Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damages in the amount of $8,420.00; for compensation for monetary loss or other money owed of $1,000.00 - retaining the security deposit to apply to these claims; and to recover the $100.00 cost of their Application filing fee.

The Tenants and the Landlords appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness, S.H., for the Landlords was also present and available to provide affirmed testimony.

During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In describing the hearing process to the Parties, I advised them that pursuant to Rule

7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on May 1, 2019, with a monthly rent of $2,500.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of $1,250.00, and no pet damage deposit.

The Tenants said the Landlords refused to sign a tenancy agreement, and that they merely produced a list of handwritten paragraphs in a notebook to govern the tenancy. The Tenants said the Landlords failed to inspect the condition of the rental unit prior to the start of the tenancy or produce a condition inspection report ("CIR"), from such an inspection for comparison purposes at the end of the tenancy.

The Parties agreed that the Tenants vacated the rental unit on December 30, 2019, and provided their written forwarding address to the Landlords via text and letter within the week of January 7th, 2020.

Landlords' Claims

Prior to the Parties giving testimony, I advised them of how I would be analyzing the evidence presented to me. I said a party who applies for compensation from another party has the **burden of proving their claim on a balance of probabilities**. Policy Guideline 16 ("PG #16")sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlords must prove:

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

The Landlords applied for two categories of compensation in their Application; however,

they did not provide a monetary order worksheet listing their specific claims. Submitting a completed a monetary order worksheet form (RTB-37) is not mandatory (RTB Policy Guideline 18); however, according to Rule 3.7, applicants must ensure that their written submissions are clear, legible and organized.

Rule 3.7 states:

> **3.7 Evidence must be organized, clear and legible**
>
> 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. For example, photographs must be described in the same way, in the same order, such as: “Living room photo 1 and Living room photo 2”.
>
> 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.
>
> [emphasis added]

I find it is not clear how many specific monetary claims the Landlords are making, and how much compensation they are claiming for each item. The Landlords merely provided totals in their submissions - $8,420.00 and $1,000.00. It is not clear what documentary evidence relates to which monetary claims.

I attempted to discern these factors from the Landlords during the hearing, but their explanations did not prove helpful in interpreting their evidence. It is not part of my responsibility to study or review text messages or a party’s other evidence to determine what costs apply to which claims. Further, the Landlords said their claims are based on estimates of repair costs of alleged damage, rather than invoices that the Landlords have paid to repair any damage. This detracts from the certainty of the value of the Landlords’ claims. The Landlords may have applied too soon, before verifiable work was done to the residential property to repair any damage, with accompanying invoices.

Further, without a CIR, it is difficult to determine if any damage identified at the end of the tenancy was caused by the Tenants or whether the damage was there at the start of the tenancy.

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that the damage occurred as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act. Further, a landlord is required by section 24(2)(c) to complete a CIR and give the tenant a copy in accordance with the regulations.

PG #16 states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Based on the above, I am not satisfied that the Landlords provided sufficient, and sufficiently clear evidence to prove on a balance of probabilities that they are entitled to monetary compensation from the Tenants. Accordingly, I dismiss the Landlords' Application with leave to reapply.

Conclusion

The Landlords are unsuccessful in their Application, because they did not provide sufficient or sufficiently clear evidence to establish their claims on a balance of probabilities. The Landlords' Application is, therefore, wholly dismissed with 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 25, 2020

Residential Tenancy Branch