Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF; MNDC

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

The landlord and the two tenants, "male tenant" and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 53 minutes in order to allow both parties, particularly the tenants who used the majority of the hearing time to speak, to fully present their submissions.

At the outset of the hearing, the landlord said that he intended to call his mother to testify. As she was an intended witness for this hearing, I advised the landlord that she had to be excluded from the proceedings until it was time for her to testify, so she could not hear other parties' evidence. The landlord ensured that his mother left the room. Later during the hearing, I asked the landlord if he wanted his mother to testify and he stated that he did not want her to testify. Accordingly, the landlord's mother did not testify at this hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenants testified that they both personally served the landlord with their written evidence package on October 1, 2015. The written evidence consists of five pages of the tenants' handwritten statements and three pages of an ICBC vehicle estimate. The landlord denied receiving this written evidence, stating that he only received the tenants' application and notice of hearing on October 1, 2015. As the landlord did not receive the evidence and the tenants did not provide any other supporting evidence such as testimony or written statements from other independent third party witnesses not involved in this proceeding, who witnessed the service, I advised them that I could not consider their written evidence at this hearing. I find that the landlord was not served with the tenants' written evidence as required by Rule 3.1 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

Preliminary Issue – Inappropriate Behaviour by the Tenants during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

> *Interruptions and inappropriate behaviour at the dispute resolution hearing*
>
> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

At the outset of the hearing, I advised both parties about the rules of the conference, to respect each other and myself, that one person was to speak at any given time, that parties were not to interrupt while others were talking, and that both parties would be given a chance to speak. I advised both parties that as the Arbitrator, my role was to conduct and control the conference. Throughout the hearing, the tenants repeatedly interrupted and made sarcastic comments to the landlord and me. They yelled and were aggressive. The tenants displayed rude, hostile and inappropriate behaviour. I repeatedly warned the tenants to stop their inappropriate behaviour but they continued. I notified the tenants that they could be excluded from the hearing if they continued with their behaviour. However, I allowed the tenants to attend the full hearing, despite their inappropriate behaviour, in order to provide them with an opportunity to present their application and to respond to the landlord's application. I caution the tenants not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and they may be excluded from future hearings.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to recover the filing fee for his application?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed that this tenancy began on March 15, 2015. The landlord said that the tenancy ended on October 1, 2015, while the tenants said that it ended on October 14, 2015. Both parties agreed that monthly rent in the amount of $800.00 was payable on the first day of each month and a security deposit of $400.00 was paid by the tenants and the landlord continues to retain this deposit. Both parties agreed that a written tenancy agreement was signed, but neither party provided a copy for this hearing.

Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy. Both parties agreed that the tenants did not provide a forwarding address in writing to the landlord. The landlord agreed that he did not have written permission from the tenants to keep any amount from their security deposit. The landlord filed his application on October 8, 2015.

The landlord seeks $5,000.00 for damages caused by the tenants to the walls in the rental unit and $50.00 for the recovery of the filing fee. The landlord said that a professional provided him with an estimate of $5,000.00 to fix the wall damages. He noted that there was no wall damage when the tenants moved into the unit. The landlord claimed that the tenants caused holes of eight to ten inches in the walls throughout the living room, kitchen, and master bedroom. The tenants denied causing any wall damages.

The tenants seek $6,200.00 from the landlord. The tenants said that the landlord and his mother caused damages totaling $3,000.00 to their vehicle. The tenants seek $300.00 for a microwave/oven that they said was destroyed by the landlord and his mother and the return of their security deposit of $400.00. The tenants claimed that they are entitled to a return of $2,000.00 in rent and $500.00 for a loss of peace and quiet enjoyment at the rental unit. The tenants said that the landlord and his mother

complained, harassed them and banged on the door to their rental unit. The female tenant testified that she was assaulted by the landlord's mother and the police had to be called. The landlord disputed all of the tenants' claims. The landlord said that he and his mother did not damage the tenants' vehicle. He noted that the tenants did not provide any photographs or videos of the damages claimed.

Analysis

As per section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I dismiss the landlord's application of $5,000.00 for wall damages without leave to reapply. I find that the landlord failed to meet parts 1, 2 and 3 of the above test to show that wall damages exist, that the tenants caused these damages, and proof of the actual amount. The tenants denied the landlord's claim. The landlord failed to produce any documentary evidence including photographs of the damages and an estimate of the amount, despite having this estimate in his possession.

As the landlord was unsuccessful in his application, I find that he is not entitled to recover the $50.00 filing fee from the tenants.

Tenants' Application

I dismiss the tenants' application of $5,800.00 for damage to their vehicle, a loss of quiet enjoyment, damage to a microwave/oven, and a return of rent, without leave to reapply. I find that the tenants failed to meet parts 1 and 2 of the above test to show that the above losses and damage exist and that the landlord caused them. The landlord denied all of the tenants' claims. The tenants failed to produce documentary evidence including photographs, videos, witness statements or other evidence to support their claim. The tenants said that they had photographs and videos in their

possession but were unable to submit them for this hearing. As noted above, I did not consider the tenants' documentary evidence at this hearing but if I did, I find that the evidence is not sufficient to support the tenants' claims. The tenants' five pages of written statements are their own narratives of the events that occurred, which they presented at the hearing through their testimony. They are not independent third party witness statements. The tenants' three-page ICBC vehicle estimate does not prove that the landlord caused damages to their vehicle.

Section 38 of the *Act* requires a landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, a landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Both parties agreed that the tenants did not provide a written forwarding address to the landlord. Therefore, the doubling provisions of section 38 of the *Act* have not yet been triggered. Therefore, I find that the tenants are not entitled to double the value of their security deposit. The tenants are only entitled to the return of their original security deposit of $400.00 from the landlord. No interest is payable on the security deposit during the tenancy term.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $400.00 against the landlord. The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

With the exception of the tenants' application to recover the $400.00 security deposit, the remainder of the tenants' application is dismissed without leave to reapply.

The landlord's entire application is dismissed without leave to reapply.

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

Dated: April 15, 2016

Residential Tenancy Branch