Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD MNDCT

Introduction

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

- authorization to obtain a return of all of the security deposit ($500) pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $37,000 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was assisted by an agent, who also acted as a translator ("**JT**"). The landlord was assisted by his son ("**AB**").

Preliminary Issue – Service of Documents

The tenant testified, and the landlord agreed, that the tenant served the landlord with the dispute resolution hearing package and an evidence package in January 2021. However, on May 10, 2021, the tenant provided a second evidence package to the Residential Tenancy Branch (the "**RTB**"). He did not provide this package to the landlord. Rule of Procedure 3.14 requires the tenant to serve the landlord with any document he intends to rely on at the hearing documents no later than 14 days before the hearing. The tenant stated he was unaware of this requirement and did not provide any explanation as to why he was unable to provide this second evidence package to the landlord in accordance with Rule 3.14 or at all.

It would be unfair to the landlord to allow the tenant to rely on materials at this hearing that he has not had an opportunity to review. Additionally, the tenant provided me no basis on which to find that the evidence was new or that it was not available at the time his application was made or when he served and submitted his first evidence package. Accordingly, I decline to exercise my discretion to admit this evidence pursuant to Rule 3.17.

I exclude the tenant's second evidence package into evidence. He was permitted to give testimony on any aspect of this claim, including the topics the contents of the second evidence package referenced.

The landlord testified, and the tenant agreed, that he served the tenant with his evidence package by posting it on the door of the tenant's address for service listed on the notice of dispute resolution proceeding form.

Preliminary Issue – Amount of Tenant's Claim

Section 58(2) of the Act states:

> 58(2) Except as provided in subsection (4) (a), the director must not determine a dispute if any of the following applies:
>
> (a) the amount claimed, excluding any amount claimed under section 51 (1) or (2) *[tenant's compensation: section 49 notice]*, 51.1 *[tenant's compensation: requirement to vacate]* or 51.3 *[tenant's compensation: no right of first refusal]*, for debt or damages is more than the monetary limit for claims under the *Small Claims Act*;

The monetary limit fort claim under the *Small Claims Act* is $35,000. The tenant's monetary claim is for $37,000. The tenant's claim does not fit into any of the exceptions listed in section 58. I advised the tenant that the RTB does not have jurisdiction to adjudicate disputes in excess of $35,000. I advised him that he could either:

1) withdraw this application, and commence a claim in BC Supreme Court; or
2) amend his claim to seek an amount of $35,000.

The tenant chose the latter of these two options.

Accordingly, with consent of the tenant, I order that the tenant's monetary claim is amended to reduce the amount sought from $37,000 to $35,000.

Issues to be Decided

Is the tenant entitled to:

1) the return of his security deposit;
2) a monetary order of $35,000;
3) recover the filing fee?

Background and Evidence

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

The parties entered into an oral tenancy agreement starting February 15, 2020. The rental unit was a basement suite in a single detached home. The landlord resided in the upper unit. Monthly rent was $1000 and is payable on the first of each month. The tenant paid the landlord a security deposit. The parties disagree on its amount. The tenant testified that he paid the landlord $500 in cash. The landlord testified the tenant paid him $100 in cash. The landlord testified that he did not issue a receipt for the deposit. The landlord continues to hold the security deposit in trust for the tenant.

The tenant and his family stopped residing in the rental unit on November 12, 2020, following a fire. The tenant made multiple requests for the return of the security deposit, but did not provide his forwarding address to the landlord in writing unit he served the landlord with the notice of dispute resolution hearing package, which contained his address for service (which the tenant testified is his forwarding address).

The instigating event that led to the tenant's monetary claim was a fire that occurred in the rental unit on November 12, 2020. The tenant testified that it was caused by a faulty space heater provided to him by the landlord.

The tenant testified that that there was no heat in the rental unit and that, when he advised the landlord of this, the landlord gave him a space heater. However, the tenant testified that this heater did not work, so he returned it to the landlord and purchased a space heater of his own. He testified that the landlord did not allow him to use this second heater as it was "too big", so he returned it and purchased a third, smaller space heater. The landlord told the tenant that this third heater was too big, and instead provided the tenant with a smaller-still fourth space heater.

The tenant testified that the fourth space heater was damaged when he received it from the landlord: the electrical cord was taped in several places. He testified that, on November 1, 2020, he plugged the smaller heater in, and then turned his back on it to tie his turban. He testified that he remained in the same room as the heater while he was tying his turban but was not paying attention to the heater. He testified that within 5 or 10 minutes after plugging it he noticed "smoke and fire" coming from the heater. He testified that there was "too much fire" and he immediately vacated the rental unit. The fire department attended and put out the fire. The damage to the rental unit was severe enough that the tenant and his family did not return to stay in the rental unit. He testified that he secured a new rental unit to live in on December 5, 2020, which costs $1,300 per month.

The tenant testified that a large number of his belongings were destroyed, damaged, or lost in the fire including furniture, clothing, and medicine. He testified that he kept $5,500 in cash in one of his suitcases, along with his wife's jewelry. He testified that he returned to the rental unit one week after the fire but discovered that the suitcases were opened and that these items were missing. The tenant submitted photographs of the rental unit taken after the fire, which show fire-damaged furniture, a fire-damaged kitchen, a space heater with severed electrical cords, luggage, blankets, and debris on

the floor. The tenant did not provide any photographs of the suitcases that he alleged had been opened and his cash and his wife's jewelry removed from.

The tenant did not provide any documents as to the value of the lost or damaged property, but he claims its combined value is $25,000 (included the lost cash).

The tenant also claims an amount equal to six months rent ($6,000) for pain, suffering, and hardship he and his family experienced as a result of the fire. He testified he has been unable to work for seven months, as a result of stress, health issues, and frustration caused by the fire. He seeks compensation for an amount equal to three months' wages ($6,000 total). He has suffered from smoke inhalation. He testified that, prior to the fire, he had heart surgery, and that his doctor advised him that the smoke inhalation affected his heart. He testified that his family was homeless between November 12, 2020 and December 5, 2020, and that during this time his children did not attend school. The tenant did not provide any documents corroborating any of this testimony.

AB denied that the landlord was in any way responsible for the fire. AB testified that his mother was home at the time of the fire, and that she saw smoke rising through the floor vents in the kitchen from the rental unit. He testified that she went downstairs to check on his grandmother (who lived in another suite located on the ground floor of the residential property). Then, she saw that smoke was coming out of the rental unit door. She knocked on the door but received no answer. She called 911 and then called AB, who happened to be nearby. AB testified that he arrived at the rental unit and kicked down the door. He testified that when he went inside the rental unit he saw the tenant standing there with a bucket of water. The firefighters attended and extinguished the fire.

AB testified that he asked the tenant how the fire started, and that the tenant responded that he did not know how it started and that he was asleep in the bedroom. AB testified that the firefighters told him that the fire was caused by a short circuit of a heater that had been left on for a long period of time, and that, as the wires on this heater had gotten hot, causing it to spark. AB denied that this heater was provided to the tenant by the landlord.

Additionally, AB testified that he spoke with the tenant's son after the fire. He testified that the tenant's son was really scared of what the tenant would do, because the son had forgotten to turn the heater off before leaving for school.

The landlord did not provide any documentary evidence which corroborated AB's testimony (such as fire department records, records of an insurance investigation (which, I understand was undertaken), or correspondence between the parties relating to the cause of the fire). The landlord did provide copies of his October and November 2020 Fortis BC bills. AB argued that these showed that the house was adequately

heated at the time of the fire, as the entire house is heated by gas, and that the November gas bill is almost three times as much as the October gas bill.

AB denied that the landlord or any member of the landlord's family took any possessions from the rental unit after the tenant vacated. AB argued that the tenant provided insufficient evidence to prove the value of the lost or damaged goods, and, as such, no monetary order should be made.

Analysis

1. Monetary Claim

Residential Tenancy 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.
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> (the "**Four-Part Test**")

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
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> 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.
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> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the tenant must prove it is more likely than not that each part of the of the Four-Part Test is met in order to be successful in his application.

The tenant did not make submissions as to which section of the Act the landlord was to have breached. From the tenant's submissions, it appears the tenant believes the landlord breached the Act by either:

a) failing to ensure the rental unit was adequately heated, which led to the provision of fourth space heater, which, in turn caused the fire; or
b) providing him with a faulty space heater which caused the fire.

Section 32 of the Act may relate to both of these options. It states:

> **Landlord and tenant obligations to repair and maintain**
> **32**(1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Additionally, I infer from the testimony of the parties that the landlord was to provide heat to the rental unit as a term (either express or implied) of the verbal tenancy agreement.

Based on the evidence present at the hearing, I decline to find that the landlord has breached either section 32 of the Act or a term of the tenancy agreement requiring him to provide heat to the rental unit.

There is no evidence other than the tenant's disputed testimony, that the landlord provided the tenant with the space heater which caused the fire, or that, if he did, it was faulty or damaged. It may be that the fire was caused by the space heater as a result of readily apparent damage to it. It may also be that the tenant left the space heater unattended and in conditions which were conducive to a fire starting. It may be that the fire started as a result of some defect in the heater's manufacture. Based on the evidence presented, I cannot which of these is more likely.

Additionally, the only documentary evidence before me relating to the provision of heat to the rental unit is that of the landlord, which shows that in November 2020, the landlord's natural gas usage almost tripled from the previous month. I cannot say if this increased cost was due to increased heat being provided to the rental unit (it may be that there is inefficient heat transfer from the furnace to the rental unit, or that the landlord used natural gas for some reason other than heating). However, the landlord does not bear the onus to prove that he provided heat to the rental unit. The tenant bears the onus to prove that the landlord did not. I find the tenant has failed to discharge this evidentiary burden.

Additionally, I cannot find that the tenant has discharged his evidentiary burden to provide it is more likely than not that the landlord breached the Act or the tenancy and

that this breach led to the cause of the fire. There is nothing to corroborate the tenant's claim that the landlord provided him the heater which caused the fire, or that, if he did, that this heater was known to be faulty.

As such, I do not find that the landlord has breached the Act or the tenancy agreement. As such, the first part of the Four-Part Test has not been met. Accordingly, I do not need to address the remaining parts.

I decline to make any order with regards to the tenant's monetary claim.

2. Security Deposit

Both parties agree that the tenant provided the security deposit in cash to the landlord. The dispute the amount that was provided. Based on the testimony of the parties, I find it is more likely than not that the tenant provided a $500 security deposit to the landlord at the start of the tenancy. I rely on section 26(2) of the Act in coming to this conclusion, which states:

> **Rules about payment and non-payment of rent**
> **26**(2) A landlord must provide a tenant with a receipt for rent paid in cash.

I find that the landlord failed to comply with this section of the Act. Accordingly, I find that this has the effect of reversing the evidentiary burden as, by failing to provide the tenant with a receipt, he denied the tenant the documents necessary to discharge the evidentiary burden. As such, I find that the landlord is required to prove it is more likely than not that his version of events is true. He has failed to do this. I accept the tenant's testimony, which accords with the standard practice of providing a security deposit equal to half a months' rent, that he provided a security of $500 to the landlord.

Section 38(1) of the Act states:

> **Return of security deposit and pet damage deposit**
> **38**(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (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.

As such, the landlord's obligation to either return the security deposit or make a claim against it only arises after the tenant has provided him with a forwarding address. The tenant did not provide a forwarding address to the landlord until he made this application and delivered it as part of the application materials. It is a well-established policy of the RTB not to consider the provision of an address for service provided as part of a dispute resolution proceeding package to be the service of a forwarding address for the purposes of section 38 of the Act.

As such, the landlord has not yet been served with the tenant's forwarding address.

Pursuant to section 71(2) of the Act, I order that the tenant is considered to have provided his forwarding address to the landlord on the date the tenant serves a copy of this decision on him. The landlord then has 15 days from being served with the decision to either return the security deposit (which I have found to be $500) or make an application to retain the security deposit with the RTB.

I caution the landlord that, if he fails to do either of these, section 38(6) of the Act may apply, and an arbitrator may order that he pay the tenant double the amount of the security deposit.

3. Filing Fee

As the landlord has been mostly successful in this application, I decline to order that he reimburse the tenant the filing fee.

Conclusion

I dismiss the tenant's application for a monetary order for $35,000 and to recover his filing fee without leave to reapply.

I order the tenant to serve a copy of this decision to the landlord immediately upon receipt.

I order that, within 15 days of being served this decision **by the tenant**, the landlord return the security deposit to the tenant or make an application to retain the security deposit.

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 11, 2021

Residential Tenancy Branch