Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants and landlord N.S. (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agreed that the landlord personally served the tenants with this application for dispute resolution on March 9, 2021. I find that the landlord served the tenants with this application for dispute resolution in accordance with section 89 of the *Act.*

The landlord testified that he served the tenants with his amendment via regular mail on June 9, 2021. No documents to substantiate the above testimony were entered into evidence. The tenants testified that they did not receive the landlord's amendment. I find that the landlord has failed to prove, on a balance of probabilities, that the tenants were served with the landlord's amendment. The landlord's amendment, claiming loss of rental income, is therefore dismissed with leave to reapply.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on February 1, 2017 and ended on April 30, 2021. Monthly rent in the amount of $2,515.54 was payable on the first day of each month. A security deposit of $1,150.00 was paid by the tenants to the landlords. A written tenancy agreement signed by the landlords, and the addendum to the tenancy agreement signed by both parties, were entered into evidence.

The tenants testified that they emailed and texted the landlord with their forwarding address on April 21, 2021. The landlord testified that he received the tenants forwarding address on April 21, 2021. The landlord testified that he returned the tenants' security deposit to the tenants via registered mail on April 28, 2021. The tenants testified that they received their security deposit via registered mail on May 6, 2021.

Both parties agree that move in and out condition inspection reports were not completed.

Section 2 of the tenancy agreement addendum states:

> It is hereby agreed between the landlord and the tenant:
>
> (2) The tenant will store the following items either in the carport which belongs to the landlord. Fridge, stove, washer,, dryer and bbq. It could be stored in the

garden shed which will be installed at the tenants cost in the property located at [subject rental property address]

Both parties agree that at the start of the tenancy the landlord stored a refrigerator, stove, washer, dryer and a bbq in the carport.

The landlord testified that all of the appliances were two years old and in good working order at the start of this tenancy. No receipts of purchase were entered into evidence. The landlord testified that without his permission the tenants moved the appliances from the carport to the backyard. The landlord testified that all of the appliances were damaged beyond repair from being left out in the rain. The landlord testified that when he noticed the appliances out in the open in the backyard the tenants helped him move the appliances back to the carport. No documentary evidence about the condition of the appliances at the start or end of the tenancy were entered into evidence.

The tenants testified that the landlord gave them permission to move the appliances but later changed his mind, and at that point the tenants helped move the appliances back in the carport. The tenants testified that the appliances were not left uncovered in the back yard but were placed on a platform, wrapped in plastic and put under a tarp. The tenants testified that they did not damage the appliances. The tenants testified that the appliances were older than 2 years when they moved in and the landlord left them exposed to the elements for the duration of their 4-year tenancy and an unknown amount of time before they moved in. The tenants testified that they do not know if the appliances were in working order at the start of the tenancy but did not believe so as they looked to be in disrepair.

The tenants testified that the refrigerator was mouldy inside and that the landlord picked up the bbq before the appliances were moved to the yard. The landlord testified that he did not pick up the bbq. The tenants entered into evidence photographs of the appliances in the carport. The appliances appear old and dirty. A bbq cannot be seen in the photographs.

The landlord entered into evidence online shopping carts for the following appliances at the following costs:

Item	**Amount**
Refrigerator	$745.00
Stove	$845.00
Washer	$845.00

Dryer	$645.00
BBQ	$699.00

The landlord testified that he is also seeking the cost of GST on the above items in the amount of $188.95 and the cost of PST on the above items in the amount of $264.53.

Analysis

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

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 has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has not proved, on a balance of probabilities, that the appliances were in good working order at the start of this tenancy as a move in condition inspection report was not completed and no other evidence regarding their state of repair at the start of this tenancy were entered into evidence.

The parties provided conflicting testimony as to whether the tenants damaged the appliances. The landlord bears the burden of proof. I find that the landlord has not proved that the appliances were damaged by the actions of the tenants as no proof about the alleged damages were entered into evidence such as a statement from an appliance repair shop, before and after photographs or move in an out condition inspection reports.

I find that the landlord has not proved the age of the appliances as no receipts of sale were entered into evidence and the tenants have testified that the appliances were old when they moved in. I find that the landlord has not proved, on a balance of probabilities, that the appliances had any monetary value at the end of this tenancy given their prolonged storage in an open-air carport and obvious state of neglect. Pursuant to my above findings, I dismiss the landlord's claim for damages.

Section 38(1) of the *Act* states that 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.

Based on the testimony of both parties, I find that the landlord returned the tenants' security deposit within 15 days of the end of this tenancy, in accordance with section 38 of the *Act.*

As the landlord has already returned the tenants' security deposit to them, I dismiss the landlord's application to retain the tenants' security deposit, without leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenants, pursuant to section 72 of the *Act.*

Conclusion

The landlord's application for dispute resolution 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: July 13, 2021

Residential Tenancy Branch