Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order of $510.00 for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain a portion of 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 landlord and the 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. This hearing lasted approximately 29 minutes from 1:30 p.m. to 1:59 p.m.

The landlord and the tenant provided their names and spelling. They both provided their email addresses for me to send this decision to them after the hearing.

The landlord stated that he is the previous owner of the rental unit during this tenancy, prior to it being sold to a new purchaser. He 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 party. At the outset of this hearing, the landlord 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. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The landlord stated that he was prepared to accept my decision if he was unsuccessful, received $0, and was required to return the tenant's security deposit. The tenant confirmed that she was prepared to accept my decision if she was unsuccessful, and the landlord was ordered to retain her security deposit.

The landlord confirmed that he was calling from outside and that he did not have his evidence or computer in front of him during this hearing. Throughout this hearing, the landlord could be heard speaking to someone else near him. The landlord stated that he asked someone else to bring his glasses so he could see, and his computer so he could access his application and evidence, since he was outside. I provided the landlord with extra and ample time during this hearing to complete the above tasks and to obtain his evidence and look through it.

I informed the landlord that his telephone cut out a few times and it was difficult for me to hear him properly, at times. I notified him that if I was unable to hear something or I missed information provided by him during this hearing, that it may affect my decision regarding his application, if he continued the hearing outside. The landlord confirmed his understanding of and agreement of same and stated that he wanted to proceed with this hearing and remain outside, despite my above warnings.

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

The tenant confirmed that she did not submit any evidence for this hearing.

Issues to be Decided

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

Is the landlord entitled to retain a portion of 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 both parties at this hearing, 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.

Both parties agreed to the following facts. This tenancy began on May 15, 2017. Monthly rent in the amount of $1,600.00 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. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlord on December 19, 2021, by way of email, which the landlord received. The tenant provided written permission by email for the landlord to keep $200.00 from her security deposit. The landlord's application to retain the tenant's security deposit was filed on January 15, 2022.

The tenant stated that she vacated the rental unit and left her keys in the mailbox on December 19, 2021. The landlord agreed that the tenant moved out and left the keys in December 2021, but that he retrieved the keys on January 1, 2022.

The landlord stated that he seeks a monetary order of $510.00 for damages and the $100.00 application filing fee, totalling $610.00. The landlord confirmed that he wanted to retain $610.00 total from the tenant's security deposit of $750.00, and return the remainder of $140.00 to the tenant, from her deposit.

The landlord testified regarding the following facts. The tenant left junk behind at the rental unit after she moved out. He asked the tenant to pick it up and she refused, saying she would only give $200.00 for the junk removal. He found the least expensive company with the cheapest estimate. The tenant left behind a trampoline, double porch swing, a desk, dresser, and a canopy, among other items. It took four loads to dump and recycle. He provided a photo of an invoice. He does not know why there is no signature, letterhead, date, or name of the company on the invoice. There is a name of a person on the invoice. It was a private company, they are small, and they were the cheapest. One load went to recycling for metal, and the rest was taken to the dump as garbage. The company also had to disassemble items. This was all done and paid for by the landlord in January 2022. He paid the $510.00 to the company by e-transfer but

he did not provide a receipt or the emails showing the payment, as he did not think it was required, since he provide an invoice. The company finished the work in one day.

The tenant testified regarding the following facts. She lived at the rental unit for five years, since May 2017. When she moved into the rental unit, the swing, the barbeque, all the items in the garage shed, and other contents were already there at the rental unit. She only left four items behind in the rental unit, including the trampoline, the desk, the lazy boy, and the canopy. She agreed for the landlord to keep $200.00 from her security deposit for junk removal. She was required to leave all the items at the rental unit because she was snowed in, and she had to move out before Christmas, due to multiple notices to end tenancy issued by the landlord. The landlord's invoice looks like he wrote it himself.

The landlord stated the following in response to the tenant's submissions. Most of the stuff left behind at the rental unit, was the tenant's own stuff. The items in the garden shed are still there, which were there at the beginning of this tenancy. He previously offered the tenant to retain $510.00 from her security deposit but she refused, so now he wants the $100 filing fee for this application, in addition to the $510.00. He offered the tenant to find her own company to do junk removal, but she did not do so.

Analysis

Burden of Proof

At the outset of this hearing, I repeatedly informed the landlord, that as the applicant, he had the burden of proof, on a balance of probabilities, to prove his application and monetary claims. I repeatedly notified the landlord that the *Act, Regulation*, *Rules*, and Residential Tenancy Policy Guidelines require him to provide evidence of his 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 served his application to the tenant, as required. The landlord received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing his application. This document contains the phone number and access code to call into the 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 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 repeatedly informed both parties 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. I informed the landlord that he was required to provide sufficient evidence of his claims, since he chose to file this application on his 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 did not properly present his 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 failed to properly go through his claims and the documents he submitted in support of this application. The landlord did not review any of his documents, except for one invoice, since I specifically asked him questions about it during this hearing.

During this hearing, I repeatedly asked the landlord whether he wanted to add any information, present any further submissions, and respond to the tenant's testimony. This hearing lasted 29 minutes, so the landlord was given ample and multiple opportunities to present his application and respond to the tenant's claims.

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 both parties at this hearing.

I award the landlord $200.00 for damages for garbage and recycling removal, because the tenant agreed to pay this amount prior to and during this hearing.

I dismiss the remainder of the landlord's application for $310.00 without leave to reapply. The tenant disputed the above amount during this hearing.

The landlord provided an invoice for $510.00 for damages for garbage and recycling removal, with a balance due. The tenant testified that the invoice looked like the landlord wrote it himself. The invoice submitted by the landlord was a photograph

image. It is not signed by anyone. There is no date on the invoice. There is no name or address for the company that completed the work. It is not on company letterhead. There is no indication of how long the work took, how many people completed the work, or the cost per hour or per worker. There is only a cost per work task.

The landlord did not provide a receipt for any payment made by him for the above work and invoice of $510.00. The landlord claimed that he made an e-transfer payment, but he did not provide a copy of the emails, sending the above amount or it being accepted by the company for the above work. The landlord did not provide sufficient documentary evidence, showing that he paid for the above work, when it was paid, how it was paid, or other such information.

The landlord had ample time from filing this application on January 15, 2022, to this hearing date of August 25, 2022, a period of over 7 months, to provide the above 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.

When I informed the landlord about the above issues during this hearing, he stated that the work was completed and paid for in January 2022. He failed to provide an exact date. He said that the work was completed by a small private company, but he was not sure of the name of the company. He claimed that there was no signature, date, name of the company or letterhead on the invoice, because the company was small, private, and the cheapest he could find.

The tenant stated that she left four items behind because she was unable to remove them due to heavy snow and she left in a hurry, due to eviction notices issues by the landlord prior to Christmas in December 2021. She agreed that she owed $200.00 for the above damages but that the remaining items were there from the beginning of this tenancy. The landlord stated that the garden shed items were still there, but he did not respond to the remaining items claimed by the tenant to be there at the beginning of this tenancy.

I find that the landlord failed to provide move-in and move-out condition inspection reports, to show the condition of the rental unit at the beginning and end of this tenancy, including any items that were already present at the rental unit when the tenant moved in, and any new items that the tenant brought in and was required to remove at the end of the tenancy.

As the landlord was only partially successful in this application, based only on what the tenant agreed to pay prior to and during this hearing, 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. I order the landlord to retain $200.00 from the tenant's security deposit of $750.00, in full satisfaction of the monetary award.

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 make the following findings on a balance of probabilities, based on the landlord's documentary evidence and the testimony of both parties at this hearing.

I find that this tenancy ended on December 19, 2021. Although the landlord claimed that he picked up the keys from the mailbox on January 1, 2022, he agreed that the tenant vacated the rental unit and left the keys in December 2021. I find that the tenant vacated the rental unit and left her keys in the mailbox on December 19, 2021, as I accept her affirmed testimony during this hearing.

The tenant provided a written forwarding address to the landlord, by way of email on December 19, 2021, which was received by the landlord. The tenant provided written permission to the landlord, by email, to retain $200.00 from the tenant's deposit. Email is a permitted method of service, as per section 88 of the *Act* and section 43 of the *Regulation*. The landlord filed this application at the RTB on January 15, 2022, to retain a portion of the tenant's deposit. The landlord did not return any amount from the tenant's deposit to the tenant.

I find that the tenant is entitled to recover double the amount of the remainder of her security deposit of $550.00, totalling $1,100.00. The tenant is not entitled to recover double the amount of her entire security deposit of $750.00, because she provided written permission for the landlord to keep $200.00 from her deposit, so this amount has been deducted from the $750.00, leaving a balance of $550.00, as noted above.

The landlord's right to retain the tenant's security deposit for damages, was extinguished for failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. Further, the landlord filed his application to retain the deposit on January 15, 2022, which is more than 15 days after the tenant vacated the rental unit and provided the written forwarding address to the landlord on December 19, 2021.

The tenant is provided with a monetary order for $1,100.00. 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. Although the tenant did not apply for double the value of her deposit, I am required to consider it, as per Residential Tenancy Policy Guideline 17, provided that the tenant has not specifically waived her right to it, which she did not.

Conclusion

I order the landlord to retain $200.00 from the tenant's security deposit of $750.00. The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of $1,100.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 25, 2022

Residential Tenancy Branch