



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSD, FF
 For the landlord: MND-S, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied on November 9, 2021, under the direct request process for a return of their security deposit, and recovery of the cost of the filing fee. In an Interim Decision by another arbitrator, dated December 22, 2021, the matter was determined to lack the required evidence for the direct request process and the application was reconvened to this participatory hearing. That Interim Decision is incorporated by reference.

The landlord applied on March 11, 2022, for authority to retain the tenant's security deposit, compensation for alleged damage to the rental unit by the tenant, and recovery of the cost of the filing fee.

Although the tenant's application had already commenced, the landlord's application was administratively made a cross-application to the tenant's application. This hearing was set to consider both applications, with the tenant's application being a reconvened matter and the landlord's application being the original hearing.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me. All parties were affirmed.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

1. Is the tenant entitled to a return of their security deposit and to recovery of the filing fee paid for this application?
2. Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The tenancy began on September 1, 2020, the tenant submitted the tenancy ended on August 2, 2021, and the landlord submitted the tenancy ended September 1, 2021. The monthly rent was \$1,750 and the landlord collected and retains a security deposit of \$880.

Tenant's application-

The tenant's monetary claim is in the amount of \$980, comprised of their security deposit of \$880, plus the filing fee of \$100.

The tenant submitted that they provided the landlord with their written forwarding address on November 18, 2021, in a letter sent by Canada Post registered mail and, to date, the landlord has failed to return the security deposit.

In response, the landlord believed he received the forwarding address by registered mail. I note that the landlord used the tenant's forwarding address when making their application against the tenant on March 11, 2022.

Both parties agree there was no move-in or move-out condition inspection report (Report).

Landlord's application-

The landlord's monetary claim is \$3,100, comprised of a general claim for damages of \$3,000 and the filing fee of \$100.

The evidence filed by the landlord included random, undated photographs throughout the rental unit and yard, many of the photographs being up-close in range.

In support of their application, the landlord testified the tenant's BBQ caused a tree to burn and plastic siding to melt. The landlord submitted that the toilet seat was broken, the rug was dirty, a door hinge was broken, a bedroom wall had a hole, the shower was dirty, a shower handle was loose, and the blinds were dirty.

The landlord submitted that the tenant's heavy usage caused the electrical breakers to trip.

In response, the tenant submitted that the door hinge needed oil and was old, that the closet had a part not working which the landlord never fixed. The tenant said that the toilet seat cover and electrical plate cover were broken when they moved in, that the shower was not dirty, as the picture shows cleaning foam. The tenant submitted that the rugs were old and dirty and that he did not receive a photo of the tree, so he could not respond.

The tenant submitted the stove was broken and the landlord never fixed it.

Analysis

Tenant's application-

Section 38(1) of the Act requires a landlord to either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit within 15 days of receiving the tenant's forwarding address in writing and the end of the tenancy, whichever is later. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

Tenancy Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the security deposit, either on an application for the return of the security

deposit or at the hearing, the arbitrator will order the return of double the security deposit.

In the case before me, I accept the tenant's evidence that they vacated the rental unit on August 2, 2021 and that they provided their written forwarding address by registered mail sent on November 18, 2021. The landlord confirmed receiving the registered mail. The Act states that the registered mail was deemed to be received 5 days later.

As a result, I find the landlord was deemed served with the tenant's written forwarding address on November 23, 2021, and had 15 days from that date, or December 3, 2021, to return the tenant's security deposit in full.

Although the landlord eventually filed an application claiming against the tenant's security deposit for damages, I find the landlord filed on March 11, 2022, well beyond December 3, 2021, and had extinguished their right to claim against the security deposit for damages due to their failure to conduct a move-in or move-out inspection with the tenant and prepare a Report.

In contravention of the Act, the landlord kept the security deposit, without filing an application claiming against it.

Although the tenant did not claim an amount equivalent to double the security deposit on the application, the tenant did not specifically waive the entitlement to double the amount. I therefore find that the tenant is entitled to a return of their security deposit of \$880 and that I must double this amount.

Due to their successful application, I grant the tenant recovery of the filing fee of \$100.

For the above reasons, I find the tenant has established a monetary claim for a total monetary award of \$1,860, comprised of their security deposit of \$880, doubled to \$1,760 and the filing fee of \$100.

I grant the tenant a monetary order (Order) in the amount of \$1,860.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

Landlord's application –

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the landlord submitted insufficient evidence to support their monetary claim.

The landlord has not submitted evidence to show a monetary loss, that would normally be shown by receipts or invoices. The landlord has not shown that any repairs were made after the tenancy ended and has provided no evidence of the condition at the start of the tenancy.

The only evidence supplied by the landlord in support of their monetary claim were undated, up-close photographs taken at some point after the tenancy ended, but no photos of the same location from the beginning of the tenancy. The landlord also failed

to inspect the rental unit and prepare a Report, which would indicate the condition of the rental unit at the beginning and end of the tenancy.

For all these reasons, I find the landlord submitted insufficient evidence to meet their burden of proof as outlined above. I therefore dismiss the landlord's application, without leave to reapply.

Conclusion

The tenant's application is granted and the tenant has been issued a monetary order in the amount of \$1,860.

The landlord's application is dismissed, without leave to reapply, due to insufficient evidence.

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 10, 2022

Residential Tenancy Branch