



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 18, 2019 (the "Application"). The Landlord applied for compensation for damage to the rental unit and reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenants appeared at the hearing with Legal Counsel and the Occupant. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Tenant M.L. provided the correct spelling of his name which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

Legal Counsel advised as follows. The hearing package was received in time. The Landlord's evidence was received March 22, 2019 and the Tenants are objecting to admission of the Landlord's evidence given the late service.

The Landlord agreed her evidence was served March 22, 2019. She testified that her husband was in the hospital in December and she has been busy. The Landlord also testified that she was going to withdraw the Application but then she received the Tenants' evidence and felt that she had to respond.

Rule 3.1 of the Rules of Procedure (the “Rules”) states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding...which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) 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...

(emphasis added)

Rule 3.14 of the Rules states:

Except for evidence related to an expedited hearing...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.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

(emphasis added)

I found the Landlord failed to comply with rule 3.14 of the Rules. The Landlord should have served her evidence on the Tenants in November when the Application was filed. The Landlord had more than three months to serve her evidence on the Tenants. I did not accept that the Landlord did not have time to serve the evidence. I did not accept that the Landlord should be excused from serving the evidence late because she considered withdrawing the Application.

I told the parties I found the Landlord failed to comply with the Rules and heard the parties on whether the evidence should be admitted or excluded. The Landlord asked that it be admitted. Legal Counsel submitted that it should be excluded and the Application dismissed.

I told the parties the evidence would be excluded as the Landlord failed to comply with rule 3.14 of the Rules without a satisfactory explanation for doing so. I was satisfied it would be prejudicial to the Tenants to admit evidence that was served late as the Tenants testified that they had not seen the evidence previously.

I told the parties I would not dismiss the Application as these hearings are oral hearings and the parties have the opportunity to give verbal testimony to support their position.

At this point, Legal Counsel asked that one piece of the Landlord's evidence be admitted because it was helpful to the Tenants. Legal Counsel asked for this after taking the position twice that the Landlord's evidence should be excluded and after I gave my decision on exclusion of the Landlord's evidence. I told Legal Counsel I would not be admitting one piece of the Landlord's evidence and that the Tenants could either agree to admitting it all or it would all be excluded. Legal Counsel did not agree to admission of all of the evidence.

The Landlord confirmed receipt of the Tenants' evidence 14 days before the hearing. I note that this complies with rule 3.15 of the Rules.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$828.00 for a plumbing bill related to a plugged toilet.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenants. The tenancy started September 15, 2017 and is a month-to-month tenancy.

The Application originally named the Occupant. The Occupant is not named on the tenancy agreement. The Landlord took the position that the Occupant is a tenant under the tenancy agreement. The Tenants took the position that the Occupant is an occupant and not a tenant. I am satisfied the Occupant is an occupant and not a tenant given she is not named on the tenancy agreement. I have therefore removed the Occupant from the Application.

The Landlord provided the following testimony and submissions. She is seeking compensation because of the plumbing bill for the plumber who attended the rental unit. The plumber removed wipes and debris from the system. She was responsible to empty the septic tank but not for damage caused by the Tenants due to flushing wipes.

This was the extent of the Landlord's submissions. The Landlord did not point to any evidence submitted by the Tenants.

Legal Counsel made the following submissions. The Tenants did not fail to comply with the *Act, Residential Tenancy Regulation* (the "*Regulations*") or tenancy agreement. There is no evidence that the Tenants used improper wipes that damaged the plumbing. The wipes used are labelled as flushable and safe for septic tanks. The Landlord had not told the Tenants there was a septic tank. Any loss or damage was caused by the Landlord's failure to maintain the septic tank. The Tenants contacted the plumber and Landlord at the time of overflow and the Landlord spoke to the plumber. The Tenants did not give the plumber any direction. The plumber acted for the Landlord. If the Landlord wanted to use a different plumber or wanted the plumber to do different work, she could have arranged for this.

Legal Counsel did not dispute the amount of the plumbing bill.

In reply, the Landlord testified that the plumber was working until 1:30 a.m. and the pipes were clean and ready to be used.

I have reviewed the admissible evidence and do not find it adds to the above.

Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 32 of the *Act* states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Policy Guideline 1 addresses the responsibility to maintain rental units and states:

SEPTIC, WATER AND OIL TANKS

1. The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.

The Landlord sought compensation on the basis that the Tenants caused the issue that lead to the plumber being required. There is insufficient evidence before me that the Tenants caused the issue. The Tenants allege that the issue was caused by a failure to maintain the septic tank. In the absence of further evidence, I am not satisfied the issue was not caused by a failure to maintain the septic tank, which is the Landlord's responsibility.

There is insufficient evidence before me that the Tenants breached the *Act*, *Regulations* or tenancy agreement. I am not satisfied the Landlord is entitled to compensation.

Given the Landlord was not successful in the Application, I decline to award her reimbursement for the \$100.00 filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

I am not satisfied the Landlord is entitled to compensation. The Application is dismissed without leave to re-apply.

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: April 01, 2020

Residential Tenancy Branch