Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Landlord) L.Z.	310050893	MNDCL-S, FFL
(Tenant) W.X.	910051869	MNSD, MNDCT, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord applied for:

- $1,988.26 compensation for monetary loss or other money owed – holding the security deposit to apply to this claim; and
- recovery of the $100.00 application filing fee;

The Tenant applied for:

- the return of the security deposit in the amount of $840.44;
- $1,147.82 compensation for monetary loss or other money owed; and
- recovery of the $100.00 application filing fee.

The Landlord and a translator for the Landlord, L.Y. ("Translator"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 50 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and her Translator, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, were the Landlord and her Translator.

I explained the hearing process to the Landlord and gave her an opportunity to ask

questions about it. The Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that her husband served the Tenant with the Notice of Hearing documents in person on October 14, 2021. The Landlord provided a photograph of the service as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on October 13, 2021; however, the Tenant did not attend the teleconference hearing scheduled for May 17, 2022, at 1:30 p.m. (Pacific Time). The phone line remained open for over 50 minutes and was monitored throughout this time. However, only the Landlord and her Translator called into the hearing.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Landlord and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 1:30 p.m. on May 17, 2022, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over 50 minutes; however, neither the Tenant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant's Application without leave to reapply**.

Preliminary and Procedural Matters

The Landlord provided her email address in her Application, and the Tenant's email address in the hearing. The Landlord confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Landlord that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Landlord affirmed that she was not recording the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The tenancy agreement provides and the Landlord confirmed in the hearing that the fixed term tenancy began on July 1, 2019, and ran to June 30, 2020, and then operated on a month-to-month basis. She verified that the tenancy agreement required the Tenant to pay her a monthly rent of $2,800.00, due on the first day of each month. She confirmed that the Tenant paid her a security deposit of $1,400.00, and no pet damage deposit, and that she holds this security deposit in full to apply to this claim. The Landlord confirmed that the tenancy ended on August 21, 2021, and that she did not have the Tenant's forwarding address until she received it in the Tenant's application. I advised the Landlord that as of the date of the May 17, 2022 hearing, the Landlord had the Tenant's forwarding address.

In the hearing, I asked the Landlord to explain her claim for $1,988.26, and she said:

> For the money, we applied to retain is $1,988.26. The money has relevancy for utilities fees we mentioned. Within those, they include blue box, garbage, floor protection, and annual waste fees.

I asked the Landlord where in the tenancy agreement it states that the Tenant will pay utilities as part of the tenancy. The Landlord said:

> No mention for fees, but we've contacted the RTB and city hall … and they said that the fees like electricity and utilities are to be negotiated within the tenancy agreement, and for the tenancy agreement in our case, the sections for the fees covered are to be checked. We covered the electricity, so we checked the boxes, but no mention for these four fees.

In clause 3 on page two of the tenancy agreement, there are boxes to check which indicate what services or facilities are included in the tenancy. None of the boxes was checked, including electricity; therefore, I conclude that the utilities including water, electricity, heat, and garbage collection were to be covered by the Tenant and not the Landlord.

The Landlord submitted monetary order worksheets; however, she did not complete these sheets with the amounts she claims the Tenant owes that add up to the total claimed. I am not required to, however, I went through the utility bills submitted and I came up with a total of $2,437.21, which does not include electricity and does not equal what the Landlord seeks.

It is not my job to sort through an applicant's submissions to find evidence that corresponds to their claims. I infer from the Landlord's testimony that I she expects me to go through the utility bills and calculate the specific amounts for some, but not all of the items billed. This is the applicant's job, not the arbitrator's.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Landlord testified, I advised her of how I analyze evidence presented to me. I told her that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

As noted above, the Landlord failed to provide a completed monetary order worksheet or any other calculation that equates to her monetary claim. Despite it not being my job to calculate such claims, I added up the utility bills and my calculation was nearly $450.00 higher than the Landlord's claim in this regard. Without an explanation of how the Landlord calculated her claims, I find she has not proven the third step of the Test.

As such, I find that the Landlord has not met her burden of proof on a balance of probabilities. Accordingly, I dismiss the Landlord's application wholly without leave to reapply, pursuant to section 62 of the Act.

As noted above, given the Tenant's failure to attend the hearing to present the merits of her case, I dismiss the Tenant's application without leave to reapply, pursuant to Rule 7.3 and section 62 of the Act.

However, given the Landlord's lack of success in her application, I Order her to return the full security deposit to the Tenant. In this regard, and pursuant to sections 62 and 67 of the Act, I award the Tenant with a **Monetary Order** of **$1,400.00** from the Landlord in full recovery of the security deposit. I find that this situation does not fit within the grounds for doubling the security deposit pursuant to Policy Guideline #17, C.

Conclusion

Both Parties are unsuccessful in their applications, as the Landlord failed to provide sufficient evidence to meet her burden of proof on a balance of probabilities, and the Tenant failed to attend to present the merits of her case. Therefore, both applications are dismissed wholly without leave to reapply.

However, pursuant to Policy Guideline #17 and section 62 of the Act, I grant the Tenant a **Monetary Order** of **$1,400.00** for the return of the Tenant's security deposit in full.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: June 07, 2022

Residential Tenancy Branch