



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL; MNDCT, OLC, PSF, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord and the two tenants, male tenant ("tenant") and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 73 minutes.

The tenant confirmed that he had permission to represent the female tenant at this hearing (collectively "tenants"). The female tenant did not testify at his hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

At the outset of the hearing, both parties confirmed that the tenants vacated the rental unit. I notified the tenants that their application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement and an order requiring the landlord to provide services or facilities required by law, were both dismissed without leave to reapply. I informed them that these orders related to an ongoing tenancy only. The tenants confirmed their understanding of same.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenants' security deposit?

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2009. Monthly rent in the amount of \$1,215.96 was payable on the first day of each month. A security deposit of \$550.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. No move-in condition inspection report was completed for this tenancy, but a move-out condition inspection report was completed. The landlord did not have any written permission to retain any amount from the tenants' security deposit. The tenants provided a forwarding address in writing by way of a text message received by the landlord on April 4 or 5,

2020. The landlord's application to retain the tenants' security deposit was filed on April 18, 2020.

Both parties agreed that the tenants returned the keys and removed the last of their belongings on April 4, 2020. The landlord stated that the tenancy ended on April 4, 2020. The tenant claimed that it ended on April 1, 2020, when most of the belongings were removed except for items on the patio, which were removed on April 4, 2020.

The landlord seeks a monetary order of \$2,504.25 plus the \$100.00 application filing fee. The tenants dispute the landlord's entire monetary claim.

The landlord seeks \$1,215.96 for April 2020 rent because she said the tenants left on April 4, 2020 and did not give proper notice to leave. She stated that she did not attempt to re-rent the unit for April 2020, she did not rent it for April 2020, and she still has not rented the unit because she is still completing renovations since the tenants vacated, as she took a couple months off for a back issue she was suffering from. The tenant disputed the landlord's rent claim, indicating that the tenants left on April 1, 2020 pursuant to the landlord's notice to end tenancy from February 2020, the house was unrentable due to renovations in the kitchen and bathroom, the landlord did not re-rent or attempt to re-rent the unit, and the house was still under construction.

The landlord seeks \$85.00 for a plumbing cost because she said the tenant interfered with the plumber and stopped him from doing his job, according to her video. The tenant claimed that he advised the plumber to abide by workplace health and safety regulations, for which he provided a copy to him, since the landlord did not advise the plumber of same. He maintained that because of the mold issue, the plumber was required to use protective plastic sheeting if opening the wall as well as a hepa-filter. The tenant mentioned a letter that was provided for this hearing from the plumber, indicating that there was a mold issue and the plumber left the rental unit, but he did not go through this letter during the hearing.

The landlord seeks \$470.56 to replace the two crispers and the three bar shelves in the refrigerator at the rental unit. She said that this was the estimated cost, although she had not paid it, as she was planning to buy a new refrigerator. The tenant claimed that the refrigerator was an old 2003 model, the landlord said she would replace it in the renovations so not to worry about fixing anything, and the tenant replaced the shelves twice before and screwed them on.

The landlord seeks \$202.79 and \$311.05 for excess gas consumption by the tenants, \$67.32 for hydro electricity costs projected to the end of April 2020, and \$151.57 for gas costs projected to the end of April 2020. The tenant stated that the tenants vacated the rental unit by April 1, 2020, so they were not responsible for any utility costs in April 2020. He maintained that the tenants were required to ventilate and heat the house for the last two years of their tenancy, the tenants bore extra costs for electricity and gas because the landlord refused to renovate the house, as required, and the landlord neglected the maintenance issues inside the house.

The tenants seek a monetary order of \$34,999.09 including the \$100.00 application filing fee. The landlord disputes the tenants' entire monetary claim.

During the hearing, the tenants abandoned their claim without leave to reapply, for medical expenses of \$1,702.20, in order to reduce their monetary amount below \$35,000.00. The tenants seek a return of their security deposit of \$550.00.

The tenants seek a rent reimbursement for a 12-month period of \$8,277.84, which was reduced from \$14,400.00 during the hearing, in order to reduce the tenants' monetary claim below \$35,000.00. The tenant did not provide a breakdown for the above number. He claimed that the tenants had to keep their fans on, and the windows open all the time, due to the mold in the rental unit. He said that the landlord was supposed to fix the kitchen, install new kitchen cabinets, and replace the flooring, but it was not done. He claimed that the tenants were promised a home without problems, these issues added up over the years, and the tenants had to maintain and fix the house for the landlords.

The tenants seek \$6,071.25 for a "current monetary loss." The tenant testified that he bought equipment for the landlord from the flea market and online sellers. He maintained that there were ventilation costs, new filters, fans, extra heating costs, and the windows were open during the winter. The tenant referenced a chart of electricity costs but did not explain it during the hearing. He explained that he incurred health expenses from the mold in the rental unit, for his inhaler to get his lungs under control, and he had to use different medications. He claimed that his doctors recommended that he move out of the rental unit, as per his doctor's notes, which he did not go through during the hearing. He stated that the tenants had limited moving funds, so the female tenant spent 100 hours at \$15.00 per hour for moving, plus an additional \$1,145.34 for moving company expenses.

The tenants seek \$10,000.00 per tenant, for a total of \$20,000.00 for aggravated damages. He said that the landlord was trying to make the rental unit unliveable for the tenants, as per the plumber's statement, which he did not go through during the hearing. He said that the landlord brought in all kinds of contractors to the rental unit. He claimed that there were exchanges between the landlord and the tenants but did not go through these documents during the hearing.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the applicants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the respondents in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the applicants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

On a balance of probabilities and for the reasons stated below, I make the following findings.

Landlord's Application

During the hearing, I asked the landlord numerous times for her to explain her claim in detail and go through the specific four elements of the test noted above but she failed to do so. I notified her that it was up to her to present her claim, as the applicant, since she was required to prove her claim. I find that the landlord did not present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having been giving the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

I asked the landlord a number of questions regarding her claim, in order for me to make a decision. This hearing lasted 73 minutes so both parties had ample opportunities to present their application and respond to each other's applications.

I dismiss the landlord's entire application of \$2,504.25 without leave to reapply.

I dismiss the landlord's claim for April 2020 rent of \$1,215.96. I find that the tenants vacated the rental unit by April 1, 2020. While they still had some items on the patio which they removed on April 4, 2020, while returning the keys on the same date, I find that the tenants had vacated the main house on April 1, 2020. I also find that the landlord did not re-rent the unit, nor did she attempt to re-rent the unit for April 2020. The landlord is still completing renovations on her own timeline and still has not re-rented the unit, as of the date of this hearing. Therefore, I find that the landlord did not suffer any rent losses.

Since I found above that the tenants were not residing in the rental unit after April 1, 2020, I find that the tenants are not liable for the landlord's projected costs for April 2020 of hydro electricity of \$67.32 and gas of \$151.57 and these claims are dismissed.

I find that the landlord failed to provide sufficient evidence of her claims of excess gas consumption costs of \$202.79 and \$311.05 and these claims are dismissed. She did not go through any utility bills during the hearing and she did not indicate which periods and months they covered.

I dismiss the landlord's claim for plumbing costs of \$85.00. The landlord did not go through any invoices or receipts during the hearing. She did not indicate whether she paid any costs and if so, when she paid it.

I dismiss the landlord's claim for refrigerator costs of \$470.56. The landlord did not go through any invoices or estimates during the hearing. She did not provide any receipts for purchase. She said that she got a quote but did not reference the quote during the hearing, including a breakdown of costs or when the quote was obtained. I also find that the landlord did not have the repairs done and does not intend to, since she is renovating the rental unit and intends to buy a new refrigerator.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenant's security deposit of \$550.00. Over the period of this tenancy, no interest is payable on the tenant's security deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I order the landlord to return the security deposit of \$550.00 to the tenants within 15 days of receiving this decision. I issue a monetary order to the tenants for \$550.00.

I find that the tenants are not entitled to double the value of their security deposit, as they did not provide their forwarding address in writing to the landlord, only by text message, which is not permitted by 88 of the *Act*.

Tenants' Application

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application for compensation of \$34,449.09, without leave to reapply. I already awarded the return of the tenants' security deposit of \$550.00 to them, as noted above.

During the hearing, the tenant was calculating the tenants' monetary claim, adding and subtracting numbers. The tenant was unsure of what was being claimed in his application and was aware of the RTB's monetary jurisdiction of \$35,000.00, as he had spoken to a lawyer prior to filing his application. During the hearing, the tenant reduced the tenants' monetary claim from \$42,823.35 to \$34,999.09. The tenant did not explain a breakdown or why certain amounts were claimed for different types of relief. When the tenant reduced the monetary claim, he did not indicate what the revised numbers stood for, he was simply trying to reduce the claim to under \$35,000.00 so that he did not have to go to the Supreme Court of B.C. and he could have it heard at the RTB.

The tenants submitted hundreds of pages of evidence for this hearing in support of their application and in response to the landlord's application. However, the tenants failed to go through their documents during the hearing. The tenant simply referenced the summary breakdown of his amended monetary claim, which he revised again during the hearing. He did not reference the case law submitted, any letters provided, any receipts or invoices, any medical documents, or other such records. The tenant did not go through any documents provided for the significant aggravated damages claim of \$20,000.00.

I find that the tenants did not present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having been giving the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

During the hearing, I asked the tenant numerous times to explain the tenants' claims in detail. I asked the tenant a number of questions regarding his claim, in order for me to make a decision. This hearing lasted 73 minutes so both parties had ample opportunities to present their application and respond to each other's applications.

I find that the tenants did not provide sufficient evidence to substantiate their monetary claims and they failed to satisfy the above four-part test. The tenants did not go through their documents during the hearing.

I also find that the tenants were unable to show that they were forced to vacate the rental unit, due to mold. They lived in the rental unit from September 2009 to April 2020, a period of over 10.5 years. They also disputed previous notices to end tenancy and remained in the rental unit, despite claiming that they were told to move by their doctors, due to mold and health issues. Therefore, I find that the tenants were unable to show that they are entitled to a rent reimbursement, health expenses, or moving expenses. I also find that the tenants incurred costs for upkeep of the rental unit on their own accord. Rather than having the landlord repair and incur these costs in accordance with the repair procedures in the *Act*, I find that the tenants chose to make improvements on their own and they must bear these costs.

Accordingly, the tenants' application for \$34,449.09 is dismissed without leave to reapply.

As the tenants were mainly unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$550.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenants' application is dismissed 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: August 04, 2020

Residential Tenancy Branch