



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNDL-S, FFL

Introduction

The landlord seeks compensation of \$525.00 against their former tenant pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks \$100.00 to pay for the cost of the application filing fee.

A dispute resolution was convened on Monday, June 20, 2022 at 1:30 PM. The landlord's representative, the tenant, and the tenant's daughter attended hearing.

The parties were affirmed, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

The landlord filed its application on November 18, 2021. The landlord's representative (hereafter the "landlord") testified that she had no forwarding address for the tenant and did not know of her whereabouts after the tenancy ended. The tenant testified that she was not served the Notice of Dispute Resolution Proceeding, but nevertheless was aware of the proceedings (she did not explain how) and contacted the Residential Tenancy Branch on November 22 and on December 13, 2021. The Branch provided her with a courtesy copy of the Notice of Dispute Resolution Proceeding.

The landlord was also unable to serve a copy of their documentary evidence (a 5-page PDF document is what was submitted to the Branch) because, again, they did not know the whereabouts of the tenant. It was then explained to the landlord that she had two options going forward: (1) adjourn the hearing so that she could serve her evidence on the tenant, or (2) provide oral testimony only, and not have her documentary evidence considered. She chose the second option, and that is how the hearing proceeded.

For this reason, the landlord's documentary evidence is not admitted (because it was not served on the tenant and because the landlord chose not to have an opportunity to serve this evidence) and thus it will not be considered.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy lasted from April to November. Monthly rent was \$1,050 and the tenant paid a \$525.00 security deposit and a \$525.00 pet damage deposit. Because the landlord did not have the tenant's forwarding address, those deposits have essentially been held in trust pending the outcome of this application. The landlord filed their application for dispute resolution on November 15, 2021.

The landlord's application states that this action was brought because the tenant "Did not follow he [sic] rules of having a pet at Pinecrest Apt's. The tenant signed the paper for rules at Pinecrest Apt for having a pet".

According to the landlord's rules, there is a fine of \$50.00 for each time a tenant does not clean up after their dog. In this case, the landlord testified that this occurred on numerous occasions. Most of the time it was the tenant's daughter who took the dog out and let it poop and pee on the landlord's property. One two occasions it was the tenant who took the dog out to do its business. The landlord marked down these occasions on a piece of paper. (The landlord did not explain how a total of \$525.00 in fines was calculated, given that the fine is \$50.00 per occurrence.)

The tenant testified that "this was the first she ever heard of [the dog issue]." She further testified that the property ends at a certain point and that the dog would have been taken beyond the property line. The tenant gave evidence that they collected the dog's droppings "most of the time" and "on many occasions" but they cannot control where the dog urinates. They "did the best we could." She reiterated, "this is the first time I've heard of it." Moreover, the tenant testified that she never received any clarification on where a dog is and is not permitted to poop. The tenant argued that the landlord has not provided any proof that the culprit dog was in fact her dog. There are other people who have dogs, she noted.

The tenant's daughter also testified. She explained that she was home about half the time, but she also did not receive anything from the landlord about the dog issue. The daughter added that she "cleaned up as much as possible."

Analysis

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.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

In this dispute, the evidence persuades me to find that the tenant (or her daughter) did not comply with the rules—which constitute an addendum to the tenancy agreement—regarding the cleaning up of dog feces. The tenant did not dispute that there were such rules in place. Moreover, the tenant and her daughter, while not denying the landlord's claims in their entirety, testified that they cleaned up after the dog "most of the time," "did their best," and "cleaned up as much as possible." Where this leads me is to the conclusion that the tenant and her daughter did in fact breach the tenancy agreement.

What is not proven is the specific, actual number of times that the poops occurred. However, the landlord described it as "numerous times" and that the problem "went on and on and on." This testimony, coupled with the tenant's and daughter's testimony, persuades me to find that the tenant permitted the dog to go to the bathroom and did not clean up after the dog on at least as many occasions that would give rise to a claim for \$525.00 in compensation. For this reason, it is my finding that the landlord has proven their claim for compensation in the amount of \$525.00 for a breach of the tenancy agreement.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, as the landlord was successful, the tenant is ordered to pay the landlord \$100.00 in compensation.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is hereby ordered to retain \$625.00 of the tenants' security and pet damage deposit in full satisfaction of the amount awarded.

The balance of the deposits held, \$425.00, must therefore be returned to the tenant within 15 days of the landlord receiving a copy of this Decision. The tenant should contact the landlord by email and set up an arrangement for the return of this amount.

Alternatively, the tenant may provide a forwarding address, in writing, to the landlord if the tenant wishes to receive the returned amount by regular mail.

Conclusion

The landlord's application is hereby granted.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 20, 2022

Residential Tenancy Branch