



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the value of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords (male and female), the landlords' agent, and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed that their agent ("landlord") had permission to speak on their behalf and she represented them during this hearing. The female tenant ("tenant") represented both tenants at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application. The landlord confirmed that she had no objection to me considering the tenants' written evidence package, despite the fact that the landlords were not served this package by the tenants for this current hearing, only for the previous Residential Tenancy Branch ("RTB") hearing on September 11, 2018, noted on the front page of this decision.

At the outset of the hearing, both parties agreed that a different Arbitrator at a previous RTB hearing on September 11, 2018, dealt with the tenants' security deposit as part of the landlords' application for damages. The file number for the previous hearing appears on the front page of this decision. I notified both parties that the tenants' double security deposit claim of \$1,500.00 was *res judicata*, meaning it had already been decided and that I could not deal with that claim at this hearing. Both parties confirmed their agreement and understanding of same.

I notified both parties that I would only be proceeding with this hearing to decide the tenants' monetary claim for \$400.00 plus the \$100.00 application filing fee.

Issues to be Decided

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

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on May 1, 2015 and ended on February 1, 2018. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month.

The tenants seek a monetary order of \$400.00 plus the \$100.00 application filing fee.

The tenants seek \$400.00 for aggravated damages. The tenant testified that the tenants not only attended the previous RTB hearing on September 11, 2018, but they also attended another hearing on February 5, 2018, as well as this current hearing on September 27, 2018. The file numbers for the February 5, 2018 hearing also appears on the front page of this decision. The tenant said that the tenants had to take time off from work in order to attend the hearings as well as to attend a Small Claims Court payment hearing with the landlords on April 17, 2018, in order to enforce their monetary

order awarded at the previous RTB hearing on February 5, 2018. The tenant explained that this claim for aggravated damages was not related to their previous RTB claim on February 5, 2018 for a loss of quiet enjoyment. The tenant confirmed that her children were distraught because her family had to vacate the rental unit within a one month period.

The landlord disputed the tenants' monetary claim. She agreed that the landlords attended the payment hearing on April 17, 2018 as well as the three RTB hearings including this current hearing. She said that the landlords suffered the same inconvenience as the tenants, for having to attend all of these hearings. She claimed that the landlords did not have any contact with the tenants' children after February 5, 2018 and that this claim was already decided in the previous hearing on February 5, 2018, which dealt with the landlord's 1 Month Notice to End Tenancy for Cause as well as the tenants' loss of quiet enjoyment claim.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlords 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 tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

After reviewing the previous decision, I find that the tenants' claim for aggravated damages was not dealt with at the previous hearing on February 5, 2018.

I dismiss the tenants' monetary claim for \$400.00 without leave to reapply. I find that the tenants failed to justify the above amount and show how they are entitled to receive a specific type of damages which they identified as aggravated damages.

I find that the tenants filed two of the three applications which resulted in the RTB hearings that they attended on February 5, 2018 and this current hearing on September 27, 2018. I note that the landlords also filed an application which was heard at the same time as the tenants' application on February 5, 2018. It is both parties' legal right to file applications and attend RTB hearings. However, I find that the tenants are not entitled to any wage loss for attending hearings, if it exists, as the only hearing-related cost recoverable under section 72 of the *Act*, is for the application filing fee.

The tenants attending a payment hearing at Small Claims Court is their legal right to do so and part of the process to enforce a monetary order. The RTB has no jurisdiction over the costs in the Provincial Court of British Columbia or any wage loss related to their hearings.

I also find that the tenants failed to show how their children were distraught by any eviction, as they did not provide any medical records or other such documentary evidence of such suffering.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenants' application for a return of double the amount of the security deposit of \$1,500.00 is *res judicata*.

The remainder of the tenants' 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: September 28, 2018

Residential Tenancy Branch