



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL**

Introduction

This review hearing dealt with the landlord's application pursuant to section 67 of the *Residential tenancy Act* (the "Act") for a monetary award for damage to the rental unit.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord confirmed that they were served with the Review Consideration Decision of October 6, 2020 and Notice of Reconvened Hearing.

Issue(s) to be Decided

Should the original decision be affirmed and upheld, varied or set aside and replaced with a new decision.

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

There was a previous hearing under the file number on the first page this decision on May 22, 2020. That hearing dealt with the tenants' application for a return of the security deposit and other relief. In the decision dated June 9, 2020 the Arbitrator notes:

The landlord hand-delivered their evidence for this hearing to the tenants who confirmed receipt of the same.

Further in the decision the Arbitrator makes note of the contents of the landlord's evidence stating:

[The landlords] also presented photos and an estimate to repair walls and carpet, amounting to \$1312.50.

The Arbitrator then finds that:

The landlord in this hearing presents the costs and photos showing the carpet and walls; however, the landlord did not file for a dispute resolution to make a claim for monetary compensation against the security deposit.

The present matter was commenced by the landlord's application for dispute resolution filed on May 15, 2020. The matter proceeded by way of a hearing on September 17, 2020 where the landlord attended and the tenants did not. As noted in the original decision:

The landlord, I.S. stated that the tenants were served in person with the notice of hearing package and the submitted documentary evidence. The landlord was unable to provide a date for service but stated that it was served in person by his daughter.

In the Review Consideration Decision of October 6, 2020 the tenants submitted that they were not served in accordance with the *Act* or at all. In the Review Consideration Decision the Arbitrator orders that:

Since the tenants did not receive the original hearing documents and evidence of the landlords, I order the landlords to serve the tenants with their application for dispute resolution and evidence within 3 days of the date on which the tenants serve them with the notice of hearing

In the present Review Hearing the tenants testified that they still have not been served with the landlord's application for dispute resolution and evidence. The landlord confirmed that they have not served the tenants despite having been served with the Review Consideration Decision and Notice of Reconvened Hearing. The landlord testified that "there was nothing new to serve".

When questioned about the date and manner by which their notice of hearing package was originally served the landlord expressed confusion and stated that they have only served the tenants on one instance since the initial application of the tenants. The landlord was unable to provide the date of service.

A review of the evidence submitted by the landlord for both this application and the earlier hearing of the tenants' application shows that the materials are identical and no additional materials have been provided.

The parties agree that no condition inspection report was prepared at any time for this tenancy. In their present application the landlord seeks a monetary award of \$1,312.50 for damage to the rental unit. The landlord submits that the tenants have caused damage to the walls of the rental unit requiring repainting and water damage to carpets requiring replacement. The landlord submitted into evidence quotations from companies for work to be done on the unit.

Analysis

All parties named on an application for dispute resolution must be served with the application and any supporting documents. Section 89(1) of the *Act* provides the methods by which an application for dispute resolution may be served on a party.

The landlord expressed considerable confusion regarding their own service of materials on the tenants. The landlord testified multiple times that they have only served the tenants on one occasion. The landlord failed to provide the date of service nor could they identify what documents were served.

The landlord confirmed that despite being served with the notice of hearing and Review Consideration Decision which expressly ordered that the landlord serve the tenants with their application for dispute resolution and evidence they have chosen not to comply with the order.

The tenants testified that they have not been served with the landlord's application and evidence. They said the only materials they have been served with throughout their history of litigation with the landlord was with the landlord's evidentiary materials for the earlier hearing of their application.

Based on the testimony of the parties I find that there is little evidence that the landlord has served the tenants in accordance with the *Act* or at all. It appears that the landlord

believes that their provision of evidence for an earlier dispute is sufficient service for all subsequent matters. The landlord repeatedly stated that they have not served the tenants even after being expressly ordered to do so in the Review Consideration Decision. I find that the landlords have not served the tenants in a manner consistent with the *Act* or at all.

I further note that the conduct of the landlord in choosing to ignore the express order of the Branch to serve the tenants is worthy of censure.

However, I accept the evidence of the parties that the tenants were served with identical evidentiary materials in an earlier proceeding and that the tenants are aware of the nature and content of the landlord's present claim. I find that there is no prejudice to the tenants or infringement on the principles of procedural fairness and natural justice to proceed with a consideration of the landlords' application. Therefore, in accordance with section 71(2) of the *Act* I find that the landlord's application has been sufficiently served for the purposes of this *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that no condition inspection report was prepared at any time for this tenancy. While the landlord submits that there was damage to the rental unit caused by the tenants, I find that in the absence of a proper inspection report prepared in accordance with the *Act* there is insufficient evidence of the pre-tenancy state of the rental unit. I find the handful of photographs submitted by the landlords to be insufficient to determine that damage to the rental unit exists to the extent claimed or that it is attributable to the tenancy.

Based on the totality of the materials and submissions of the parties, I find that the landlord has failed to meet their evidentiary burden on a balance of probabilities. Accordingly, I dismiss the landlords' application without leave to reapply.

Conclusion

The decision and order of September 17, 2020 are set aside and replaced with the present decision.

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: December 10, 2020

Residential Tenancy Branch