Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, CNR, RP, FFT

Introduction

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

- a monetary order of $2,600.00 for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- an order allowing the tenants to reduce rent of $200.00 per month, for repairs, services, or facilities agreed upon but not provided, pursuant to section 65;
- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord complete repairs to the rental unit, pursuant to section 32; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

"Tenant AM" did not attend this hearing, which lasted approximately 44 minutes from 11:00 a.m. to 11:44 a.m. The landlord's agent and tenant SM ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent confirmed his name and spelling. The tenant confirmed the names and spelling for him and tenant AM. The landlord's agent and the tenant both provided their email addresses for me to send this decision to both parties after this hearing.

The landlord stated that he is the property manager for the landlord company ("landlord") named in this application and he had permission to speak on its behalf at this hearing. He confirmed the legal name of the landlord. He said that the landlord is

the agent for the owner. He claimed that he had permission to represent the owner at this hearing. He provided the rental unit address.

The tenant stated that he had permission to represent tenant AM, who is his wife, at this hearing (collectively "tenants").

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord's agent and the tenant both separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing.

Both parties were given multiple opportunities to settle this application at the beginning and end of this hearing. The tenant stated that he did not want to settle with the landlord, despite the landlord making an offer of $500.00 to settle the tenants' application. The tenant confirmed that he wanted me to make a decision regarding this application, he understood that the tenants did not submit any documentary evidence regarding their monetary claims and that it could negatively affect the outcome of my decision, and the tenants were prepared to receive $0 if that was my decision.

The landlord's agent confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord's agent stated that the landlord did not submit any documentary evidence for this hearing.

Preliminary Issue – Amendments to Tenants' Application

At the outset of this hearing, the landlord's agent confirmed that the landlord's 10 Day Notice was cancelled, the tenants paid rent up to date, the landlord did not require an order of possession against the tenants, and this tenancy would continue. I informed both parties that I would not issue an order of possession to the landlord and the landlord's 10 Day Notice was cancelled and of no force or effect. Both parties confirmed their understanding of same.

At the outset of this hearing, the tenant confirmed that the tenants did not require any repairs from the landlord because all repairs had been completed. I informed him that this portion of the tenants' application was dismissed without leave to reapply. He confirmed his understanding of same.

During this hearing, the tenant confirmed that he did not want to pursue the tenants' monetary application for a rent reduction of $200.00 per month. I informed him that this portion of the tenants' application was dismissed without leave to reapply. He confirmed his understanding of same.

During this hearing, the tenant confirmed that he wanted to reduce the tenants' application for a monetary order for compensation for damage or loss under the *Act, Regulation o*r tenancy agreement. He said that the tenants wanted to reduce their monetary claim from $2,600.00 to $1,700.00, which represents one month rent compensation.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to reduce their monetary claim from $2,600.00 to $1,700.00. I find no prejudice to the landlord in making this amendment, since it is a decrease, not an increase, in the monetary claim. Further, the landlord's agent did not object to the above decrease during this hearing.

I informed the tenant that the remainder of the tenants' monetary claim of $900.00 was dismissed without leave to reapply. He confirmed his understanding of same.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to remove the incorrect name of the landlord as a landlord-respondent party. The tenant included two names for the landlord in this application and one was incorrect. I find no prejudice to either party in making this amendment.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on October 1, 2021. Monthly rent in the amount of $1,700.00 is payable on the first day of each month. A security deposit of $850.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The tenant testified regarding the following facts. There were three sewer backups at the rental unit on December 24, February 1, and February 7. On December 24, there was a sewer backup and the tenants noticed it when they went to get their presents from the crawl space. It left dirty water that was cleaned up on December 29. On February 1, there was a sewer backup that was about 10 feet by 30 feet. This was cleared five to six days later. On February 7, there was a third sewer backup, which was the biggest, as it cost $10,000 in materials and possessions. It was cleaned up on February 16. The tenants went through insurance and paid a deductible. The water was about 6 inches deep in the crawl space and was about 30 feet by 35 to 40 feet. The cleanup was done for the third backup, but it ruined the tenants' possessions that were stored. It took three weeks to clean up with people coming and going. The pipes froze. The tenant is not 100% accurate on the facts. There were two other tenants that left because of sewer backups in other units, including one police officer. The tenant is not angry at the landlord. The tenants were not put in a hotel by the landlord and there was no care or compassion from the landlord. There was sewer water for over a week and a musty smell because of it. The tenant has three small boys and there was mold in the crawl space. The tenant had verbal conversations. The tenant has emails but did not provide them for this hearing.

The tenant stated the following facts. He does not know if it was an accident or a malfunction regarding the sewer backups, so he is not 100% sure. The tenant does not want the restoration or steaming companies to lose their jobs, but they came more than 10 times to the rental unit. It is "he said, she said" but the tenant heard that people want to sue regarding the sewer backup, so he thinks it is a bigger issue than just the rental unit, involving the whole complex. The tenant does not have proof of what he heard. In the "grand scheme of things," the landlord does not have any compassion and the

tenants had to sleep with the “stench” there, so it was a terrible time for his family. He talked to the past manager at the rental unit, who said that the landlord should provide a hotel and two weeks compensation to the tenants. The new landlords offered $200.00 to the tenants for the hydro bill.

The landlord’s agent testified regarding the following facts. He made an offer earlier during this hearing. Contents insurance is part of the agreement and mandatory for the tenants. Insurance is the tenants’ choice and the landlord requires at least $2 million in liability. Any other kind of insurance coverage is up to the tenants, including a smaller or bigger deductible. The landlord does did not agree to refund any costs to the tenants. There are no fines, suits, or claims against the landlord. The tenants signed the additional terms of the agreement. It is not the landlord’s responsibility to refund the tenants for their “grief.” The landlord offered more than $200.00 to the tenants as a settlement during this hearing but the tenant refused. The landlord does not owe any money to the tenant. No sewer backups have occurred since and the landlord believes the previous backups were weather-related. It was minus 30 degrees Celsius for a few days when the previous sewer backups occurred. The landlord told the tenants in emails that the sewer backups were “acts of God” and the landlord was not responsible. The tenants were comfortable with staying at the rental unit after the sewer backups occurred and they were “made whole” by the insurance company and the actions of the companies that restored the rental unit. If the tenants were dissatisfied, they could have moved out and found a different rental property. The landlord is willing to offer the tenants $500.00 to compensate them even though the tenants did not agree to this settlement offer during this hearing.

The tenant stated the following facts in response to the landlord’s submissions. The tenants got proper insurance and they got compensated for $10,000 in damages and materials. The tenant agreed that there was cold weather during the time of the sewer backups. However, this also happened in the past to other tenants, so it is a bigger issue. The mold issue downstairs has been fixed. It is not easy to find rentals in the area and moving would cost a lot, so the tenants want to buy their own home in the spring. The tenants do not like living with the smells. There were three weeks of people “coming and going” and moving boxes in the crawl space. It was minus 20 to minus 30 degrees Celsius at the time. The tenants want at least one month rent compensation of $1700.00 because it is “fair.” The tenants did not provide documentary evidence for their monetary claims because “life got busy” but they wish they had presented it. The tenant did not have the documents in front of him during this hearing but he can provide it after the hearing. The tenants did not “badmouth” the landlord. The landlord should pay for the tenants’ insurance deductible cost of $1,000.00 even

though the tenants have not provided proof of their insurance agreement policy, or the deductible paid. The tenants are not asking for the same items that were compensated by the insurance company of $10,000.00, in this application. The tenants cannot prove it is the landlord's fault for the sewer backups because the landlord claims it is "act of God" and from weather.

Analysis

Burden of Proof

At the outset of this hearing, I informed the tenant that as the applicants, the tenants had the burden of proof, on a balance of probabilities, to prove this application and monetary claim. I informed him that the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the tenants to provide evidence of this application, in order to obtain a monetary order.

The tenants served an application package from the RTB to the landlord, as required. The tenants were provided with a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, which includes the phone number and access code to call into this hearing. 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 contains provisions that a legal, binding decision will be made in 30 days and that links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days to issue a written decision regarding this application.

The tenants received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the tenants to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenants, as the applicants, to provide sufficient evidence of their claims, since the tenants chose to file this application on their 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…*

Section 32 of the *Act* states the following:

> *Landlord and tenant obligations to repair and maintain*
> *32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that*
> > *(a) complies with the health, safety and housing standards required by law, and*
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
(4) A tenant is not required to make repairs for reasonable wear and tear.
(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

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 to establish the claim. To prove a loss, the tenants 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 landlord 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 tenants 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.*

I find that the tenant did not properly present the tenants' evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

This hearing lasted 44 minutes so the tenant had ample opportunity to present this application and evidence and respond to the landlord's submissions. During this hearing, I repeatedly asked the tenant if he had any other information to present and provided him with multiple opportunities for same.

The tenant did not explain the tenants' monetary claim in sufficient detail during this hearing. The tenants did not provide sufficient documentary evidence for their monetary claim. The tenants provided photographs for their repair claim, but the tenant did not review them at all during this hearing, despite the fact that I specifically mentioned them to him during this hearing.

The tenant claimed that he had documents to support the tenants' monetary claim, but they were not in front of him during this hearing. He said that he could submit the evidence after this hearing. I informed him that I would not accept evidence from the tenants after this hearing, since the tenants filed this application on April 10, 2022 and they had ample time of almost 4 months to provide this evidence prior to this hearing on August 8, 2022. Further, the landlord would not have an opportunity to respond to the tenants' evidence if it was submitted this hearing.

Findings

In its online RTB dispute details of its application, the tenants stated the following regarding their monetary claim:

"We rented this unit because it had a huge crawl space to put our belongings instead of our storage locker we were renting. Due to the sewer backups we can no longer store any items below without always wondering when the next sewer backups would be. Deductible for renter insurance for damaged items and additional costs for required storage unit. Contacted Sterling Management to offer a settlement and it was declined do to "Acts of God" "

I was required to question the tenant about the amount of the tenants' monetary claim during this hearing because he did not explain it until I asked him.

On a balance of probabilities and for the reasons stated below, I award the tenants $500.00 of the $1,700.00 claimed for monetary compensation. The remaining amount of $1,200.00 is dismissed without leave to reapply. The landlord's agent agreed to pay the above amount of $500.00 to the tenants during this hearing, regardless of whether this application settled.

I find that the tenants failed to provide sufficient evidence regarding the remainder of their monetary claim for $1,200.00. I find that the tenants failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The tenants did not provide a monetary order worksheet for this hearing. The tenant did not confirm what items were being sought, how much was being sought for each item, or how the landlord was responsible for each item, during this hearing. The tenant did not explain how the tenants arrived at the $1,700.00 number during this hearing, except to mention that it was "fair" and one month's rent compensation.

The tenants failed to provide sufficient documentary evidence, in the form of invoices, estimates, receipts, or other such documents to prove their monetary claim. The tenant agreed that he had documents to support the monetary application, but he did not provide them for this hearing. During this hearing, the tenant claimed that the landlord should pay for the tenants' insurance deductible of $1,000.00 but could not explain why and did not provide a copy of the tenants' insurance policy or proof that they paid a deductible to their insurance company. During this hearing, the tenant agreed that the tenants received $10,000.00 from their insurance company for compensation for the sewer backup. The tenants did not provide documentary proof of any costs they incurred for their storage unit, as they claimed in their online RTB dispute details above. I find that the tenants failed part 3 of the above test.

I find that the landlord adequately dealt with the tenants' sewer backup issues in reasonable time periods after they occurred, in accordance with its obligations under section 32 of the *Act*. The landlord had the rental unit cleaned and restored, as per the undisputed affirmed testimony of both parties at this hearing. I find that the tenants failed part 2 of the above test.

The tenants did not provide sufficient evidence that the landlord wilfully or negligently caused the sewer backups or that the landlord delayed in repairing or responding to these issues in the rental unit. I find that although the tenant believed that the third sewer backup took three weeks to resolve, the tenant also testified that it was cleaned up by February 16 and took additional time for workers to move in and out with items after. I do not find the above time period of three weeks to be unreasonable given the larger scale and size of the third sewer backup as per the tenant's testimony, the involvement of a third party restoration company during a worldwide covid-19 pandemic, and the large $10,000.00 compensation amount received by the tenants from their insurance company.

The tenant testified about the efforts and actions that the landlord and the restoration company took to resolve the sewer backup issues after they occurred. During this hearing, the tenant agreed that the weather was very cold at the times that the sewer backups occurred. During this hearing, the tenant agreed that the tenants could not prove that the sewer backups occurred as a result of the landlord, rather than weather-related events. During this hearing, the tenant stated that he heard from other people that there was a larger issue in the rental property complex, but he did not have any proof. This is hearsay and the tenants failed to provide documentary proof regarding same. I find that the tenants failed part 2 of the above test.

As the tenants were mainly unsuccessful in their application, except for the landlord's agreement to cancel the 10 Day Notice and to pay the tenants $500.00, I find that the tenants are not entitled to recover the $100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

Conclusion

The landlord's 10 Day Notice is cancelled and of no force or effect. The landlord is not issued an order of possession against the tenants. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to reduce their future monthly rent, payable to the landlord for this rental unit and tenancy, by $500.00, on a one-time basis only, in full satisfaction of the monetary award.

The remainder of the tenants' 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 08, 2022

Residential Tenancy Branch