Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSDS-DR, FFT

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit of $550.00 in full satisfaction of the monetary order, pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- authorization to obtain a return of the tenant's security deposit of $550.00, pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for her application, pursuant to section 72.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 56 minutes.

This hearing began at 1:30 p.m. with me and the landlord present. The tenant called in late at 1:40 p.m. I informed the tenant that I did not discuss any evidence with the landlord in the absence of the tenant, except for service of the landlord's application to the tenant. This hearing ended at 2:26 p.m.

The landlord and the tenant confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to them after the hearing.

The landlord stated that he was the owner of the rental unit until he sold it on March 16, 2022. He confirmed the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle both applications.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord stated that he did not receive any documentary evidence from the tenant. He explained that the tenant sent him an email referencing attached documents, but he could not view those attachments, and he told her that by return email. The tenant said that she received the landlord's return email, but she did not re-send any of her documents to the landlord because the landlord threatened to take legal action against her in Small Claims Court.

Rules 3.10, 3.10.5 and 3.15 of the RTB *Rules* require the tenant to serve her evidence to the landlord, and since it is digital evidence of printable documents sent by email, ensure that the landlord had access and could view it. The tenant did not provide the digital evidence details form to the landlord or the RTB, as per Rule 3.10.4, with proper labelling and description of the evidence, as per Rule 3.10.1.

I informed the tenant that I could not consider her documentary evidence at the hearing or in my decision because the landlord did not receive it, he could not view it, he informed the tenant, and the tenant did not re-send her evidence or ensure that the landlord could view it. The tenant confirmed her understanding of same. I answered questions from both parties regarding the above decision. The tenant stated that she wanted to proceed with this hearing, even though I could not consider her documentary evidence at the hearing or in my decision.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit in full satisfaction of the monetary order for damage to the rental unit?

Is the tenant entitled to a return of her security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on December 1, 2018, when the landlord purchased the rental unit and assumed the tenancy from the former landlord. Both parties signed a written tenancy agreement. The tenant was already living in the rental unit prior to the landlord assuming this tenancy. This tenancy ended on August 31, 2021. Monthly rent in the amount of $1,130.00 was payable on the first day of each month. The tenant paid a security deposit of $550.00 to the former landlord. The landlord received the tenant's security deposit from the former landlord when he purchased the rental unit and the landlord continues to retain the deposit in full. No move-in or move-out condition inspection reports were completed for this tenancy, between both parties. The landlord did not have written permission to retain any amount from the tenant's security deposit. The landlord received a written forwarding address from the tenant.

The landlord stated that his application to retain the tenant's security deposit was filed on September 21, 2021. He said that he received the tenant's written forwarding address but cannot recall the date or the method by which he received it.

The tenant stated that her tenancy began with the former landlord on September 1, 2016. She said that she provided a written forwarding address to the landlord on September 7, 2021, by way of email or a letter handed to him in person, but she could not recall the method of service. She explained that she did not complete a move-in condition inspection report with the former landlord when she moved into the rental unit.

The landlord confirmed that he seeks to retain the tenant's security deposit of $550.00 for damages that the tenant caused to the rental unit, plus the $100.00 application filing fee.

The tenant confirmed that she seeks a return of her security deposit of $550.00 plus the $100.00 application filing fee.

The landlord testified regarding the following facts. He planned to sell the rental unit and list it right away for sale after the tenant moved out. He got the keys from the tenant, moved into the rental unit, and it caused him stress and depression because there were damages to the rental unit, which he had to fix before he sold it. He gave the tenant one-month free rent because he intended to sell the rental unit. He stayed at the rental unit longer than six months, so he did not actually have to give the tenant one-month free rent. He spent $4,861.71 on the rental unit to repair damages, due to the tenant. The tenant told the landlord that she was only responsible to clean the rental unit. However, the tenant signed a tenancy agreement addendum in 2018, saying that she would not cause any damages or "holes in the walls, etc." The landlord does not want the full amount of $4,861.71 for the damages, he just wants to keep the tenant's security deposit of $550.00 and not repay it back to the tenant.

The tenant testified regarding the following facts. She disputes the landlord's entire application. The landlord did not offer her one-month free rent, she provided him with the information when she learned it from the RTB. The landlord was aware this was a rental suite when he assumed the tenancy, not a show suite to resell. She had an agreement with the former landlord that she would clean the rental unit and patch the walls when she left. She cleaned the rental unit better than how she received it, and she patched the walls. The landlord only had to repaint the walls after she left. She does not owe any money to the landlord for fixing the baseboards. The landlord only

repainted the rental unit after five years of the tenant living there. The landlord made the suite "prettier" after the tenant left.

The landlord stated the following facts in response to the tenant's testimony. The tenant did not pay for one month of rent, he found out, this caused him severe financial challenges, and then both parties agreed that the tenant did not have to pay for the one month of rent. He provided photos of the rental unit and it is very clear in all the photos, which he provided to the tenant, that the tenant did not patch any damages on the walls. He did not provide any invoices or receipts to the RTB because he only wants to keep the tenant's security deposit, not recover all of his costs for repairs of $4,861.71. He has invoices that he can provide after the hearing, which the tenant does not need to respond to. He incurred the costs at the end of 2021 and the beginning of 2022, so he did not have the evidence when he filed his application in September 2021. He provided all the evidence that he had at the time he filed his application in September 2021. He is not required to spend money in order to get money from the RTB. For example, if he caused an accident and hit someone's car, that is a fact. If he chooses to repair the vehicle, then that is a different issue. However, the fact is that the tenant caused damages to the rental unit. The RTB did not tell the landlord that he was required to provide any documentary evidence for this hearing, including that he spent any money to repair damages.

The tenant stated the following facts in response to the landlord's response testimony. She tried to contact the landlord at the end of June 2021, regarding the one-month free rent, but he did not respond to her until July 2021. The landlord should not be comparing the rental unit to his friend's suite.

Analysis

Landlord's Application

Burden of Proof

At the outset of this hearing and during this hearing, I repeatedly informed the landlord that as the applicant, he had the burden of proof, on a balance of probabilities, to prove his application and monetary claims. I informed him that the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines required him to provide evidence of his claims, in order to obtain a monetary order. I informed the landlord that if he was unable to prove his claims on a balance of probabilities, he would receive $0.00, and his application would be dismissed without leave to reapply. The landlord stated that he

wanted to proceed with this hearing, and he had provided all his evidence to prove his monetary claims in this application.

The landlord testified that he was not required to provide proof of damages or having spent money to repair damages. He said that the tenant caused damages, it was a fact, and since he was not asking for the full amount of $4,861.71, that he spent to repair damages, he was entitled to retain the tenant's security deposit of $550.00. He claimed that he was not informed by the RTB that he was required to provide documentary evidence for this hearing. He asked what provisions of the legislation required him to provide same.

At the outset of this hearing, the landlord confirmed that he received an application package from the RTB, including instructions regarding the hearing process, and he provided copies of these documents to the tenant, as required. During this hearing, the landlord confirmed that he received a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, which he had in front of him during this hearing, and which he used to call into this hearing with the phone number and access code. The NODRP states the following at the top of page 2, in part (emphasis in original):

> *The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*
>
> - *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
> - *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*
> - *The hearing will continue even if one participant or a representative does not attend.*
> - *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

During this hearing, I read aloud the following provisions to the landlord, which he agreed were contained at the top of page 2 of his copy of the NODRP:

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*

I informed the landlord during this hearing that the NODRP contained provisions that a legal, binding decision would be made in 30 days and that links to the RTB website and the *Rules* were provided in the same document.

The landlord received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support his application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord, as the applicant, to provide sufficient evidence of his claims, since he chose to file his application on his own accord. The landlord was at liberty to obtain legal advice from a lawyer prior to this hearing, and have a lawyer represent him at this hearing. The landlord was at liberty to consult agents and advocates prior to this hearing and have them appear on his behalf at this hearing. This information was provided in the NODRP, at the top of page 2, that the landlord said he received:

- *Parties (or agents) must participate in the hearing at the date and time assigned.*

The landlord stated that he incurred costs at the end of 2021 and the beginning of 2022, so he had already provided his evidence in September 2021, when he first filed his application. I informed the landlord that he had 14 days prior to this hearing date, to provide documentary evidence to support his application. This is in accordance with Rule 3.14 of the RTB *Rules*.

The landlord stated that he could provide invoices after this hearing. I informed the landlord that he could not submit any evidence after this hearing, as he had ample time to provide evidence to the tenant and the RTB prior to this hearing, since the landlord's application was filed on September 21, 2021, and this hearing occurred on May 16, 2022, almost 8 months later.

Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, 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…*

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 tenant 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.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

> *C. COMPENSATION*
> *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:*

- *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.*

…

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. ***A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

Findings

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application to retain the tenant's security deposit of $550.00, in full satisfaction of the monetary claim for damages to the rental unit, without leave to reapply.

I find that the landlord did not properly present his evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

This hearing lasted 56 minutes so the landlord had ample opportunity to present his application and respond to the tenant's claims. During this hearing, I repeatedly asked the landlord if he had any other information to present and provided him with multiple opportunities for same.

The landlord did not explain his claims in sufficient detail during this hearing. The landlord did not review his documents in sufficient detail during this hearing. The landlord simply mentioned providing photographs as evidence for this hearing but did not point me to any specific pages or photographs or review them in any detail, during this hearing. The landlord did not indicate any specific amounts which he spent to

repair damages. I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

I find that the landlord failed to prove damages beyond reasonable wear and tear, caused by the tenant, as required by Residential Tenancy Policy Guideline 1. I find that the landlord did not indicate how old the paint at the rental unit was, for me to determine its useful life, as per Residential Tenancy Policy Guideline 40. The tenant is not required to repaint a rental unit, unless she caused excessive damages to the walls, as per Residential Tenancy Policy Guideline 1. The tenant indicated that she lived in the rental unit for 5 years from September 1, 2016 to August 31, 2021 and repainting was only done by the landlord after this time. Residential Tenancy Policy Guideline 40 states that the useful life of indoor paint at a rental unit is 4 years. Therefore, the landlord would have to repaint the rental unit in any event, since he did not indicate that any painting was done during this tenancy from 2016 to 2021, including with the former landlord.

The landlord did not complete a move-in condition inspection report when he assumed this tenancy from the former landlord, even though he signed a new written tenancy agreement with the tenant. The landlord did not complete a move-out condition inspection report with the tenant. Therefore, I cannot determine if any damages were caused by the tenant during her tenancy or whether these damages were pre-existing when she moved into the rental unit.

The landlord provided copies of quotations with balances due, for painting, replacing flooring, and repairing baseboards. He provided a photograph of a door handle with a price tag, from a store, that he pasted to a Word document. He provided a summary of expenses on an excel spreadsheet. He did not explain any of these documents, claims, or amounts during this hearing.

The landlord did not provide any receipts or invoices, to show if or when he had any damages repaired, when the work was completed, who completed it, how many people completed it, what the rate per hour or per worker was, what tasks were completed, how long it took to complete, when the work was paid for, how it was paid, and who paid it. The landlord did not provide any testimony about the above information during this hearing, despite the fact that I specifically asked him about the above information during this hearing.

Accordingly, I dismiss the landlord's application to retain the tenant's security deposit of $550.00, in full satisfaction of the monetary order for damages to the rental unit, without leave to reapply.

As the landlord was unsuccessful in his application, I find that he is not entitled to recover the $100.00 filing fee from the tenant.

Tenant's Application

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities, based on the testimony of both parties and the landlord's documentary evidence. The landlord continues to retain the tenant's entire security deposit of $550.00. This tenancy ended on August 31, 2021. The landlord did not have written permission to retain any amount from the tenant's security deposit.

Based on the undisputed testimony of both parties at this hearing, I find that the tenant provided a written forwarding address to the landlord on September 7, 2021, which was received by the landlord. I accept the tenant's affirmed testimony that she sent it on September 7, 2021, since the landlord could not recall the date of receipt. Neither party could confirm the service method of the written forwarding address. During this hearing, the tenant did not reference or review any documents regarding her written forwarding address.

The landlord filed his application to retain the tenant's security deposit on September 21, 2021, which is within 15 days of the written forwarding address being provided by the tenant on September 7, 2021.

I find that the landlord's right to claim against the tenant's security deposit for damages was extinguished for failure to complete a move-out condition inspection report with the tenant, as required by section 36 of the *Act*.

However, I find that the tenant did not review documentary evidence of her written forwarding address and she could not recall the method of service, during this hearing. I find that the tenant is not entitled to double the value of her security deposit for these reasons. I am required to consider the doubling provision, as per section 38 of the *Act* and Residential Tenancy Policy Guideline 17, even though the tenant did not apply for it, since she did not waive her right to it at this hearing.

No interest is payable on the tenant's security deposit during the period of this tenancy. In accordance with section 38 of the *Act*, I find that the tenant is entitled to the return of her entire security deposit of $550.00. I find that the landlord is not entitled to retain the tenant's security deposit, as noted above, since I dismissed his application without leave to reapply. I find that the tenant is entitled to its return, as per her application.

As the tenant was successful in her application, I find that she is entitled to recover the $100.00 filing fee from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of $650.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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.

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: May 16, 2022

Residential Tenancy Branch