



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes MNDL MNDCL FFL

Introduction

The landlord seeks \$15,465.00 in compensation from their former tenant pursuant to sections 67 and 72(1) of the *Residential Tenancy Act* ("Act").

Attending the dispute resolution hearing on June 28, 2022 were the landlord and the tenant. The parties were affirmed, no service issues were raised (except for one document, which is addressed below), and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

Preliminary Issue 1: Previous Dispute Between Tenant and Landlord

The tenant raised an objection in his response evidence and submissions noting that this matter was previously dealt with. See previous file (the file number is referenced on the cover page of this decision). However, this is not a case of *res judicata* because the issue before the previous arbitrator dealt with whether the tenant was entitled to the return and doubling of his security deposit, whereas the issue before me deals with whether the landlord is entitled to compensation. As such, the landlord's application before me is separate and distinct from the previous file's legal issue.

Preliminary Issue 2: Service of Evidence

The tenant acknowledged that he received the landlord's documentary evidence except for one document authored by a contractor. This document, which is dated November 28, 2021, is a "budget proposal" outlining repairs that the landlord submitted needs to be completed because of the tenant's negligence.

The landlord believed that this document was served on the tenant but could not with absolute certainty remember (due to the rather lengthy time that has passed since he filed his application in November 2021). Given that the landlord was unable to establish on a balance of probabilities that this document was, in fact, served on the tenant, it is my finding that the document is inadmissible and will not be considered.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on September 1, 2020 and ended on August 31, 2021. Monthly rent was \$1,400.00.00 and was due on the first day of the month. The tenant paid a \$700.00 security deposit which was the disputed issue in the above-noted previous file. A copy of the written *Residential Tenancy Agreement* was in evidence.

The landlord seeks \$9,765.00 in compensation for costs related to the repair of the rental unit due to, according to the landlord, the tenant's negligence. The landlord testified that the rental unit, which is a basement suite, was gutted and newly renovated. It was in "brand new" condition at the start of the tenancy. (Though, some of the landlord's furniture was still stored in the rental unit when the tenant did a pre-tenancy walk through.) The landlord has not to date incurred any expenditures or spent any money on repairing the rental unit. No condition inspection report was ever completed.

As for the damages, this included various damage to the walls, painting that needs to be done, repairs on a damaged door, repairs to a damaged baseboard moulding, and repairs to a laminate floor. The proposal for repair costs (inadmissible as evidence) was made by the same contractor who renovated the rental unit before the tenant took occupancy, the landlord testified. What is admissible as evidence are dozens and dozens of photographs of the rental unit at the end of the tenancy.

In addition, the landlord seeks \$5,600.00 in loss of rent for a period of four months because the landlord did not rent out the rental unit after the tenant damaged it. The landlord testified that, as of today, the rental unit remains empty of tenants. He left it "as is" to "preserve the evidence," though, admittedly, he did not anticipate that the dispute resolution process would take this long.

The tenant denies causing damage to the rental unit, argued that no condition inspection report was ever completed, and testified that he believed he left the rental unit "in a very good condition."

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.

1. Claim for Repairs and Loss of Rental Income

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 party must compensate the other for damage or loss. A party claiming compensation must do whatever is reasonable to minimize their loss. And 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 breaching the Act, the regulations, or a tenancy agreement.

Section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate the property.

In this case, while the landlord submitted multiple photographs of the rental unit at the end of the tenancy, he did not submit photographs of the rental unit at the start of the tenancy. Nor did the landlord submit a condition inspection report, which might support a claim that the tenant caused damage (beyond reasonable wear and tear). While the photographs depict various scratches and marks and so forth, the landlord did not make any argument that such damages were not a result of reasonable wear and tear.

[Section 21](#) of the *Residential Tenancy Regulation* (the “Regulation”), which speaks to the probative value of documentary evidence, including a condition inspection report, states the following:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Here, there is no condition inspection report to provide evidence of the state of repair and condition of the rental unit, and the landlord—upon whom rests the burden of proof—did not provide a preponderance of evidence that the tenant did not leave the rental unit in “very good condition.”

Taking into consideration all the oral and documentary evidence before me, it is my finding that the landlord has not proven on a balance of probabilities that the tenant breached the Act. As such, no compensation may flow.

Given that the landlord has not proven a claim for compensation related to the tenant's breach of the Act, I am likewise unable to find that the landlord has proven that he suffered a loss of rent for four months. Ultimately, he chose to not rent the property out after the tenant vacated, and while there is some light damage to the rental unit, I am not satisfied that the condition of the rental unit—as it is depicted in the many photographs—prevented the landlord from re-renting the property. For this reason, I am not persuaded that the tenant breached the Act, the regulations, or the tenancy agreement leading to the landlord's claim for loss of rent.

2. Claim for Recovery of Application Filing Fee

The claim to recover the cost of the filing fee under section 72 of the Act is dismissed.

Conclusion

IT IS ORDERED that the application in this matter be dismissed without leave to reapply.

This decision 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 28, 2022

Residential Tenancy Branch