Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- authorization to retain all or a portion of the security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $9,285 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This matter was reconvened from a prior hearing on March 18, 2022. I issued an interim decision setting out the reasons for the adjournment that same day (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:18 am in order to enable the landlord to call into the hearing scheduled to start at 11:00 am. The tenants attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the tenants and I were the only ones who had called into the hearing.

In the Interim Decision, I wrote:

> […]I order the landlord to complete a Monetary Order Worksheet (RTB Form 37, available here: https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms), and submit a copy of it as well as all receipts referenced on it to [the Residential Tenancy Branch (the "**RTB**")] and to serve a copy of it and the receipts to the tenants by April 1, 2022. This is not an opportunity for the landlord to increase his claim or to submit new evidence. I am instead ordering him to better organize his existing claim. He may not rely on any evidence not included in either the first or second evidence packages.

The landlord did not provide the RTB or the tenants with the documents he was ordered to provide.

Preliminary Issue – Effect of the Landlord's Failure to Comply with Order

In the Interim Decision, I found that the landlord's evidence was not sufficiently organized. I wrote:

> When I asked about specific receipts, and the reasons why their costs were incurred, DT was unsure and had to consult with IZ. This was time consuming. Additionally, DT appeared to be speculating at times as to why certain costs were incurred. I do not think this was in an attempt to deliberately mislead me but rather due to his unfamiliarity with materials. Such speculation casts doubt on other parts of his testimony.
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> Rule of Procedure 3.7 states:
>
> > **3.7 Evidence must be organized, clear and legible**
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> > All documents to be relied on as evidence must be clear and legible.
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> > To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.
> >
> > For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".
> >
> > To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.
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> The landlord's evidence was not sufficiently organized.
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> The landlord submitted his documentary evidence to the RTB twice. Once, at the time he made the application, and again shortly before the hearing. The first evidence submission was not organized. The second submission was paginated. The pagination was helpful in ensuring that everyone at the hearing was referring to the same document. However, some of the documents in the first package were not in the second package, which caused a great deal of confusion.

> The landlord did not include a completed Monetary Order Worksheet (RTB Form 37) with his evidence. The Rules of Procedure do not require that an applicant submit such a worksheet, but it is a useful tool for an applicant to use to organize their claim. It requires that the applicant set out a description of each part of their monetary claim and assign a value to it.
>
> As it stands now, I am uncertain how the landlord arrived at the total amount of their monetary claim. I am uncertain if the receipts that were in the first package, but not in the second package, form part of the landlord's monetary claim. I am uncertain what certain receipts represent.

I ordered the landlord to provide a monetary order worksheet and indicate which receipts support his claim to allow me to better understand his claim. The landlord has failed to do this. As such, the uncertainty mentioned above persists.

When an applicant provides confusing, contradictory, or misleading evidence, it is not the role of the arbitrator to reconcile the evidence; an arbitrator's role to determine whether the applicant has provided sufficiently clear evidence to establish their claim on a balance of probabilities. In this case, I am not satisfied that the landlord has provided sufficient evidence to establish his claim because his evidence was convoluted and confusing. Per Rule of Procedure 6.6, the landlord bears the evidentiary burden to prove the merits of his claim. He has failed to do this. As such, I dismiss his application, without leave to reapply.

Security Deposit

In his application, the landlord claimed against the security deposit and pet damage deposit. At the March hearing, the parties agreed that the landlord collected a $2,500 security deposit and a $2,500 pet damage deposit (collectively, the "**Deposits**") from the tenants at the start of the tenancy, and that the landlord had not yet returned them. As I have dismissed the application, the landlord no longer has any entitlement to hold the Deposits. The parties agreed that a move-in condition inspection report was completed at the start of the tenancy.

At the March hearing, the tenants testified that tenant WR participated in a move-out condition inspection with two of the landlord's agents (TD and IZ) on July 31, 2021, the last day of the tenancy. No report was created. The landlord argued he no inspection was done, as the tenants had not finished cleaning the rental unit at the time TD and IZ walked through the rental unit with WR, and because he was not there himself.

I find that the inspection conducted by WR, TD, and IZ, is sufficient to satisfy the requirement that the parties inspect the property together set out at section 35(1) of the Act. If the property was not sufficiently clean at that time, the landlord's agents could have noted the fact on a move-out condition inspection report. I do not find it appropriate require that the rental unit be entirely clean before a move out inspection is made. The parties agreed to do the inspection on July 31, 2021. The landlord sent his agents. The tenants

were represented by WR. This satisfies the tenants' obligations under the Act. the landlord is then obligated to provide a move out condition inspection report based on this inspection. The landlord did not do this.

I do not find that the July 31, 2021 inspection is void because the landlord himself was not present. It is not a requirement for landlord to be present for an inspection; it is only required that the landlord is *represented* at the inspection. I find that TD and IZ's presence was sufficient to satisfy this requirement.

Accordingly, I do not find that the tenants have extinguished their right to the return of the security deposit.

At this hearing, the tenants testified that they sent their forwarding address to the landlord via text message on Aug 18, 2021, and then again via e-mail and registered mail on August 25, 2021. Section 88 of the Act sets out how party may serve documents on another party. It does not include service via text message (or email, except in certain circumstances). It does include service via registered mail. As such, I find that the landlord was served with the tenants' forwarding address five days after it was sent by registered mail (per section 90 of the Act). Accordingly, I find the landlord is considered to have received the tenants forwarding address on August 30, 2021.

The landlord made his application on September 6, 2021. This is within the 15-day window set out at section 38 of the Act. Accordingly, the tenants are not entitled to the return of double the Deposits (as set out at section 38(6) of the Act). They are only entitled to the return of the full amount of the Deposits ($5,000).

Conclusion

I dismiss the landlord's application, without leave to reapply

Pursuant to sections 65 of the Act, I order that the landlord pay the tenant $5,000, representing the return of the Deposits

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: July 14, 2022

Residential Tenancy Branch