



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Landlord: FFL MNDL-S MNRL-S
 For the Tenants: FFT MNSD

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The landlord’s application for dispute resolution was made on October 31, 2018 (the “landlord’s application”). The landlord applied for the following relief pursuant to the Act:

1. a monetary order for unpaid rent in the amount of \$8,202.50;
2. a monetary order for damages caused to the rental unit in the amount of \$556.94; and,
3. a monetary order for recovery of the filing fee in the amount of \$100.00.

The tenants’ application for dispute resolution was made on November 15, 2018 (the “tenants’ application”). The tenants applied for the following relief, pursuant to the Act:

1. a monetary order for the return of their security deposit in the amount of \$1,100.00; and,
2. a monetary order for recovery of the filing fee in the amount of \$100.00.

The landlord and one of the tenants attended the hearing before me on February 26, 2019, and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Finally, while I have reviewed all oral and documentary evidence submitted, only evidence both served and presented in compliance with the *Rules of Procedure* and the Act, and only relevant evidence pertaining to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent?
2. Is the landlord entitled to a monetary order for damages caused to the rental unit?
3. Is the landlord entitled to a monetary order for recovery of the filing fee?
4. Are the tenants entitled to a monetary order for the return of their security deposit?
5. Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced on June 15, 2016. He evicted the tenants (for nonpayment of rent) effective August 15, 2018, and the tenants vacated on or about August 17, 2018.

Rent was \$1,100.00, due on the fifteenth of the month. Hydro was \$50.00 a month. The tenants paid a security deposit of \$550.00. A copy of the written tenancy agreement was submitted into evidence. The landlord seeks compensation for unpaid rent that accumulated throughout the period 2016-2018. Submitted in support of his claim was a balance of payments document reflecting the accumulating arrears. The document shows that rent was paid in cash on varying dates for each month, and only partial payments. At the end of 2016, arrears were \$70.00. At the end of 2017, arrears totalled \$4,817.50. By the time the tenancy ended in August 2018 arrears had accumulated to \$8,202.50.

As to why the landlord did not pursue collecting the rent at the time, he explained that he almost died of heart failure in 2017. Had he been in good health he would have evicted the tenants earlier. Eventually, he did, and issued a few notices to end tenancy, which resulted in the tenants being evicted in mid-August 2018.

The landlord's other part of his claim relates to extensive mould damage to the rental unit. Mould covered all the walls and other parts of the rental unit's exterior. He explained that the tenants had lots of furniture, and then acquired even more furniture, creating what he described as a "canyon pathway" through which one had to walk. There was no air circulation because of all the furniture, the windows were never opened (except the bathroom window to let fresh air in for "stink from [the] cat litter." The tenants heated the place with an oil-filled electric plug-in heater, and the rental unit was "very warm and moist"—like the tropics, the landlord commented—and over the two years they were in the rental unit, excessive mould resulted.

The landlord's application stated that "The result was a lot of mold on all the walls, on shower curtain, on both window blinds. I had to replace both blinds, shower curtain, remove the mold and repaint." This cost the landlord \$556.94, and receipts were submitted for these expenses. In support of this aspect of his claim the landlord submitted several photographs of the mould, primarily around the windows.

The landlord did not complete a Condition Inspection Report at the start of the tenancy but did complete a report at the end of the tenancy. A copy of the report was submitted into evidence. He submitted photographs of the condition of the rental unit after renovations were completed but before the tenants moved in, in support of his argument that the rental unit was in good condition when the tenants moved in.

After the tenants vacated, the landlord received a letter from the tenants in October 2018, which was the first time that he received their forwarding address. He responded to the tenants saying that he would not be paying back the security deposit. He was unable to recall the specific date on which he received the letter. However, the landlord's written submissions included a statement to the effect that he received the tenant's forwarding address on October 20, 2018.

The tenant testified that there was a verbal agreement between the parties that the tenants could pay the landlord rent on a weekly basis, and in chunks. The tenant explained that she often asked for receipts from the landlord for the payments in cash, but that the landlord refused to issue these. In his rebuttal, the landlord stated that "the husband never asked for receipts." And, after March 2018, the tenants started paying rent by money order.

In respect of the mould, the tenant testified that the rental unit had mold in it when they moved in, and that this was already an issue. She further explained that there was "not enough sunlight" getting into the rental unit to kill the mould, and that she tried to get rid of the mould.

In respect of the unpaid rent, the tenant testified that they paid the rent and that there were different amounts owing than what is being alleged by the landlord. The tenant's explanation of what was paid and was owing was, admittedly, rather difficult to follow, as was the hand-printed calculations documents submitted into evidence. She testified that the landlord omitted several payments from his calculations in his claim (e.g., April 11, 17, 28, July 6, October 7, and December 15). However, she testified that she is unable to prove that such payments were made because of the lack of receipts.

Both parties testified that the tenant's husband helped the landlord throughout 2017 after the landlord suffered his heart failure, and that the landlord needed the help due to his health. The tenant said that her husband provided shoveling "day and night" and gutter cleaning, and other services. But, he was not compensated accordingly: "not a penny for my husband's job." The landlord countered, and explained that he had paid the husband, but stopped after a while, as the tenants were not paying rent.

Analysis

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.

Tenant's Claim for the Return of the Security Deposit

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

In this case, the landlord received the tenants' forwarding address on October 20, 2018. The landlord's written submissions attest to this, and the tenant did not dispute this. The landlord applied for dispute resolution claiming against the security deposit on October 31, 2018, which is within the 15 days permitted by the Act. As such, the landlord applied against the security deposit in compliance with the Act. I will address whether the tenants are entitled to the full or partial return of their security deposit, below.

Landlord's Claim for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the 10 Day Notice to End Tenancy for Unpaid Rent (issued on August 2, 2018) informed the tenants that there was unpaid rent of \$7,823.00.

The landlord testified and provided documentary evidence (consisting of the balance of payments documentation and the 10 Day Notice) to support his claim that the tenants have rent arrears in the amount of \$8,202.50. The tenant disputed this amount and claimed that they paid rent. However, the tenant produced no documentary evidence that such rent was ever paid. And, while a landlord “must provide a tenant with a receipt for rent paid in cash,” under section 26(2) of the Act, responsibility also falls on a tenant to ensure that they keep a record of rent paid.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenant has failed to provide any evidence that they paid the rent that the landlord claims was not paid.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for unpaid rent in the amount of \$8,202.50.

Landlord’s Claim for Damage to the Rental Unit

In a claim for damages under the Act, the onus falls on the applicant to prove on a balance of probabilities that the respondent did not comply with this Act, the regulations or their tenancy agreement, and that compensation flows from that non-compliance.

Further, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

Subsection 37(2) of the Act states 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.

In this case, the tenants purportedly left the rental unit full of mould, which the landlord had to remove. The landlord testified that there was no mould at the start of the tenancy, while the tenant testified that there was a mould issue when they moved in.

The landlord explained that no Condition Inspection Report was completed at the start of the tenancy, but that he submitted photographs—more precisely, a scan of a document containing an image of a computer screen grab of several smaller greyscale photographs—of the rental unit after renovations were completed before the tenancy. The scanned document was created on January 21, 2019 by a third party.

A landlord must complete a Condition Inspection Report at both the end, and at the start of a tenancy, pursuant to sections 23 and 35 of the Act. A Condition Inspection Report is an important document that frequently establishes whether damage was done to a rental unit. Often, it is the only document that a landlord has to prove that a tenant caused damage. Section 21 of the *Residential Tenancy Regulation* states the following:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The tenant argued that there already existed a mould issue when they started the tenancy. The landlord's photographs do not provide a sufficient depiction of a non-mouldy rental unit; they are small, they are scanned, they are greyscale, and are of rather low-resolution. I place little weight on this evidence, and therefore find that the landlord has not provided a preponderance of evidence establishing that there was, in fact, no mould in the rental unit.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving his claim for compensation for damage to the rental unit. I dismiss that aspect of his claim without leave to reapply.

Landlord's Claim for Recovery of the Filing Fee

As the landlord was partially successful in his application I grant a monetary award of \$50.00 toward the filing fee.

Monetary Order

A total monetary order of \$7,702.5 for the landlord is calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$8,202.50
Filing fee	\$50.00
<i>LESS</i> security deposit	(\$550.00)
Total:	\$ 7,702.50

Conclusion

I dismiss the tenants' application without leave to reapply.

I grant the landlord a monetary order in the amount of \$7,702.50, which must be served on the tenants. This order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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

Dated: February 27, 2019

Residential Tenancy Branch