



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PR LOTUS HOTEL LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with the landlord's application, filed on January 17, 2022, pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order of \$5,093.75 for unpaid rent, for damage to the rental unit, and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$750.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 45 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 2:15 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's "witness JK" was excluded from the outset of this hearing. She called into this hearing from approximately 2:05 p.m. to 2:14 p.m. and exited the teleconference after providing testimony.

The landlord's agent provided her name and spelling. She provided her email address for me to send this decision to the landlord after the hearing.

The landlord's agent stated that the landlord company ("landlord") named in this application, owned the rental unit until it was sold on February 14, 2022. She said that she is a legal assistant for the landlord and that she had permission to speak on its behalf at this hearing. She provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any participant. At the outset of this hearing, the landlord's agent affirmed, under oath, that she would not record this hearing. During this hearing, witness JK affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord's agent. She had an opportunity to ask questions. She confirmed that she was ready to proceed with this hearing. She did not make any adjournment or accommodation requests.

The landlord's agent testified that the tenant was served with a copy of the landlord's notice of dispute resolution proceeding on January 28, 2022, by way of registered mail, to a residential address obtained by a skip tracer from a credit report. The landlord provided a copy of the skip trace report. The landlord provided a Canada Post receipt and the landlord's agent confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on February 2, 2022, five days after its registered mailing, to the tenant's residential address provided in a skip trace report.

The landlord's agent testified that the tenant was served with a copy of the landlord's amendment and evidence package on July 28, 2022, by way of registered mail, to the residential address obtained by the skip tracer, as noted above. The landlord provided a Canada Post receipt and the landlord's agent confirmed the tracking number verbally during this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's amendment and evidence on August 2, 2022, five days after its registered mailing, to the tenant's residential address provided in a skip trace report.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to remove the tenant's former rental unit from the style of cause. The landlord's agent confirmed that the landlord initially indicated two rental units for this tenant, but it should be amended to reflect the last rental unit where the tenant resided, not the first one. I also amend the landlord's application to increase the monetary claim from \$1,658.06 to \$5,093.75, as the landlord served an amendment, as noted above, and a monetary order worksheet, to the tenant, to confirm same.

The landlord's agent stated that this application was filed on January 17, 2022, almost a year after the end of this tenancy on January 26, 2021, because it came to the attention of the legal department at that time. She claimed that the landlord's application was amended to increase its monetary claim, and all of its evidence was served to the tenant on July 28, 2022, shortly before this hearing on August 29, 2022, because the landlord sold the rental property on February 14, 2022, and it took time for the landlord to retrieve its invoices.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage to the landlord unit, and for compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agent and witness JK, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent stated the following facts. This tenancy began on August 1, 2020 for a fixed term ending on January 31, 2021, after which it was a month-to-month tenancy. This tenancy ended on January 26, 2021, when the tenant abandoned the rental unit. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed by both parties for this tenancy. A move-out condition inspection report was completed by the landlord only, without the tenant present. The landlord provided one opportunity to complete a move-out condition inspection to the tenant, by email on January 27, 2021, but did not propose a date or time for the inspection. The landlord did not provide an approved RTB form for a final opportunity to complete a move-out condition inspection. The tenant did not provide a written forwarding address to the landlord. The tenant did not provide written permission for the landlord to keep any amount from her security

deposit. The landlord's application to retain the tenant's security deposit was filed on January 17, 2022.

The landlord's agent stated that the landlord seeks a monetary order of \$5,093.75, to retain the tenant's security deposit of \$750.00 towards the above amount, plus the \$100.00 application filing fee. She said that the landlord seeks \$1,000.00 for October 2020 rent, \$900.00 for November 2020 rent, \$500.00 for January 2021 rent, and \$1,500.00 for February 2021 rent. She claimed that the landlord also seeks \$125.00 for keys, FOB, and laundry card, \$150.00 for cleaning, \$630.00 for painting, and \$288.75 for skip tracing.

The landlord's agent testified regarding the following facts. The landlord seeks costs for rent, cleaning, skip tracing, and painting. The tenant did not provide any proper notice to move out, as per her tenancy agreement. The landlord tried to communicate with the tenant.

Witness JK testified regarding the following facts. She was the former property manager for this rental property, until it was sold on March 11, 2022. She is still employed by the landlord but at a different building. She provided two opportunities for a move-out condition inspection to the tenant. She did not provide two opportunities for move-out condition inspection. She does not recall whether she provided two opportunities for move-out condition inspection. She does not recall whether she provided a date or time for the move-out inspection in her email, dated January 27, 2021, as she did not have that information in front of her during this hearing. She sent emails to the tenant and spoke to her verbally, regarding a move-out condition inspection. She did not provide the tenant with an RTB approved form for a final notice of opportunity to schedule a move-out condition inspection.

Analysis

Burden of Proof

As the applicant, the landlord has the burden of proof, on a balance of probabilities, to prove this application and monetary claims. The *Act, Regulation, Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of its claims, in order to obtain a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord's agent testified that this application

package was served to the tenant, as required. The landlord received a document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing this application. This document contains the phone number and access code to call into this hearing. The landlord provided a copy of this document for this hearing, as evidence of service to the tenant.

The NODRP states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed the landlord’s agent that I had 30 days to issue a decision in writing, regarding the landlord’s application.

The landlord received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support his application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation, Rules*, and Residential Tenancy Policy Guidelines. The landlord is required to provide sufficient evidence of its claims, since it chose to file this application on its own accord.

Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord's agent did not properly present the landlord's claims and evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

During this hearing, the landlord's agent failed to properly review and explain the landlord's monetary claims and the documents submitted in support of this application. The landlord's agent did not review any of the landlord's documents, except for the skip trace report, registered mail service information, and emails, since I specifically asked her questions about them during this hearing.

During this hearing, I repeatedly asked the landlord's agent whether she wanted to add any information and present any further submissions and evidence. This hearing lasted 45 minutes and only the landlord and witness JK attended this hearing, not the tenant. The landlord's agent was given ample and multiple opportunities to present this application and evidence. As noted above, the testimony of the landlord's agent and witness JK were brief, during this hearing.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant landlord to establish his claims. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;

- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

C. COMPENSATION

*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.** In order to determine whether compensation is due, the arbitrator may determine 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.*

...

D. AMOUNT OF COMPENSATION

*In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the landlord's documentary evidence and the testimony of the landlord's agent and witness JK at this hearing.

I dismiss the landlord's application for \$5,093.75 without leave to reapply.

The landlord's agent simply read aloud the monetary claims and amounts directly from the monetary order worksheet during this hearing. She did not review or point me to any specific documents, details, page numbers, or other information in the move-in or move-out condition inspection reports, invoices, or photographs, all provided by the landlord as evidence for this hearing.

As per section 26 of the *Act*, the tenant is required to pay rent on date indicated in the tenancy agreement, which the landlord's agent testified is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord's agent did not explain the unpaid rent claims during this hearing. She stated that unpaid rent of \$1,000.00 was due for October 2020, \$900.00 was due for November 2020, and \$500.00 was due for January 2021. She did not explain if, when, how, or the amount of any partial rent payments made by the tenant to the landlord for the above months.

The landlord's agent did not explain why the landlord was seeking \$1,500.00 for a loss of February 2022 rent, when this tenancy ended on January 26, 2021, and the fixed term tenancy ended on January 31, 2022. Although the tenant is required to provide one month's notice to vacate a rental unit for a month-to-month tenancy, as per section 45(1) of the *Act*, the landlord is required to show efforts to mitigate its losses, as per section 7(2) of the *Act*, above. I find that the landlord failed to show how it properly mitigated its losses in efforts to re-rent the unit.

I find that the landlord failed to provide sufficient documentary or testimonial evidence including copies of rent advertisements, to show if or when it was advertised for re-rental, the rent amount per month, the term of length of the tenancy, how long the unit was advertised for, what details were given in the advertisement, and other such information. I find that the landlord failed to provide sufficient documentary or testimonial evidence to indicate how many inquiries were made for re-rental, how many showings were done, when any showings were done, how many applications were received, how many applications were accepted or rejected, and other such information. I find that the landlord failed to provide sufficient documentary or testimonial evidence

regarding if or when the rental unit was re-rented to new tenants, the length of tenancy, the rent for the tenancy, whether a new tenancy agreement was signed and a copy of same, or other such information.

The landlord did not provide any receipts for payments made by the landlord for painting of \$630.00, cleaning of \$150.00, keys/fob/laundry card of \$125.00, and skip tracing costs of \$288.75. The landlord only provided invoices with balances due for the above costs. There is no indication that the landlord actually paid the above invoices. The landlord did not provide sufficient testimonial or documentary evidence, showing that it paid for the above work, when it was paid, how it was paid, or other such information. The landlord did not provide sufficient testimonial or documentary evidence regarding if or when the above work was done, how it was done, who completed the work, how many people completed it, what the rate was per hour or per worker, or other such information.

The landlord did not provide sufficient testimonial or documentary evidence regarding how old or how big the rental unit is, when the painting was last completed, what areas were painted in the rental unit, and what areas were cleaned in the rental unit. Residential Tenancy Policy Guideline 40 states that the useful life of indoor paint is 4 years, so the landlord may have had to paint the rental unit in any event, if the last painting was done more than 4 years prior.

The landlord's agent did not review or explain the move-in or move-out condition inspection reports during this hearing, to indicate the condition of the rental unit at the beginning or end of this tenancy, or whether any damages were present at the beginning of this tenancy prior to the tenant moving in. The move-out condition inspection report does not indicate any of the above costs sought by the landlord, it does not refer to painting being required, and it does not refer to whether the tenant returned keys, FOB, and the laundry card in the specific section of the report.

The landlord had ample time from filing this application on January 17, 2022, to this hearing date of August 29, 2022, a period of over 7 months, to provide sufficient documentary evidence and failed to do so. I find that the landlord failed part 3 of the above test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

As the landlord was mainly unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 application filing fee from the tenant. This claim is dismissed without leave to reapply.

Security Deposit

The landlord continues to retain the tenant's security deposit of \$750.00. No interest is payable on the deposit during this tenancy.

Although the tenant did not apply for the return of her security deposit, I am required to consider it on the landlord's application to retain the deposit, as per Residential Tenancy Policy Guideline 17.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that this tenancy ended on January 26, 2021. The tenant did not provide a written forwarding address to the landlord, to date. The tenant did not provide written permission to the landlord, to retain any amount from her security deposit. The landlord filed this application at the RTB on January 17, 2022, to retain the tenant's deposit. The landlord did not return any amount from the tenant's deposit to the tenant.

I find that the landlord's right to retain the tenant's security deposit for damages, was extinguished for failure to provide two opportunities to complete a move-out condition inspection with proposed dates and times, one using the approved RTB form, contrary to section 36 of the *Act* and section 17 of the *Regulation*. However, the landlord also applied for unpaid rent, cleaning, and a skip trace charge, which are not damages.

Section 39 of the *Act* states the following:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The landlord filed his application to retain the deposit on January 17, 2022, which is more than 15 days after the tenant vacated the rental unit on January 26, 2021.

However, the tenant failed to provide a written forwarding address to the landlord, within one year of the end of this tenancy on January 26, 2021. For the above reason, pursuant to section 39 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$750.00.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$750.00.

The remainder of the landlord's application is dismissed without leave to reapply.

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: August 29, 2022

Residential Tenancy Branch