



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on December 31, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- an order to retain the Tenants' security deposit; and
- an order granting recovery of the filing fee.

The Landlord, the Landlord's Agent L.P., and the Tenant P.W. attended the hearing at the appointed date and time.

The Landlord's Agent testified that she attempted to serve the Tenants in person at the Tenants' forwarding address on January 3, 4, and 5, 2020 by using a process server. The Landlord's Agent stated that they were unsuccessful in serving the Tenants in person. As such, the Landlord attempted to apply for substitute service before receiving information from the Residential Tenancy Branch that the Landlord is permitted to serve the Application via registered mail. As such, the Landlord served the Application and documentary evidence package to the Tenant by registered mail on February 6, 2020. The Tenant confirmed receipt, however, the Tenant stated that the Landlord did not serve the Application within 3 days pursuant to Section 3.1 of the Rules of Procedure.

The Landlord's Agent stated that further evidence was served to the Tenant on May 8, 2020 by registered mail. The Tenant confirmed receipt. However, the Tenant stated that some of the evidence was not organized, clear, or legible.

The Tenant testified that he served the Landlord with his documentary evidence by email a little over a week before the hearing. The Landlord's Agent confirmed receipt. Pursuant to section 71 of the *Act*, I find the Tenant's documentary evidence was sufficiently served for the purposes of the *Act*.

Preliminary Matters

During the hearing, the Tenant raised some concerns regarding the timing of the Landlord's service of the Application. Furthermore, the Tenant questioned the clarity of the Landlord's documentary evidence.

According to Rules or Procedure Section 3.13 Applicant evidence provided in single package;

Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package.

An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution] or Rule 10 [Expedited Hearings].

I understand Rule 3.13 to apply to circumstances where an applicant delivers evidence three days after receiving the dispute resolution package from the RTB, but before the fourteen-day deadline set out at Rule 3.14.

The test in Rule 3.13 is less stringent, requiring only that the applicant explain the reason for the reason for submitting a subsequent evidence package. Rule 3.13 is silent as to what criteria (if any) is to be applied by an arbitrator when evaluating the applicant's explanation. I also note that Rule 3.13 does not set out any consequence for a failure to explain the service of subsequent evidence.

Given that Rule 3.14 allows evidence to be submitted by an applicant up to fourteen days prior to a hearing, I find that any test to be applied when evaluating the explanation for an applicant submitting evidence subsequent to the timeframe set out in Rule 3.1 must necessarily be less stringent than the test set out in Rule 3.17.

I find that the appropriate test to apply when assessing an applicant's explanation is whether their explanation is reasonable. If it is not reasonable, I find that the arbitrator must then look to Rule 3.11 [Unreasonable Delay] to determine if the evidence may be admitted.

Rule 3.11 grants an arbitrator the discretion to exclude evidence whose service was "unreasonably delayed". It does not include factors for an arbitrator to consider when making the determination. As Rule 3.11 is not mandatory, I do not understand it to mean that if evidence has been unreasonably delayed the evidence must be automatically excluded.

In this case, I find that the Landlord attempted to serve the Application and documentary evidence to the Tenants in person on within the three days after receiving the dispute resolution package from the RTB. I accept that the Landlord was unsuccessful in serving the Tenants in this fashion. I accept that the Landlord then made an Application for substitute service before being advised that registered mail is an accepted form of service. I am satisfied that the Tenant received the Landlord's Application and documentary evidence by registered mail on or about February 6, 2020.

In light of the above, I find that the Landlord's service of the Application and documentary evidence was not unreasonably delayed and was sufficiently served to the Tenants pursuant to Section 88 ad 89 of the *Act*. I find that the Tenant has had sufficient time to review, consider, and respond to the Landlord's Application and documentary evidence prior to the hearing.

The Tenant also stated that some of the Landlord's evidence was not organized, clear, or legible. According to the Rules of Procedure 3.7;

All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office. To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

In this case, I found no difficulties in viewing the Landlord's documentary evidence. I find that the Tenant did not require any clarification during the hearing while discussing evidence. As such, I accept the Landlord's documentary evidence as being sufficiently organized, clear, and legible.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit, site, or property, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy started on December 18, 2017. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$2,395.00 to the Landlord each month. The Tenant paid a security deposit in the amount of \$1,197.50 which the parties agreed the Landlord was permitted to retain. The Tenancy ended on January 8, 2018.

The parties agreed that there was a flood in the rental unit which caused significant damage, resulting in the rental unit being uninhabitable. The Landlord stated that the leak was caused by the Tenant's shower being left on which flooded the rental unit. The Landlord's Agent stated that the Tenant was not home at the time of the flood, therefore, the Landlord was required to hire a locksmith to open the door to the rental unit at a cost of \$193.55 which the Landlord is seeking compensation for. The Landlord provided a receipt in support.

The Landlord's Agent stated that the cost of restoration to the rental unit after the flood was \$10,000.00. The Landlord's Agent stated that the flood was a result of the Tenant's negligence by not turning off the shower before the water was turned off to the rental property. The Landlord provided a copy of the invoice in support.

Lastly, the Landlord is seeking to be compensated for the loss of rental income in the revised amount of \$8,155.10. The Landlord's Agent stated that the Landlord was unable to re-rent the rental unit from the date of the flood up until the Landlord was able to restore the rental unit and secure a new tenancy which commenced on May 21, 2018.

The Tenant stated that he was not home during the flood and that he was not made aware that the water in the rental property was going to be turned off for a period of time before being turned back on. The Tenant stated that the Landlord should have had a spare key to allow entry to the rental unit for restoration purposes. The Tenant stated that the Landlord also failed to mitigate his loss by not using his insurance to cover the restoration costs.

The Landlord testified that he did claim the flood through his insurance as was only required to pay a \$1,000.00 deductible. The Landlord's Agent stated that the Landlord is claiming on behalf of the third-party coverage. If successful, the Landlord is also claiming for the filing fee.

Analysis

Based on the affirmed oral testimony and documentary evidence, 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 Tenant. 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.

According to the Residential Tenancy Policy Guideline #1(the "Policy Guideline"); the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

The Landlord is seeking monetary compensation in the amount of \$193.55 for the cost of hiring a locksmith to access the Tenant's rental unit to access the flood. In this case, I find that the Tenant did not breach the *Act* by not being at home at the time of the flood. I find that the Landlord could have held a spare key to gain access to the rental unit in emergency situations. As such, I find that the Landlord did not mitigate his loss and dismiss this portion of the Landlord's claim.

The Landlord is claiming \$10,000.00 in relation to the restoration costs as a result of the flood as well as \$8,155.10 for the loss of rent during the restoration process. I accept that both parties agreed that there was a flood in the rental unit which caused significant damage to the rental unit. The Landlord stated that he could not recall if the Tenant was notified that the water would be turned off at the rental property. I accept that the Tenant was unaware that the water was going to be turned off at the rental property in order to prepare himself accordingly and to ensure that the shower was turned off during this time.

In light of the above, I find that the Landlord provided insufficient evidence to demonstrate that he mitigated his loss by notifying the Tenant that the water to the

rental unit would be turned off for any period of time. As such, I dismiss the Landlord's claim for compensation relating to the cost of restoration as well as the loss of rental income, without leave to reapply. As the Landlord was unsuccessful with their Application, I find that they are not entitled to the return of the filing fee.

Conclusion

The Landlord has provided insufficient evidence to demonstrate that the Tenant has breached the Act and that the Landlord mitigated their loss. As such, I dismiss the Landlord's Application in its entirety 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: June 23, 2020

Residential Tenancy Branch