Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on September 8, 2015. The Landlords filed seeking a Monetary Order for: damage to the unit, site, or property; unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by one Landlord and both Tenants. Each person gave affirmed testimony. The Landlord affirmed he would be representing both Landlords at the hearing. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On February 16, 2016 the Tenants submitted 10 pages of evidence and a USB stick containing digital evidence to the Residential Tenancy Branch (RTB). The Tenants affirmed they served the Landlords copies of the same documents and digital evidence they had served the RTB in one package of evidence and one USB.

The Tenants asserted they sent the packages to the service address for the male Landlord as they had previously dealt with him until the end of the tenancy. The Landlord acknowledged receipt of the Tenants' documents and USB stick and stated that he was not able to view the USB stick because his computer was broken. The Landlord did not submit evidence as to why he made no attempts to access another computer to view the USB stick he simply stated he did not view the USB stick.

Based on the foregoing, I find the Tenants submitted their evidence within the required timeframes. However, the Tenants failed to contact the Landlords to confirm they were able to view the items on the USB stick, as required by the Rules of Procedure. Therefore, I considered the Tenants' documentary submissions as evidence of this

proceeding along with the Tenants' oral submissions; and I did not consider their Digital Evidence.

There was oral evidence before me regarding a previous dispute resolution hearing which the parties attended on September 18, 2015. I informed both parties that I would be reviewing and considering the September 18, 2015 Decision as evidence for this hearing. Neither party disputed my consideration of the former Decision.

On September 14, 2015 the Landlords submitted Canada Post receipts as proof of service of their application upon the Tenants. On March 1, 2016 the Landlords submitted 23 pages of evidence to the RTB. The Landlord affirmed the Tenants were served with copies of their evidence via registered mail on March 2, 2016.

The Tenants testified they had not received evidence from the Landlords. Upon further clarification the Tenants stated the service address to which the Landlords' application was sent was no longer the Tenants' service address. The Tenants confirmed they had not contacted the Landlords to inform them of their new address; rather, they listed there new service address as their return address when they served their evidence to the Landlords in February 2016.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

> 1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.1 stipulates the applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following: the Application for Dispute Resolution; the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch; the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

Rule of Procedure 3.11 provides evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

Rule of Procedure 3.14 provides documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office **not less than 14 days before the hearing** [my emphasis added with bold text].

Section 90 of the *Act* provides that a document given or served in accordance with section 88 of the *Act*, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

In this case I find the Tenants were deemed to have received the Landlords' evidence on March 7, 2016, five days after it was mailed, pursuant to section 90 of the *Act.* That means the Tenants were deemed to have received the applicant Landlords' evidence seven calendar days before the hearing. Therefore, notwithstanding the Tenants' change of service address, I find the applicant Landlords' evidence was not served upon the Tenants in accordance with the Rules of Procedure.

Rule of Procedure 3.12 stipulates the arbitrator may refuse to accept evidence if the arbitrator determines that there has been a willful or recurring failure to comply with the Act, Rules of Procedure or an order made through the dispute resolution process, or if, for some other reason, the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

When asked why the Landlords' evidence was not served until March 2, 2016 the Landlord stated the other Landlord, his ex-wife, compiled and served their evidence as she was the one who handled the move out process.

There was evidence before me that the Tenants had served their **respondents'** evidence upon the Landlords on February 16, 2016, over two weeks prior to the Landlords sending their **applicants'** evidence to the Tenants. In addition, the Landlords had attended dispute resolution previously and knew or ought to have known the service requirements for their evidence.

Based on the above, I find the Landlords failed to serve their evidence in accordance with the Rules of Procedure. As a result, I find the Tenants were prejudiced due to the applicant Landlords' delay with service of their evidence, as the only information the Tenants had been provided within the required timeframe was the description listed on the application in the details of the dispute. Therefore, I declined to consider the Landlords' submissions as evidence for this application, pursuant to Rules of Procedure 3.11 and 3.12. I did however inform the Landlord during the hearing that I would be considering his oral submissions as evidence for this proceeding.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation of $4,410.00?

Background and Evidence

On the application for Dispute Resolution the Landlords listed a monetary claim amount of $4, 410.00 as described in the Details of the Dispute as follows:

> *The tenants vacated the house Aug 31 and the rooms were dirty, appliances unclean and yard unkempt despite cleaning checklist given August 18 2015. Plants in driveway damaged. Last month's rent & utilities not paid. I'm requesting to retain security deposit.*
>
> [Reproduced as written]

The Landlords and Tenants entered into a fixed term written tenancy agreement that began on July 1, 2015 and was set to expire on July 1, 2016. Rent of $3,600.00 was payable on or before the first of each month. On June 28, 2015 the Tenants paid $1,800.00 as the security deposit and $1,000.00 as the pet deposit. A move in condition inspection report was completed in the presence of each party and signed by both parties on July 1, 2015.

In the September 18, 2015 Decision the Arbitrator found the parties had mutually agreed to end the tenancy. The Tenants had vacated the rental unit as of August 31, 2015.

The Landlord testified his ex-wife was the person who handled the move out inspection and was the person who filed their application and served their evidence. He stated he was told by his ex-wife what occurred during the move out and how the Tenants refused to sign the move out inspection report form.

The Landlord submitted they had returned the Tenants' $1,000.00 pet deposit within 15 days of the tenancy ending. The Tenants confirmed receipt of their pet deposit as described by the Landlord.

The Landlord stated they are now seeking to retain the security deposit and monetary compensation as follows:

1) $3,600.00 for the unpaid rent for August 2016;
2) $284.16 for the unpaid municipal water utilities as per the invoice submitted in their evidence;
3) $240.00 for cleaning costs as the house was not cleaned to their satisfaction;
4) $65.00 for yard work to have the yard and lawn cleaned up after the Tenants moved out; and
5) $34.23 ($10.50 + $23.73) for mail and postage fees incurred in serving their application and evidence.

The Tenants disputed all items claimed by the Landlords. They argued they had agreed to participate in the move out inspection; however, it was the Landlord who refused to allow them to take part in the completion of the move out form during the walk through.

The Tenants asserted the Landlord insisted on walking through the house with her friend and denied the Tenants the opportunity to provide input while she completed the move out form. They said that is why they refused to sign the form.

The Tenants asserted they ran around and cleaned up or changed things each time the Landlord would say a deficiency out loud. The one Tenant stated that she even went as far as to leave to go purchase a light bulb to replace a burnt out bulb during the inspection.

The Tenants responded to each item claimed as follows:

1) $3,600.00 for the unpaid rent for August 2016 – the Tenants argued they were of the opinion they did not have to pay August rent because the Landlord asked them to move out.
2) $284.16 for the unpaid municipal water utilities – the Tenants did not dispute the fact that they were required to pay the utilities; however, they argued they have never received a copy of the municipal bill.
3) $240.00 for cleaning costs – the Tenants argued they had cleaned the entire house except for one area of the front floor which was dirty due to the moving of their last remaining articles. They argued it would not cost $240.00 to wash one small area of the floor.
4) $65.00 for yard work to have the yard and lawn cleaned up – the Tenants asserted there was never any lawn it was just weeds and dirt. They noted that they had only resided in the rental unit for two months during the hot summer so the yard could not have needed that much work. They stated they had pulled weeds out of the flower beds and maintained the property while they were living there.
5) $34.23 for Canada Post fees – the Tenants asserted they had to pay to mail their evidence so the Landlords could pay for their own.

The Tenants submitted their landlord/tenant relationship broken down and was very “messy” during the month of August. They are of the opinion that they do not owe the Landlords anything.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 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.

Section 67 of the Residential Tenancy *Act* states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

As per the findings in the September 18, 2015 Decision this tenancy ended by mutual agreement. Therefore, I accept the Landlords' evidence the Tenants failed to pay their August 1, 2015 rent in accordance with section 26 of the *Act.* Accordingly, I grant the Landlords' claim for August 2015 unpaid rent in the amount of **$3,600.00.**

The parties agreed the tenancy agreement required the Tenants to pay the municipal water utilities. When the utilities are in the Landlords' name the Landlord is required to provide the Tenants with a copy of the invoice and the Tenants then have thirty days to pay the amount owed for the utilities.

In this case, I find the Landlords failed to serve the Tenants with a copy of the utility invoice prior to filing their application. Therefore, I conclude that at the time the Landlords filed their application the Tenants were not in breach of the tenancy agreement or the *Act.* Therefore, the claim for unpaid water utilities of $281.46 is dismissed, without leave to reapply.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

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

The evidence supports this landlord/tenant relationship became acrimonious shortly after the tenancy began and the tenancy ended after two months. I accept the Tenants' submissions and fine there was insufficient evidence to prove the Tenants left the rental

unit dirty and the yard unkempt. I further accept the Tenants' submissions that there was one area of the floor which remained dirty due to the removal of the last load of their possessions which would not take $240.00 to clean that floor.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the above, I find the Landlords are entitled to nominal damages for having to clean the floor in the amount of **$5.00**. The remainder of the Landlords' claim for costs of cleaning and yard work is dismissed, without leave to reapply.

In regards to registered mail fees for bringing this application forward and service of documents, I find the Landlords have chosen to incur those costs which cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act and to request recovery of their filing fee. Section 88 and 89 of the *Act* provides for various methods of service; therefore, I find costs incurred due to a service method choice are not a breach of the *Act*. Accordingly, I dismiss the Landlords' claims for registered mail costs of $34.23 as they are costs not denominated, or named, by the *Residential Tenancy Act.*

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have partially succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $1,800.00 security deposit since June 28, 2015.

I find the Landlords' monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Unpaid August 2015 Rent	$3,600.00
Nominal damages	5.00
Filing Fee	50.00
SUBTOTAL	$3,655.00
LESS: Security Deposit $1,800.00 + Interest $0.00	- 1,800.00
Offset amount due to the Landlords	**$1,855.00**

The Tenants are hereby ordered to pay the Landlords the offset amount of $1,855.00, forthwith.

In the event the Tenants do not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **$1,855.00** which may be enforced through Small Claims Court upon service to the Tenants.

Conclusion

The Landlords have partially succeeded with their application and were awarded monetary compensation of $3,655.00 which was offset against the Tenants' security deposit leaving a balance owed to the Landlords of **$1,855.00**.

This decision is final, legally binding, and 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: March 18, 2016

Residential Tenancy Branch