



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDL, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 22 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf.

During this hearing, I informed the landlord that she was not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. At the end of this hearing, the landlord affirmed, under oath, that she did not record this hearing.

At the outset of this hearing, I explained the hearing process to the landlord. She had an opportunity to ask questions. She confirmed that she was ready to proceed with this hearing. She did not make any adjournment or accommodation requests.

The landlord stated that both tenants were separately served with copies of the landlord's application for dispute resolution hearing package on April 1, 2021 and the landlord's photographic evidence package on April 12, 2021, both by way of registered mail to the same PO Box address that the tenants used during this tenancy, and noted on a declaration of income and assets form that was provided for this hearing. She said

that the tenants did not move to a different city, their PO Box address did not change, and the physical address provided by the tenants on the first move-out inspection report from September 25, 2020, could not receive mail.

The landlord provided four Canada Post receipts and tracking reports and confirmed all four tracking numbers verbally during this hearing. She said that the packages were signed for and delivered, as per the tracking reports. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on April 6, 2021, and the landlord's photographic evidence package on April 17, 2021, five days after their registered mailings.

Issues to be Decided

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

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on April 10, 2017 and ended on October 5, 2020. Monthly rent in the amount of \$648.00 was payable on the first day of each month. No security or pet damage deposits were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties. The first move-out condition inspection report was completed by the landlord's agent with the tenants present on September 25, 2020, but the tenants were still in the process of moving. The second move-out condition inspection report was completed by the landlord's agent without the tenants present on September 30, 2020, after the tenants had moved out. The landlords did not give the tenants an RTB-approved form to provide them with a final opportunity to complete a move-out condition inspection. The landlord's application for this hearing, was filed on March 31, 2021.

The landlord seeks a monetary order of \$4,845.00 plus the \$100.00 application filing fee. The landlord reduced the landlord's monetary claim from \$4,925.00 to \$4,845.00, during this hearing.

The landlord stated the following facts. The tenants failed to pay rent of \$498.00 for May 2020 (since they paid \$150.00 towards rent of \$648.00), and \$648.00 for each month from June to September 2020, totalling \$3,090.00. The landlord was initially seeking market rent of \$664.00 for each month since the tenants did not complete their required declaration form, but since there were no rent increases allowed by the RTB during the above months due to the covid-19 pandemic, the rent should only be \$648.00.

The landlord testified regarding the following facts. The landlord seeks \$1,755.00 for drywall repairs. There are holes in the photographs. Large holes are noted on the move-out condition inspection report. The total invoice is over \$12,000.00 but the tenants are only being charged for labour and materials of \$1,755.00. The landlord does not have a receipt but can ask for one after this hearing is over, as the invoice was paid according to the landlord's online system. The tenants signed the first move-out condition inspection report but not the second one, since they were not present. The landlord does not indicate costs or estimates for damages on move-out condition inspection reports.

Analysis

Rent

As per section 26 of the *Act*, the tenants are required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$498.00 for May 2020 (since they paid \$150.00 towards rent of \$648.00), and \$648.00 for each month from June to September 2020, totalling \$3,090.00. Therefore, I find that the landlord is entitled to \$3,090.00 total in unpaid rent from the tenants. I find that the tenants were living in the rental unit from May to September 2020, and they owe this rent to the landlord.

Drywall Repairs

The following RTB *Rules of Procedure* state, 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...

I find that the landlord did not properly present the landlord's evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*. During this hearing, the landlord failed to properly go through this claim and the documents submitted in support of this application. This hearing lasted 22 minutes and only the landlord appeared at this hearing, not the tenants. Therefore, the landlord had ample opportunity to present this application.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 tenants 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord.

I dismiss the landlord's application for drywall damages of \$1,755.00, without leave to reapply. The landlord did not review the landlord's invoice in any detail during this hearing. She simply indicated that the invoice was for over \$12,000.00 and the tenants were only being charged for labour and materials of \$1,755.00. There is extensive repainting of the property, in addition to moulding and other work indicated on the invoice, but the landlord did not state what repairs were being attributed to the tenants. She did not indicate when the landlord had any repairs done, what repairs were done, and when any costs were actually paid.

The invoice provided by the landlord is dated for January 20, 2021, more than three months after the tenants vacated the rental unit on October 5, 2020. The landlord did not indicate the reason for any delay. The landlord did not indicate whether new tenants moved into the rental unit after the tenants vacated and if any further damages were caused to the walls by any new tenants or other people, prior to them being repaired. The invoice indicates a balance due and does not state that any amounts were actually paid, as no receipts for payment were provided by the landlord. The landlord stated that she could provide a receipt after the hearing. I informed her that she was not permitted to do so, as the landlord had ample time to provide this information prior to this hearing, since the landlord filed this application on March 31, 2021, almost five months prior to this hearing on August 30, 2021. Further, the tenants would not have notice to respond to that receipt if it is provided after this hearing.

The landlord failed to reference the move-in condition inspection report during this hearing which states that there were issues with the walls when this tenancy started, and painting and repairs required. Accordingly, I find that the landlord failed to show if any damages were pre-existing when the tenants moved in and which damages the tenants may have caused while living at the rental unit. The landlord only referenced the existence of but did not describe or point me to any specific photographs during this hearing to show the drywall damage, or where in the rental unit these damages were noted. The tenants did not participate in or sign the second move-out condition inspection report from September 30, 2020, as the landlord did not provide the tenants with the required RTB form. There was no estimate or indication of any costs for drywall repair in any of the two move-out condition inspection reports. The landlord did not indicate how these damages were beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1, requiring the tenants to pay for same.

As the landlord was only partially successful in this application, I find that the landlord is not entitled to recover the \$100.00 application filing fee from the tenants.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,090.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 landlord's application for damages of \$1,755.00 and to recover the \$100.00 filing fee 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 30, 2021

Residential Tenancy Branch