Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlords: MNRL, MNDL, FFL
For the tenants: MNSD, FFT

Introduction

This hearing dealt with a cross application. The landlords' application pursuant to the Residential Tenancy Act (the Act) is for:

- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to recover the filing fee for this application, under section 72.

The tenants' application pursuant to the Act is for:

- an order for the landlord to return the security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under to section 72.

Landlord KI and tenants AN (the tenant) and AM attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Service of the Landlords' application

The landlord affirmed he served the notice of hearing and evidence by registered mail sent on October 20, 2020. A second evidence package was served by registered mail on January 20, 2021. The tenants confirmed receipt of the package mailed on October 20, 2020 and denied receipt of the package mailed on January 20, 2021. The landlord confirmed receipt of the tenants' response evidence package on January 13, 2021.

Rule of Procedure 3.14 States:

> Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **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**.

(emphasis added)

I accept the landlord served the notice of hearing and evidence package mailed on October 20, 2020 in accordance with section 89 of the Act. The second evidence package mailed on January 20, 2021 was served late and is excluded, per Rule of Procedure 3.14.

Service of the Tenants' application

The tenants affirmed they did not serve the notice of hearing and evidence in any of the ways described in section 89 of the Act. The tenants' application can not proceed fairly when the respondent has not been notified of the application.

I dismiss the tenants' application with leave to reapply. Leave to reapply is not an extension of timeline to reapply.

As the tenants were not successful in their application, they are not entitled to recover their filing fee.

Issues to be Decided

Are the landlords entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including the accepted documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate his claims.

Both parties agreed the tenancy started on June 01, 2019 and ended on August 31, 2020. Rent was $2,100.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of $1,051.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

Both parties also agreed the forwarding address was provided in writing on July 14, 2020, there was no condition inspection and the tenants only paid $1,050 for August 2020 rent. This application was filed on October 12, 2020.

The landlords are claiming $600.00 for the removal of a washing machine and dryer. The landlord affirmed the tenants replaced the old washing machine and dryer with new ones and removed them when the tenancy ended. The landlord purchased a used washing machine and dryer for $600.00 when the tenancy ended. The tenant stated the landlord authorized them to remove the old washing machine and dryer. The tenants submitted into evidence an email sent on January 27, 2020:

> Tenants' email: The washing machine was destroying clothes (leaving huge stains, etc – tried to clean but didn't work) and the dryer was smoking at one point while it was running so we decided the best route forward was to purchase new ones. **We do not want any money from you for this – we'll take them with us when we leave.**
>
> Landlords' reply: **I do not need the old one sit on the property. Since you have replaced the washing machine and the dryer you may dump the old one.**
>
> (emphasis added)

The landlords are claiming $1,000.00 for a metal backyard gate replacement. The landlord testified the tenants replaced the original gate for a new gate without the landlord's authorization and it will cost him $1,000.00 to replace the original gate. The tenants said the landlord authorized them to do improvements in the rental unit and there was no backyard gate when the tenancy started.

The landlords are claiming $200.00 for the repair of two holes in the bedroom door caused by the tenants. The tenants stated the holes already existed when the tenancy started.

The landlords are claiming $150.00 to replace and install two doors. The landlord testified the storage room door is missing and the closet door was removed during the tenancy. The tenant said the storage room did not have a door when the tenancy started and the closet door was removed by contractors paid by the landlord to replace the carpet by the closet. Both parties agreed the landlord agreed to replace the carpet by the closet door and paid for this service.

The landlords are claiming $2,400.00 to replace the vinyl deck floor. The landlord affirmed the tenants damaged the floor and the replacement will cost him $2,400.00.

The landlord believes the tenants barbecued in that area and are responsible for the floor damage. The tenants stated they did not barbecue in the damaged area and are not responsible for this damage.

The landlords are claiming $200.00 to remove four 30-feet long pipes (the pipes) left by the tenants. The tenant testified he was authorized to leave these pipes in the rental unit.

The landlords are claiming $300.00 for cleaning expenses. The landlord said the tenant left the outside walls and the appliances dirty when the tenancy ended. The tenants affirmed the rental unit was clean when the tenancy ended.

The landlords are claiming for $1,050.00 for the balance of August 2020 rent and a total amount of $5,000.00 for the seven above mentioned losses.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Unpaid rent

Based on both parties undisputed testimony and the tenancy agreement, I find the tenants agreed to pay monthly rent in the amount of $2,100.00 and paid only $1,050.00 for August 2020 rent. Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act.

In accordance with section 26(1) of the Act the tenants owe the landlords $1,050.00 for the balance of August 2020 rent.

Washing machine and dryer

Based on the tenant's convincing and straightforward testimony and the email dated January 27, 2020, I find the tenants explained to the landlord the original washing machine and dryer stopped working during the tenancy, they purchased new ones, the landlord authorized the tenants to remove the old ones and did not ask for compensation for the removal of the old ones.

The landlords did not prove the tenants failed to comply with the Act.

Thus, I dismiss the landlords' application for compensation for the washing machine and dryer removal.

Metal backyard gate

The testimony of the parties regarding the existence of a metal backyard gate when the tenancy stated is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlords) has not met the burden on a balance of probabilities and the claim fails.

I find the landlords have not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement by replacing a metal backyard gate.

Thus, I dismiss the landlords' application for compensation for the replacement of the metal backyard gate.

Bedroom door repair

The testimony of the parties regarding the conditions of the bedroom door when the tenancy started is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlords) has not met the burden on a balance of probabilities and the claim fails.

I find the landlords have not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement and damaged the bedroom door.

Thus, I dismiss the landlords' application for compensation for the bedroom door repair.

Storage and closet doors replacement

The testimony of the parties regarding the conditions of the storage room and closet doors is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlords) has not met the burden on a balance of probabilities and the claim fails.

I find the landlords have not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement by damaging the storage room and closet doors. As the landlords agreed to replace the closet carpet and paid for this service, the tenants are not responsible for possible damages caused by the contractor paid by the landlord.

Thus, I dismiss the landlords' application for compensation for the storage and closet doors replacement.

Deck floor repair

The testimony of the parties regarding the deck floor damage is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlords) has not met the burden on a balance of probabilities and the claim fails.

I find the landlords have not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement by damaging the deck floor.

Thus, I dismiss the landlords' application for compensation for the deck floor repair.

Pipes removal

Both parties agreed the tenants left the pipes in the rental unit. However, the testimony of the parties regarding the authorization to leave the pipes in the rental unit is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the tenants) has not met the burden on a balance of probabilities and the claim fails.

I find the tenants have not proved, on a balance of probabilities, that the landlords authorized them to leave the pipes in the rental unit when the tenancy ended.

Section 37(2)(a) of the Act states: "When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear".

I find the tenants breached section 37(2)(a) by not removing the pipes from the rental unit when the tenancy ended, and the landlords suffered a loss because of the tenant's failure to comply with the Act.

I find the amount of $200.00 to remove the pipes is not reasonable. The landlords did not provide a written estimate for this amount and their testimony regarding this quote was vague and not convincing.

I award the landlords $30.00 in compensation for this loss.

Cleaning

The testimony of the parties regarding the cleanliness of the rental unit when the tenancy ended is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlords) has not met the burden on a balance of probabilities and the claim fails.

I find the landlords have not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement by not cleaning the rental unit when the tenancy ended.

Thus, I dismiss the landlords' application for compensation for cleaning expenses.

Deposit

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The parties agreed the forwarding address was provided in writing on July 14, 2020 and that the tenancy ended on August 31, 2020. The landlords only brought an application for dispute resolution on October 12, 2020.

Pursuant to section 38(6)(b) of the Act the landlords must pay the tenants equivalent to double the value of the security deposit for failure to return the tenants' deposit within 15 days of receiving their forwarding address:

> **38 Return of security deposit and pet damage deposit**
> (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a)the date the tenancy ends, and
> (b)the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.
> […]
> (4)A landlord may retain an amount from a security deposit or a pet damage deposit if,
> (a)at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
> (b)after the end of the tenancy, the director orders that the landlord may retain the amount.
> […]
> (6)If a landlord does not comply with subsection (1), the landlord
> (a)may not make a claim against the security deposit or any pet damage deposit, and
> (b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Under these circumstances and in accordance with section 38(6)(b), I find the tenants are entitled to a monetary award of $2,102.00 (original $1,051.00 deposit doubled).

Over the period of this tenancy, no interest is payable on the landlords' retention of the security deposit.

Filing fee and summary

As the landlords were partially successful in their claim, I authorize them to recover the $100.00 filing fee.

In summary, the landlords are entitled to:

Expenses	**$**
Balance of August 2020 rent	1,050.00
Pipe removal	30.00
Filing fee	100.00
Total	**1,180.00**

Set-off

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.
> 2. The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

In summary:

Award for the tenants	$2,102.00
Award for the landlords	$1,180.00
Final award for the tenants	**$922.00**

Conclusion

Pursuant to section 38(6)(b) of the Act, I grant the tenants a monetary order in the amount of $**922**.**00**

The tenants are provided with this order in the above terms and the landlords must be served with this order. Should the landlords 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.

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: February 09, 2021

Residential Tenancy Branch