



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing dealt with the tenants' application, filed on October 4, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$1,050.00 for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- a monetary order of \$25,200.00 for compensation from the landlords related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two landlords named in this application, did not attend this hearing, which lasted approximately 35 minutes. The two tenants, tenant JJ ("tenant") and "tenant EJ" 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 began at 1:30 p.m. and ended at 2:05 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the two tenants and I were the only people who called into this teleconference.

The two tenants confirmed their names and spelling. The tenant confirmed the rental unit address. He provided his email address for me to send a copy of this decision to both tenants after the hearing. He identified herself as the primary speaker on behalf of both tenants at this hearing. He said that tenant EJ is his son.

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, both tenants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both tenants. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. They confirmed that they were ready to proceed with this hearing and they wanted me to make decision. They did not make any adjournment or accommodation requests.

The tenant stated that he served two copies of the tenants’ application for dispute resolution hearing package to the two landlords on October 9, 2021, both by way of registered mail to the address provided by the landlords on the parties’ written tenancy agreement, a copy of which was provided for this hearing. He said that the landlords were living at the above address until they sold the property in December 2021. The tenants provided two Canada Post receipts with their application. The tenant confirmed both Canada Post tracking numbers verbally during this hearing. He said that the mail was returned to sender. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were deemed served with the tenants’ application on October 14, 2021, five days after their registered mailings. I find that the landlords were served at an address that they provided for service on page 1 of the tenancy agreement. Unclaimed or refused mail does not avoid the deeming provisions of section 90 of the *Act*.

The tenant stated that he served the landlords with the tenants’ application for dispute resolution hearing package by email too. He claimed that since the above registered mail packages were returned to the tenants as senders, he emailed them to the landlords too, since it was their primary method of communication and providing rent by e-transfers. The tenants were unable to provide a date of email service, despite being provided with ample and additional time during this hearing to look through their documents and log onto their online account to look up the information.

The tenant said that he received a substituted service decision on October 19, 2021. The tenants were provided with permission to serve the landlords by email, as per a substituted service decision, dated October 25, 2021 (“SS decision”), from an RTB Adjudicator. However, the tenants did not provide testimony regarding if, how or when they served the SS decision to the landlords, as required by the SS decision.

Both tenants confirmed receipt of the landlords’ Two Month Notice for Landlord’s Use of Property, dated July 17, 2021 (“2 Month Notice”). In accordance with sections 88 and

90 of the *Act*, I find that both tenants were duly served with the landlords' 2 Month Notice.

The tenant asked if the tenants could add a monetary claim for the return of their security and pet damage deposits (collectively "deposits"), to this application, at this hearing. He said that the tenants filed an application for the return of their deposits through the RTB "express process" and because service by email was not confirmed at that time, it was corrected. I informed the tenants that I could not amend their application to add a monetary claim for the return of their deposits at this hearing, because the landlords did not attend this hearing to consent, and the landlords did not have notice of same in order to respond. The tenant confirmed his understanding of same. The tenants did not file an amendment form at the RTB, prior to this hearing, in order to add this monetary claim to their application. The tenants filed an amendment form at the RTB, to correct the legal name of the tenant, so they are aware of the process for an amendment.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

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

The tenant stated the following facts. This tenancy began on December 1, 2019 and ended on August 15, 2021. Monthly rent of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$500.00 were paid by the tenants and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties.

The tenant testified regarding the following facts. The landlord served the tenants with a 2 Month Notice to take over the rental unit for their own purposes. The landlords told the tenants that they were going to sell their primary residence and they needed the tenants to move out, so the landlords could move into the rental unit. The tenants received the 2 Month Notice and signed a copy confirming that they received it. The landlords did not move into the rental unit as per the 2 Month Notice. The landlord posted an online rental advertisement for occupancy on August 1, 2021. The new tenants moved into the rental unit on August 1, 2021. The tenant spoke to a neighbor who lives next door and the person who lives in the downstairs suite of the rental property. Both people said that the property owners never moved into the rental unit. The tenant called the RTB, filed the tenants' application, and met the requirements of the RTB. The landlords have no respect for the tenants or the RTB, since they did not even respond to the correspondence.

Tenant EJ testified regarding the following facts. The troubles with the landlords happened near the end of the tenancy, during a short two-week period. Most of this happened with the tenant, his father. The tenants received a 2 Month Notice, dated July 17, 2021. The tenants moved out on August 15, 2021. Tenant EJ found the online rental advertisement on August 20, 2021. The landlords are not acting with the proper intention when they posted the online rental advertisement and the date to end the tenancy. This has been a long process. He cannot recall the clause of the *Act* for this application.

Analysis

Rules and Burden of Proof

The tenants acknowledged during this hearing that they were not properly prepared for this hearing. They claimed that they were not lawyers. They required additional time during this hearing, which I provided to them, to look up information online and to look through their documents.

At the outset of this hearing, I repeatedly informed both tenants that, as the applicants, they had the burden of proof, on a balance of probabilities, to present their submissions and evidence, and to prove their monetary claims, in order for me to make a decision regarding their application. The tenants affirmed their understanding of same.

The tenants were provided with an application package from the RTB, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), which

they were required to serve to the landlords. The tenant confirmed that all of the required documents were served to the landlords with the tenants' application. The NODRP, which contains the phone number and access code to call into this hearing, 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.*

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 tenants did not properly present their application and 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*.

During this hearing, the tenants failed to properly go through their claims, amounts, or evidence submitted in support of their application. The tenant mentioned submitting documents but did not review them in specific detail during this hearing. The tenants did not point me to any specific documents, page numbers, provisions, or other such information. The tenants did not indicate what provisions of the *Act* they were applying under or how they arrived at the amounts that they claimed in this application.

This hearing lasted 35 minutes, so the tenants had ample opportunity to present their application, since the landlords did not attend this hearing. I repeatedly asked both tenants if they had any other information or evidence to present, during this hearing. I provided the tenants with ample and additional time during this hearing to look up information online and to look through their documents.

Findings

Monetary Compensation of \$1,050.00

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants 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 landlord 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 tenants 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.*

In their online RTB application details, the tenants stated the following regarding their monetary claim for \$1,050.00 entitled "I want compensation for my monetary loss or other money owed:"

"1/2 month "free" rent landlord claimed we were not entitled to."

The tenants did not explain their monetary claim for \$1,050.00 at all during this hearing. They did not reference this claim or provide any amount during this hearing. The above amount and information were taken from the tenants' online RTB application details. They failed the above four-part test, pursuant to section 67 of the Act and Residential Tenancy Policy Guideline 16, because they did not provide details about the following:

- *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.*

On a balance of probabilities and for the reasons stated above, the tenants' application for \$1,050.00 is dismissed without leave to reapply.

12 Month Rent Compensation of \$25,200.00

A copy of the landlords' 2 Month Notice was provided for this hearing. The effective move-out date on the notice is October 1, 2021. The reason indicated on the 2 Month Notice was:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*
- *Please indicate which family member will occupy the unit.*
 - *The landlord or the landlord's spouse.*

I presume that the tenants filed this application pursuant to section 51(2) of the *Act*, for 12 months' rent compensation of \$2,100.00, totalling \$25,200.00, because the landlords did not use the rental unit for the purpose stated on the 2 Month Notice. The tenants did not provide the above amount or information during this hearing.

Section 49(3) of the *Act* states the following:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the purchasers do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

Section 51(3) of the Act states the following:

- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
 - (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

I accept the tenants' testimony that they vacated the rental unit, pursuant to the 2 Month Notice, on August 15, 2021.

The tenants dispute that the landlords or a close family member occupied the rental unit. I do not find the tenants' testimony, that they saw an online rental advertisement or that they were told by neighbours that the property owners did not move in, to prove that the landlords or a close family member did not move into the rental unit.

During this hearing, the tenants did not provide the name or contact information of the above neighbours, how these neighbours obtained the above information, the date the tenants received the above information from the neighbours, or other such information. The neighbours did not appear at his hearing to provide affirmed witness testimony.

The tenants also provided conflicting information throughout this hearing. The tenant testified that an online rental advertisement for occupancy on August 1, 2021, was posted and new tenants moved in on August 1, 2021. Tenant EJ claimed that he found the online rental advertisement on August 20, 2021. However, both tenants agreed that they moved out of the rental unit on August 15, 2021, so new tenants could not have moved in on August 1, 2021.

From my review of the tenants' evidence submitted for this hearing, they provided a letter, dated October 16, 2021. The letter indicates that it is from a neighbour. There is no contact phone number for the neighbour on the letter. The neighbour did not attend this hearing to provide witness testimony to verify that they wrote the letter, when they wrote it, that they provided it to the tenants, the contents of the letter, or other such information. The tenants did not reference or review this document at all during this hearing. The tenants did not indicate who the letter was from, what it said, when they received it, or other such information.

From my review of the tenants' evidence submitted for this hearing, they provided an online rental advertisement. There is a handwritten date of August 20, 2021, on the document. It is unclear who wrote the date on the document. There is no address for the house in the advertisement, so I cannot confirm whether it is the rental unit. The tenants did not review this document at all during this hearing.

On a balance of probabilities and for the reasons stated above, I find that the tenants provided insufficient documentary and witness evidence that steps have not been taken, within a reasonable period after the effective date of the 2 Month Notice, for the landlords or a close family member to occupy the rental unit, or that the landlords or a close family member did not occupy the rental unit for at least 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice.

Accordingly, the tenants' application for a monetary order of \$25,200.00 is dismissed without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee. This claim is also dismissed without leave to reapply.

Conclusion

The tenants' entire application 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: May 17, 2022

Residential Tenancy Branch