



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL-S, MNDCL-S**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed the email address to which the Decision and any Order will be sent.

Settlement Discussions During Hearing

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During the hearing, the parties engaged in discussions regarding resolution of the dispute. The parties were unable to reach a Decision and the hearing continued.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the landlord interrupted the hearing. The landlord spoke at the same time as, and argued with, the Arbitrator and the tenants. The landlord appeared upset with the tenants and wanted to discuss several grievances which were outside the parameters of the hearing. The landlord repeated herself in a confrontational manner. The Arbitrator directed the landlord to confine her testimony to the matters at hand. The landlord then admonished the Arbitrator and asserted twice that she was prevented from speaking. The Arbitrator provided the landlord with ample opportunity to address the issues in the hearing.

The hearing took longer at 61 minutes because of the behaviour of the landlord.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the parties' submissions and arguments are reproduced here. The lengthy hearing included divergent perspectives, each party submitting many document and dozens of texts/emails/letters. Only selected, relevant and important aspects of the claims, the facts and my findings are set out below.

The landlord submitted a copy of the tenancy agreement and summarized the background of the tenancy as follows:

| INFORMATION | DETAILS |
|------------------------------|-------------------------------------|
| Date of beginning | September 1, 2020 |
| Date of ending | April 30, 2021, by Mutual Agreement |
| Length of tenancy | 7 months |
| Monthly rent | \$3,400.00 |
| Security deposit | \$1,700.00 |
| Date of landlord Application | March 19, 2021 |

The parties agreed that the lease contained a clause requiring the tenants to pay additional rent of \$100.00 for any extra occupant.

The parties agreed the landlord has kept \$775.07 of the security deposit without the authorization of the tenants and brought this application within the required 15-day period. Of that amount, the landlord agreed during the hearing to return the sum of \$75.07, leaving the balance of \$700.00 in dispute.

The landlord requested a Monetary Order in the amount of \$700.00 as well as reimbursement of \$100.00 for the filing fee.

The parties agreed that an occupant lived in the unit for 7 months and no extra compensation was paid to the landlord. The tenants testified the occupant was a

roommate and the landlord agreed he could live in the unit at no extra rental charge. The landlord disagreed and testified she asked for extra rent from the time the occupant moved in.

Each party's version of what took place is summarized.

Tenants' Evidence

The tenants testified as follows.

At the beginning of the tenancy, the relationship between the parties was cordial. When asked in October 2020, the landlord agreed the occupant could move in and there would be no extra charge. The tenants submitted many texts between the parties in which they discuss the occupant living in the unit. The landlord did not ask for extra rent.

The parties agreed the occupant would be a roommate without any extra rent. The landlord sent a text dated October 6, 2021 to the tenants, a copy of which was submitted, as follows:

No worries landlord BC has said a roommate agreement is good. [The occupant] is you're responsibility. Just need [the occupant's] last name and I will follow up with a letter giving you permission to have him as an adult occupant. [smiley face] Thanks

However, an increasing number of disputes arose between the parties on a variety of tenancy issues key among which was a parking issue.

The landlord then issued two Notices to End Tenancy, and the tenants brought two applications for dispute resolution on February 24, 2021 and March 1, 2021. Reference to the file numbers appears on the first page.

The landlord first complained about the occupant after the first Application for Dispute Resolution was submitted on February 24, 2021. The landlord sent a letter dated February 27, 2021 to the tenants, a copy of which was submitted. In the letter, the landlord stated, in part:

Over the last 2 months, I have repeatedly urged you to read your tenancy agreement in regards to additional occupants as well as extra vehicles.

The tenants claimed that the landlord's request for the rent for the extra occupant is retaliation for her other grievances against the tenants and is contrary to her agreement they could have a roommate at no extra rental charge.

The tenants moved out on April 30, 2021 pursuant to a Mutual Agreement to End Tenancy signed by both parties in the RTB form.

Landlord's Evidence

The landlord vehemently disagreed with the tenants' version of events. She testified as follows.

The landlord did not learn of the occupant's presence in the unit until mid-November 2020. The landlord immediately and repeatedly asked the tenants for the \$100.00 a month and they refused.

The landlord acknowledged many other disputes between the parties which she referenced during the hearing. However, she denied that the multiplicity of other disputes between the parties had anything to do with this claim.

The landlord testified that she never consented to the occupant living in the unit without the payment of \$100.00 and she consistently requested the payment of the extra amount for rent.

The landlord denied that she was motivated by retaliation. The landlord claimed she was entitled to additional rent of \$100.00 a month throughout the tenancy period.

When the tenants refused, the landlord brought this application on March 19, 2021.

Summary

The landlord requested an award of \$100.00 a month rent for 7 months for a total of \$700.00. The landlord agreed to return \$75.07 to the tenants.

The tenants requested the landlord's claim be dismissed. They requested a Monetary Order in the amount of \$775.07.

Analysis

The parties submitted many documents and photographs as well as considerable disputed testimony in a lengthy hearing. While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Credibility

While the parties provide conflicting testimonies, I find the tenants to be the more credible witnesses. They provided cogent, reasonable testimony which is supported in the documentary materials.

I find the landlord's denial of key facts asserted by the tenants and supported by documentary evidence to lack credibility.

As a result, where the parties' version of events differs, I prefer the tenant's version as being the more likely and believable.

Standard of Proof

Rule 6.6 of the Residential Tenancy Branch Rules of Procedures 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.

It is up to the landlord to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

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.

Four-part Test

When an applicant, the landlord in this case, seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the landlord proven the amount or value of their damage or loss?
4. Has the landlord done whatever is reasonable to minimize the damage or loss?

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

The first part is considered.

Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?

The agreement clearly states that the tenants must pay extra monthly rent of \$100.00 for an occupant. Both parties acknowledged this. There was an extra occupant in the unit during the tenancy.

However, I find the parties agreed that the tenants would not pay this extra rent despite

it being a term of the tenancy agreement. I make this finding based on the evidence of the parties which included the landlord's text message of October 6, 2021 in which she stated,

"I will follow up with a letter giving you permission to have him as an adult occupant".

I find the landlord's denial of this agreement is disingenuous and lacking in credibility. I find the parties had an agreement that the tenants could have a roommate at no extra cost. I find the landlord repudiated the agreement after other disputes arose between the parties. I find the repudiation was retaliation for perceived actions of the tenants which the landlord criticized, such as their parking. I find the repudiation of the agreement in February 2021 was swiftly followed by the tenants moving out at the end of March 2021. I find the tenants never consented to pay the extra rent.

I find that the legal principle of estoppel applies to this situation. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.

I find the landlord established a pattern of accepting rent from the tenants without requiring payment of extra rent for the occupant. I find the landlord accepted the situation that the tenants had a roommate and the tenants relied on this agreement. I find the landlord changed her mind and attempted to rescind her agreement in February 2021 as part of a multifaceted and escalating conflict. I find the landlord is estopped from now claiming that the tenants are in violation of the lease and must pay \$100.00 a month for the extra occupant from the beginning of the tenancy.

I therefore find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to the first part of the 4-part test. That is, I find the landlord has failed to establish that the tenants did not comply with the Act, regulations, or the tenancy agreement.

As stated, the landlord must meet the standard of proof with respect to all parts of the 4-part test. As the landlord has failed with respect to the first part, I find it is not necessary

to consider the remaining three parts.

For these reasons, I dismiss the landlord's claim without leave to reapply.

I direct the landlord to return the security deposit the landlord holds to the tenants in the amount of \$775.07. I grant the tenants a Monetary Order in this amount.

Conclusion

I dismiss the landlord's claim without leave to reapply.

I direct the landlord to return the security deposit the landlord holds to the tenants in the amount of \$775.07. I grant the tenants a Monetary Order in this amount.

This Monetary Order must be served on the landlord. The Monetary Order may be filed in the Courts of the Province of British Columbia and enforced as an Order.

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 25, 2021

Residential Tenancy Branch