the Act, which prohibits a tenant from ending a fixed-term tenancy before the stated end date of that tenancy, and

(2) the tenant breached section 37(2)(a) of the Act which requires that a tenant "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear" when they vacate.

In respect of the first breach, it is clear that the tenant ended the tenancy early and in contravention of the Act and the tenancy agreement. The first part of the above-noted four-part is thus satisfied. I am also persuaded that the landlord would not have suffered *some* sort of loss because of the tenant's breach. It is reasonable to expect that the landlord would have to spend time and possibly money in finding a new tenant much earlier than if the tenant had completed his tenancy.

However, as for the third criteria that must be proven (that is, whether the amount of the loss has been proven), I am not satisfied based on the evidence before me that it has.

The landlord submitted a two-page document (dated March 5, 2022) with numerous entries related to activities supposedly done in the two months previous. There is, however, no supporting, primary source document in which the time spent is recorded in a contemporaneous manner. The amount of time spent within each entry are all exactly one hour or 1.5 hour. This level of approximation or rounding is unsatisfactory when a claim of this amount is made. Nor is there a copy of any communication records such as emails with prospective tenants.

Quite frankly, with the scarcity that is the current rental market, and with a rental unit having a competitive rent of $1,900.00 in a desirable part of Oak Bay, I find the landlord's claim that it took two months and a total of 70 hours and 15 minutes to secure a new tenant for March 1 difficult to accept.

If, in the extremely unlikely case that it did take this much time, the documentary evidence simply does not support any such finding. In short, I am not persuaded that the landlord has satisfied the third part of the four-part test of compensation.

That having been said, the landlord is, by virtue of the tenant's breach of the Act and the tenancy agreement, entitled to nominal damages.

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this dispute the landlord is entitled to nominal damages in the amount of $1.00. And pursuant to section 38(4)(b) of the Act the landlord is authorized to retain $1.00 of the security deposit in satisfaction of the nominal award.

In respect of the second breach, the landlord seeks compensation for their time spent cleaning. This cleaning was done from 9:30 AM to 3 PM with a 30-minute lunchbreak. It was the landlord's testimony that the rental unit didn't look too bad. The tenant testified that he didn't damage the rent unit and that he cleaned it as best he could.

When two parties to a dispute provide equally plausible accounts of events related to a dispute, the party making the claim—in this case the landlord—has the burden to provide sufficient evidence *over and above their testimony* to establish their claim.

In this case, I find the landlord has failed to establish that the tenant breached section 37(2)(a) of the Act. There are no photographs of the rental unit at the start and at the end of the tenancy. More importantly, the Condition Inspection Report provides no useful or persuasive information as to the condition of the rental unit either at the start or end of the tenancy. Save for two notations made on September 1, 2021, entire sections have a diagonal line drawn through them with the abbreviation "NA". Nor is there anything recorded in any section of the Report for what the condition of the rental unit was like on February 27, 2022. Given the absence of any information on the Report, I do not find that the Report was completed as required by the Act and I place no evidentiary weight upon the Report.

In summary, it is my finding that the landlord has not proven a breach of the Act for which any compensation may flow, in respect of cleaning the rental unit. This aspect of their claim is accordingly dismissed.

Having dismissed the second part of the landlord's claim and having awarded only nominal damages in respect of the first part of the claim, it is further concluded that the landlord is not entitled to recover the cost of the application filing fee (section 72 of the Act). This claim is thus dismissed.

Conclusion

For the reasons given above, the application is dismissed, in part.

The landlord is ordered to return $949.00 of the security deposit to the tenant within 15 days of receiving this Decision. A monetary order is issued with this Decision to the tenant, should enforcement of the order be deemed necessary.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 18, 2022

Residential Tenancy Branch