



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL-S, FFL**

Introduction

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

1. A Monetary Order for the Tenant to pay to repair the damage that they, their pets, or their guests caused during their tenancy - holding security and/or pet damage deposit pursuant to Sections 38, 62, and 67 of the Act;
2. A Monetary Order to recover money for unpaid rent, holding the security and/or pet damage deposit pursuant to Sections 38, and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, and the Tenant, and his Support attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord testified that he served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on December 11, 2021 by Canada Post registered mail (the "NoDRP package"). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirms receipt. I find that the Tenant was deemed served with the NoDRP

package five days after mailing them on December 16, 2021 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant served their evidence on the Landlord on July 1, 2022 by posting the notice on the Landlord's door. The Landlord confirms receipt of the Tenant's evidence. I find the Tenant's evidence was deemed served on the Landlord on July 4, 2022 according to Sections 88(g) and 90(c) of the Act.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for the Tenant to pay to repair the damage that they, their pets, or their guests caused during their tenancy - holding security and/or pet damage deposit?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent, holding the security and/or pet damage deposit?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenancy agreement and the parties confirmed that this periodic tenancy began on January 15, 2019. Monthly rent is \$2,000.00 payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy. The parties went through a previous dispute resolution claim (the file number is noted on the cover page of this Decision), and the Landlord was awarded compensation for unpaid rent. He was ordered to retain the security deposit paid by the Tenant at the start of the tenancy, and the Landlord was issued a Monetary Order for \$725.00 against the Tenant. The Landlord withdraws his claim for a monetary order to recover money for unpaid rent.

A move-in condition inspection was completed by both parties on January 15, 2019, and a move-out condition inspection was completed by the Landlord alone on November 30, 2021. The Landlord put a handwritten note on page 6 of 6 of the move-out condition inspection report, that the "*Tenant refused to meet to complete the move out inspection report.*"

The Landlord stated that the Tenant destroyed a set of blinds in the house, and he said it cost him \$525.00 to repair them. The Landlord did not produce the invoice for this blind repair. The Landlord stated that his invoices were uploaded into the previous claims' documentary evidence and not in this matter.

The Landlord uploaded the move-in condition inspection report dated December 1, 2021 for the new tenant who now resides in the rental unit. Page 2 of 7 states that the "*blinds in nook on sliding door need to be replaced.*" The Landlord also uploaded a letter dated December 11, 2021 from his current tenant attesting to the condition of the blinds as "*damaged beyond repair.*"

The Landlord testified that the Tenant did significant damage to the walls. The Landlord stated the Tenant overdid the patch work repairing holes in the walls. The Landlord testified that if the Tenant had to use netting to repair the wall, "*it is a big hole in the wall.*" The Landlord said he had to repaint the rental unit, so he hired a contractor who sanded the excess stucco, primed, and painted the walls. The Landlord testified that he has an invoice for the painting work totalling \$617.00 plus GST, but he did not produce it for this matter.

The Tenant had asked the Landlord if he could put up a shed. The Landlord testified that if the Tenant took the shed when he moved out, he must restore the ground surface to the original state with grass. The Landlord said, when the Tenant vacated, he took the shed with him. The Landlord stated that the Tenant left 3" to 4" of gravel, the underpad and the landscape material where the shed was. The Landlord is claiming \$200.00 plus GST to remove the gravel, underpad and landscape material that was under the shed. The Landlord did not produce the invoice for this work.

The Landlord uploaded the move-in condition inspection report of his next tenant. This document is dated December 1, 2021. The Landlord also uploaded a letter dated December 11, 2021 written by his next tenant who confirms that they moved into the residential property on December 1, 2021. The letter notes that:

Blinds were damaged beyond repair

Walls damaged in dining room, living room, second bedroom and hallway.

Yard is completely grown over and weeds have taken over the lawn

Bare patch of gravel left on lawn

The new tenant was not brought in as a witness for the Landlord to be cross-examined by the Tenant.

The Tenant stated he did not remember seeing the invoices for the work the Landlord said was done. The Tenant did not have copies of that evidence for hearing.

The Tenant testified that the blinds were in functioning order as when he moved in. During his time in the rental unit, he said there was a twisted chain issue with the blinds, but "*we made it work.*" The Tenant uploaded two pictures, inside the unit and outside the unit, of the blinds into documentary evidence.

The Tenant said he is OCD, and he spent three days cleaning, patching, and sanding the walls before he vacated. The Tenant argues that when he moved in, he and the Landlord never did a lot through a move-in condition inspection. The Tenant stated he did not sign off on anything. He states there were existing "*dings and dents*" in the walls, the rental unit was manufactured in 2005 and was not painted prior to the Tenant's move in. The Tenant asserted that the mesh or netting existed prior to his move in. He said he repatched over the mesh, sanded it flat and wiped it down. The rental unit did need a paint job. The Tenant compared two pictures of areas that he repaired in the rental unit to pictures the Landlord uploaded.

The Tenant uploaded a picture of a patch of ground where he said he built his shed. He argues that there was no grass at this location, rather just a smattering of weeds. The Tenant claimed he put down landscaper's fabric and about $\frac{3}{4}$ " of road-based gravel, then built the shed on that foundation. The Tenant took his shed when he left the rental unit, and he said he left the landscaper's fabric and the gravel, he thought the next people could possibly use that spot to build their own storage, as there is no storage in the rental unit.

The Tenant said the Landlord brought in dirt for fill in the yard and it just grows weeds. There often was not a lot of grass, it was mostly weeds.

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.

The parties explained there was a previous dispute resolution claim between them, and the Landlord stated that he was ordered to retain the security deposit from the tenancy, and he was awarded a monetary order to cover the full amount of unpaid rent. This part of the claim was previously awarded and the Landlord agrees to dismiss this part of the claim. As there is no longer any money in the security deposit, the remaining compensation claim cannot be compensated through that, and the compensation claim portion will be considered in that context.

RTB Policy Guideline #16 addresses the criteria for awarding compensation to an affected party. This guideline states, "*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.*" (emphasis mine) This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Landlord is claiming for compensation for damage to a set of blinds, damage to walls that he claims is more than normal wear and tear, and ground restoration after the Tenant removed a shed he put up. The Landlord did not specify which Section of the Act, Regulation or tenancy agreement the Tenant has breached but he noted that the Tenant left the rental unit damaged more than reasonable wear and tear which is Section 37(2)(a) of the Act.

The Landlord's pictures of the wall repairs, in maybe two spots, look to be larger areas that the Tenant prepared for painting; however, the preparation work does not appear to be overly or excessively done. The pictures uploaded of the wall damage in 2019 when the Tenant moved in are significantly worse compared to what the Landlord was left with.

The Landlord's monetary worksheet provided estimate ranges for the required work, he but did not upload the required receipts proving the amount of the damage or loss he had to repair. The Landlord said these receipts were in the evidence of the previous file heard for this matter.

When filing an application for dispute resolution, several Rules of Procedure specify what must be submitted with the claim, what must be served on the Respondent, and the latest it must be served on the other party. They state:

2.5 Documents that must be submitted with an Application for Dispute Resolution: *To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:*

- *a detailed calculation of any monetary claim being made;*
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package: *The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:*

...

- d) *any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

3.14 Evidence not submitted at the time of Application for Dispute Resolution: *Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the*

respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

As the Landlord did not serve the Tenant with the detailed calculation of the monetary claim being made against him and the receipts for the work that was done, I find principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. I find that the Landlord did not serve the Tenant with the detailed calculation of the monetary claim being made against him and the receipts for the work that was done. These are material pieces of evidence for a compensation claim and I find it would be administratively unfair to proceed on the Landlord's compensation claim without them.

I note that the rental unit was not unrentable because of the submitted compensation claims as the Landlord secured a new tenant immediately after the Tenant vacated. I find the Landlord has not proven this part of his claim, and accordingly, I find that the Landlord's compensation claim is dismissed without leave to re-apply.

As the Landlord was unsuccessful in his claim, he must bear the cost of the application filing fee.

Conclusion

The Landlord's claim is dismissed without leave to re-apply.

The Landlord's application for a return of the application filing fee is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 28, 2022

Residential Tenancy Branch