Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on July 28, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing at the appointed date and time, and provided affirmed testimony. The Landlord did not attend the hearing.

The Tenants testified that the Landlord was served with the Application package by registered mail roughly 2 days after documents were received from the Residential Tenancy Branch. The Tenants testified further that the Landlord subsequently acknowledged receipt. In the absence of evidence to the contrary, and pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*.

The Tenants were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on February 1, 2017. The tenancy ended on June 30, 2018, pursuant to a Mutual Agreement to End a Tenancy, dated May 31, 2018 (the "Mutual Agreement"). During the tenancy, rent in the amount of $2,100.00 per month was due on the first day of each month. The Tenants paid a security deposit of $1,050.00, which the Landlord holds.

The Tenants' claim was summarized in a monetary order worksheet, dated, July 28, 2018. First, the Tenants claimed $2,100.00 for the return of double the amount of the security deposit. The Tenants testified they provided the Landlord with a forwarding address in writing on July 1, 2018, via text message. A copy of the message was included with the Tenants' documentary evidence. The text message provided the Landlord with a forwarding address, and agreed the Landlord could deduct $363.11 on account of BC Hydro and Fortis costs. The Tenants testified the Landlord returned $686.89 ($1,050.00 - $363.11) to the Tenants on August 29, 2018, after the Landlord received notice of the Application.

Second, the Tenants claimed $2,100.00 as one month's compensation for having prepared for and addressed the Landlord's claim in a previous hearing on June 12, 2018, although the Landlord did not attend. The Tenants also provided several examples of negative interactions with the tenants in the unit below, which resulted in the Tenants having cable and internet disconnected, and gas shut off. The Tenants testified the Landlord did nothing to address the Tenants' complaints, and even submitted an application for dispute resolution to request an order of possession against them.

Third, the Tenants claimed $927.55 for the cost of a mover, $44.48 for moving boxes, and $87.31 for mail forwarding services. Documents were submitted in support of each of the items claimed. During the hearing, the Tenants testified that they intended to remain in the rental unit for another year but that the circumstances with tenants below and the Landlord made it untenable. Specifically, the Landlord failed to respond to the Tenants' complaints. This included complaints that the tenants below cut off cable and internet services, and shut off gas to the Tenants' unit.

During the hearing, it was noted that the tenancy ended pursuant to the Mutual Agreement. However, the Tenants testified they felt they had to sign it because they faced eviction with limited notice if the Landlord's application, which was heard on June 12, 2018, was successful. Adding to the pressure on the tenants was the fact they were expecting their first child, and stress about the tenancy was impacting their lives.

Fourth, the Tenants claimed $175.00 for the cost of their time to prepare for a previous hearing that took place on June 12, 2018. The Landlord applied for an early end to the tenancy, pursuant to section 56 of the *Act*. Although the Tenants attended the hearing at the appointed date and time, the Landlord did not. The Landlord's application was dismissed. The Tenants testified the time spent preparing for this hearing was greater.

Fifth, the Tenants claimed $2,100.00 for loss of quiet enjoyment during the tenancy. Specifically, the Tenants stated that issues during the tenancy included 7 intentional power outages and 2 issues with the garbage caused by the tenants below. The Tenants also expressed frustration at the Landlord's lack of response to the Tenants concerns despite the other tenants' admission of fault.

Sixth, the Tenants claimed $30.00 for Canada Post priority mail costs for this and the previous hearing.

Finally, the Tenants claimed $100.00 in recovery of the filing fee.

As noted above, the Landlord did not attend the hearing to dispute the Tenants' evidence.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:
Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claim for $2,100.00 for the return of double the amount of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I am satisfied the Tenants provided the Landlord with a forwarding address in writing on July 1, 2018. The text message also consented to the deduction of $363.11 for utilities. Pursuant to section 38(1) of the *Act*, the Landlord had until July 16, 2018, to repay the balance of the security deposit to the Tenants or apply to keep it by making an application for dispute resolution. There is insufficient evidence before me to conclude the Landlord made an application for dispute resolution, and the Tenants testified the Landlord did not return the balance of the security deposit until August 29, 2018. Therefore, I find the Tenants are entitled to recover double the amount of the security deposit, calculated in accordance with Policy Guideline #17.

Policy Guideline #17 illustrates the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit. It states:

- *Example A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.*
  The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

- *Example B: A tenant paid $400 as a security deposit. During the tenancy, the parties agreed that the landlord use $100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.*

  The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is $600.00 ($400 - $100= $300; $300 x 2 = $600).

- *Example C: A tenant paid $400 as a security deposit. The tenant agreed in writing to allow the landlord to retain $100. The landlord returned $250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained $50 without written authorization.*

  The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is $350 ($400 - $100 = $300 x 2 = $600 less amount actually returned $250).

[Reproduced as written.]

In these circumstances, I find that Example C above sets out the appropriate method to determine the amount due to the Tenants. Accordingly, I find the Tenants are entitled to an award of $686.89, which has been calculated as follows:

$1,050.00 - $363.11 = $686.89
(security deposit minus agreed deduction)

$686.89 x 2 = $1,373.78

$1,373.78 - $686.89 = $686.89
(amount reduced by payment made by Landlord)

With respect to the Tenants' claim for $2,100.00 as one month's compensation for time and resources spent preparing for the previous hearing, and the Landlord's failure to address their complaints about the tenants below, I find there is insufficient evidence before me to conclude the Tenants are entitled to the relief sought. Although the Tenants may have found the Landlord's actions frustrating, I find there is insufficient corroborating evidence to conclude the Tenants suffered any loss, or that they took reasonable steps during the tenancy to minimize any loss, i.e. make an application for an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement. This aspect of the Application is dismissed.

With respect to the Tenants' claim for $927.55 for moving costs, $44.48 for boxes, and $87.31 for mail forwarding services, I find there is insufficient evidence before me to conclude the Tenants are entitled to the relief sought. The tenancy ended on June 30, 2018, pursuant to the Mutual Agreement. Although the Tenants testified they felt pressured to end the tenancy early due to the anticipated arrival of their baby, stress, and possible eviction, the Tenants were not obligated to vacate the rental unit. Rather, as noted above, the Tenants were at liberty to apply to the Residential Tenancy Branch for an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement, or other relief as appropriate. There is insufficient evidence before me that they did so. This aspect of the Application is dismissed.

With respect to the Tenants' claim for $175.00 for the cost of time spent to prepare for the hearing on June 12, 2018, I find there is insufficient evidence before me to find the Tenants are entitled to this aspect of their claim. These costs are not generally recoverable when another party exercises a lawful right under the *Act*. Further, I note the Mutual Agreement was signed on May 31, 2018, roughly 2 weeks before the previous hearing on June 12, 2018. I find it would have been reasonable for the Landlord to assume the application would not proceed because the parties had agreed the tenancy would end on June 30, 2018. This aspect of the Application is dismissed.

With respect to the Tenants' claim for $2,100.00 for loss of quiet enjoyment during the tenancy, Policy Guideline #6 states:

> *A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*
>
> *Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

[Reproduced as written.]

The Tenants testified they experience a loss of quiet enjoyment due to the actions of the tenants below, and due to the lack of response by the Landlord is dealing with their complaints. In this case, I find the Tenants experienced a number of issues related to the tenants below. These included 7 instances where the tenants below cut off power to the Tenants' rental unit, and 2 instances where the tenants below caused or allowed the Tenants' garbage to spill onto the yard. In the absence of evidence to the contrary, I find the Landlord was aware of a problem and failed to take reasonable steps to rectify the situation. However, I find a reasonable amount to award is $500.00.

With respect to the Tenants' claim for $30.00 for Canada Post priority mail costs, I find there is insufficient evidence before me to find the Tenants are entitled to this aspect of their claim. These costs are not generally recoverable, particularly when there are other methods of service that do not result in financial losses.

With respect to the Tenants' claim for $100.00 in recovery of the filing fee, I find the Tenants have been partially successful and are entitled to recover this amount.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of $1,286.89, which has been calculated as follows:

Item	**Amount**
Double security deposit:	$686.89
Loss of quiet enjoyment:	$500.00
Filing fee:	$100.00
TOTAL:	**$1,286.89**

Conclusion

The Tenants are granted a monetary order in the amount of $1,286.89. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: December 3, 2018

Residential Tenancy Branch