Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, MNSD, FFT, MNDL-S, MNDCL-S, FFL

Introduction

The tenant applied for compensation against their former landlord pursuant to sections 38, 51, 67, and 72 of the *Residential Tenancy Act* ("Act"). The landlord applied for compensation against their former tenant pursuant to sections 67 and 72 of the Act. Both the landlord and tenant also seek compensation to recover the cost of their $100 application filing fees.

Both party's applications were heard together at two hearings, held by teleconference, on March 18 and August 6, 2021. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Tenant's claim for compensation under section 51

In their application the tenant sought compensation pursuant to section 51(2) of the Act.

The tenant received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "notice") on June 25 and 26, 2020. The effective end of tenancy date on the notice was August 31, 2020. The notice was not disputed. The tenant filed their application for dispute resolution on November 26, 2020.

As explained to the tenant, a claim under this section cannot be commenced less than six months after the effective date of the tenancy (not including any reasonable period). Given that the tenant brought this claim less than three months after the effective date on the notice, I cannot consider the claim and it is dismissed with leave to reapply.

Issues

1. Is the landlord entitled to compensation?
2. Is the tenant entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

Landlord's Claim

The landlord seeks $1,590.53 in compensation for various damages alleged to have been caused by the tenant during her tenancy in the rental unit. This includes damages to the sink, the lock, a broken toilet, and for costs related to cleaning the rental unit and removal of "chair and rubbish." Invoices, bills, and photographs were submitted into evidence.

It is noted that a Condition Inspection Report was completed at the end of the tenancy but that none was completed at the start of the tenancy.

Second, the landlord also seeks $11,000 for "the renting and subletting of my parking spot without my consent or written consent." The tenant rented out the spot from November 2013 until May 2018.

Third, the landlord seeks $3,000 in aggravated damages related to the tenant's allegations that the landlord made racist remarks and was physical abusive. The landlord claims that the tenant called them a racist as a way of extorting money.

The tenant denied all the landlord's claims and explained that if there was any damage to the rental unit then it was due to wear and tear. They denied that they broke the lock. The tenant denied that they parked in the spot without consent. Finally, the tenant denied that they did anything toward the landlord that would warrant aggravated damages.

Tenant's Claim

The tenant seeks $14,000 for, as described in their application, not fulfilling their obligations as a landlord. However, in the hearing, the tenant submitted that this amount is claimed for the landlord's threats, racists remarks, gaslighting, and various emotional and physical abuse. The tenant then described a litany of such alleged behavior by the landlord. Indeed, the tenant testified that she lost ten pounds from the stress of interacting with the landlord.

The tenant also seeks the return of some of her security deposit. The tenant testified that the landlord returned $500.00 of the deposit, but that $200.00 remains owing. However, it should be noted that in the tenant's application they are seeking $1,500.00, which is double the $750.00 of the original security deposit amount. (No reference was made to the $250.00 pet damage deposit).

Analysis

Landlord's Application

First, in respect of the compensation being sought for various damages and cleaning to the rental unit, the landlord failed to provide any evidence that might establish the state and condition of the rental unit at the start of the tenancy. This evidence, which is usually a completed Condition Inspection Report, is almost always determinative in such cases. It is critical evidence that allows a landlord to claim that the tenant breached section 37(2) of the Act, which would then lead to compensation being awarded.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

In dispute resolution proceedings, a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary (see section 21 of the *Residential Tenancy Regulation).*

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 two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the tenant disputes this aspect of the landlord's claim, and the landlord has failed to provide either a condition inspection report completed at the start of the tenancy or a preponderance of evidence proving the state of repair and condition of the rental unit.

Thus, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for $1,590.53

Second, in respect of the landlord's claim for $11,000.00 for the alleged unlawful renting out of the landlord's parking spot, I must dismiss this claim without leave to reapply.

While the tenant *may* have breached a strata rule, the landlord has failed to prove how they actually suffered a monetary loss from the tenant's decision to rent and sublet the parking spot. There is in evidence nothing to support a finding that the landlord otherwise had intended to make money from renting out the spot. Indeed, it is also not lost on me that the tenant somehow managed to rent out the spot for four and a half years without the landlord doing anything to mitigate their supposed loss of revenue. In summary, then, and taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for $11,000.00.

Third, the landlord seeks $3,000.00 in what they term aggravated damages. However, the damages sought appear to relate to alleged racist remarks that the tenant said the landlord was making, and related matters. While such allegations are clearly unacceptable and not conduct becoming any tenant or landlord, they fall outside the jurisdiction of the Act. Such damages, if they in fact occurred, would likely fall within the tort known as slander, and as such are within the purview of the provincial court system. Accordingly, I must dismiss this aspect of the landlord's claim without leave to reapply.

As the landlord was not successful in any aspect of their application, I must dismiss their claim to recover the cost of the $100.00 application filing fee.

Tenant's Claim

With respect, the tenant's $14,000.00 claim made against their former landlord for such things as threats and gaslighting is preposterous. The tenant's application refers to the claim being related to, "Over the course of my time as [landlord's] tenant she did not fulfill her obligations as a landlord," and "Instead of my rights i received verbal abuse, discrimination, racial comments, physical abuse." The tenant then claimed that this arbitrary amount was related to other matters.

While the tenant submitted a plethora of documentary evidence, none of this evidence supports her claim that the landlord engaged in any of the conduct being alleged to have occurred.

Moreover, the tenant was unable to point me to what section of the Act that the landlord allegedly breached that might result in compensation being awarded. Further, the tenant was unable to articulate in any meaningful way how they arrived at the amount of $14,000.00.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their claim for $14,000.00. This aspect of the tenant's claim is dismissed without leave to reapply.

Last, in respect of the tenant's claim for the return (and doubling) of their security deposit, we must first turn to section 38(1) of the Act.

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

> 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.

In this dispute, the tenancy (according to both parties) ended on July 12, 2020. The landlord did not make an application for dispute resolution claiming against the tenant's security deposit until February 9, 2021, long after the 15-day time limit passed. From the evidence, it appears that the landlord returned $500.00 of the security on July 31, 2020, which is 19 days after the tenancy ended.

Next, I must apply section 38(6) of the Act which states the following:

> (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.

Here, the landlord did not comply with section 38(1) of the Act. As such, the landlord must pay the tenant double the amount of the security deposit, minus the $500.00 which was previously returned. Thus, the landlord is ordered to pay the tenant $1,000.00. (Calculated as $750.00 x 2 - $500 = $1,000.00).

While the tenant was successful in respect of their claim for the return and doubling of the security deposit, the remainder of the tenant's application is unsuccessful, and I thus decline to award any recovery of the application filing fee under section 72 of the Act.

Conclusion

I hereby dismiss the landlord's application in its entirety, without leave to reapply.

I hereby dismiss the tenant's application, with the exception of the claim for the return and doubling of the security deposit. In support of this claim, the tenant is granted a monetary order in the amount of $1,000.00 which must be served on the landlord. If the landlord fails to pay the tenant the amount owed, the tenant may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision, which is final and binding, is made on delegated authority under section 9.1(1) of the Act.

Dated: August 11, 2021

Residential Tenancy Branch