Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S MNDCL FFL**

Introduction

This hearing was convened by way of conference call in response to the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent, pursuant to sections 38 and 67(1);
- a monetary order for compensation for monetary loss or other money owed by the Tenant to the Landlord pursuant to section 67(1); and
- authorization to recover the filing fee of the Application from the Tenant pursuant to section 72.

The Landlord's agent ("JP"), JP's interpreter ("ML"), the Tenant and the Tenant's interpreter ("DL") appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. JP did not object to DL translating on behalf of the Tenant and the Tenant did not object to ML translating on behalf of JP.

JP stated the Landlord served the Notice of Dispute Resolution Proceeding ("NDRP") on the Tenant by registered mail. JP provided the Canada Post tracking number for service of the NDRP on the Tenant. When I asked where the Landlord got the Tenant's address for service of the NDRP, JP stated it was from the address provided by the Tenant for service in a prior application she made for dispute resolution. I find the Landlord served the NDRP on the Tenant in accordance with the provisions of section 89 of the Act.

Preliminary Matter – Service of the Landlord's Evidence on Tenant

JP stated the Landlord submitted evidence to the Residential Tenancy Branch ("RTB") for this hearing but the Landlord did not serve that evidence on the Tenant.

Rule 3.14 of the RoP states:

> **3.14 Evidence not submitted at the time of Application for Dispute Resolution**
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> 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.

JP admitted that the Landlord did not serve the Tenant with the evidence submitted to the RTB not less than 14 days before the hearing. As such, the Landlord did not comply with Rule 3.14 of the RoP. Based on the foregoing, the Landlord's evidence is not admissible for this hearing. Although the Landlord's evidence is not admissible for the hearing, I told JP she had the option of providing testimony, or calling witnesses to provide testimony, on the contents of the excluded evidence.

Preliminary Matter – Service of the Tenant's Evidence on Landlord

The Tenant stated she submitted evidence to the RTB for this hearing but she did not serve that evidence on the Landlord.

The Tenant admitted she did not serve her evidence on the Landlord not less than 14 days before the hearing. As such, the Tenant did not comply with Rule 3.14 of the RoP. Based on the foregoing, the Tenant's evidence is not admissible for this hearing. Although the Tenant's evidence is not admissible for the hearing, I told the Tenant she had the option of providing testimony, or calling witnesses to provide testimony, on the contents of the excluded evidence.

Preliminary Matter – Modification of Monetary Claims Made by Landlord

I noted that, in the description of the claim made in the Application for unpaid rent, it stated the Landlord was seeking $600.00 for unpaid rent and $100.00 for the move-out fee charged by the strata corporation. As some discussion, the Landlord requested that I amend the Application to reduce the amount of unpaid rent the Landlord was seeking to $600.00 and to add a monetary claim for compensation from the Tenant for the $100.00 move-out fee the strata corporation charged the Landlord.

Rule 4.2 of the RoP states:

> **4.2 Amending an application at the hearing**
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> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.
>
> If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the monetary claims being made by the Landlord were clearly stated in the description of the claim for the recovery of rent, I find the Tenant could reasonably have anticipated the Landlord would make a request that the Application be amended so as to seek $600.00 for unpaid rent and a monetary claim for compensation of $100.00 to recover the move-out fee charged to the Landlord by the strata corporation. As such, I order the Application be amended to reduce the amount of unpaid rent claimed by the Landlord to $600.00 and add a claim for compensation for $100.00 for recovery of the move-out fee.

Issues to be Decided

Is the Landlord entitled to:

- a monetary order for unpaid rent in the amount of $600.00?
- a monetary order for compensation in the amount of $100.00?
- recover the filing fee for the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on March 1, 2020, with a fixed term ending March 1, 2021, with rent of $1,500.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of $1,500.00 by February 25, 2020. JP acknowledged the Landlord received the security deposit for $1,500.00. The parties agreed the Tenant paid the rent for June 2021 but did not pay any rent for July 2021.

The Application stated the Landlord was seeking compensation of $600.00 for 12 days occupation of the rental unit by the Tenant from July 1 to July 12, 2021 and the move-out fee of $150.00 the strata corporation charged the Landlord when the Tenant vacated the residential property. JP acknowledged there were no damages to the rental unit when the Tenant vacated it.

The Tenant testified she served the Landlord with a written notice, on June 27, 2021, stating she was vacating the rental unit by the end of July 2021. The Tenant stated she moved out of the rental unit on July 7, 2021.

I noted that there was in an earlier decision (“Previous Decision”) of an arbitrator dated November 23, 2021 related to application for dispute resolution made by the Tenant for the return of one-half of the security deposit she paid the Landlord. In the Previous Decision, the arbitrator stated the Tenant was locked out of the rental unit on August 18, 2021. In the Previous Decision, the arbitrator ordered the Landlord to immediately return $750.00 to the Tenant as the Landlord had collected it in contravention of the Act. DL stated that he believed the finding of the arbitrator that the Landlord locked the Tenant out on August 18, 2021 was the result of a mistake he made and that he should have stated the Tenant discovered she was locked out of the rental unit on July 18, 2021 when she returned to the rental unit to pick up some personal possessions. JP stated the Landlord actually arranged to have the strata disable access to the residential property by the Tenant around July 12 or 13, 2021 because the Tenant had moved all of her possessions out of the rental unit. JP stated the Tenant did not return the keys or the key fob. JP stated the Tenant returned to the residential property on July 18, 2021 in an attempt to negotiate the return of the security deposit. DL stated that the Landlord

sent an email to the Tenant to confirm that the Tenant's move-out date was set for July 12, 2021.

The Tenant disputed owing the Landlord $100.00 for a move-out fee because she did not agree to pay such a fee. The Tenant stated there was no move-in fee when she moved into the rental unit. JP did not provide any evidence to support the Landlord's claim that the Tenant signed a Form K or had otherwise agreed to reimburse the Landlord for a move-out fee.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

> **6.6 The standard of proof and onus of proof**
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> 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.
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> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the onus to prove his case, on a balance of probabilities, is on the Landlord.

Sections 7 and 67 of the Act state:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

> 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:
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> - 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.
>
> These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).
>
> An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

Sections 26(1) and 45(1) of the Act state:

> 26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.
>
> 45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> *(a) is not earlier than one month after the date the landlord receives the notice,* and
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> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
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> [emphasis in italics added]

The Landlord claimed the Tenant owed $600.00 for rent covering the period July 1 to July 12, 2021. The Tenant stated she vacated the rental unit on July 11, 2021. The Tenant stated she served a notice to end the tenancy on the Landlord on June 27, 2021 and JP acknowledged the Landlord received the notice. As such, pursuant to section 45(1), the earliest date the Tenant could end the tenancy agreement was July 31, 2021. Pursuant to section 26(1) of the Act, the Tenant was required to pay the Landlord for the rent for the month of July 2021. Pursuant to the provisions of the tenancy agreement, the Tenant was required to pay the rent in full for the month of July 2021 on July 1, 2021. The Tenant admitted she paid the rent for June 2021 but did not pay the rent for July 2021.

The Landlord was entitled to make a claim for unpaid rent for the month of July 2021 in its entirety, being $1,500.00. The Landlord has only claimed $600.00 rent for the month of July 2021. As such, it does not matter whether the Tenant moved out of the rental unit on July 11 or July 12, 2021. I find the Landlord has satisfied the burden, on a balance of probabilities, of establishing her claim that the Tenant owes $600.00 for unpaid rent for 12 days in July 2021. Pursuant to section 72(2) of the Act, I order that the Landlord may retain $600.00 from the security deposit of $750.00 to recover the unpaid rent owing by the Tenant.

The Landlord also claimed for $100.00 compensation from the Tenant to reimburse her for the move-out fee she was charged by the strata corporation for the Tenant vacating the rental unit. The Landlord did not submit a signed Form K or any other evidence the Tenant was required to pay a move-out fee. The Tenant denied she signed anything that required her to pay a move-out fee. As such, I find, on a balance of probabilities, that the Landlord has failed to establish the Tenant must compensate the Landlord for any move-out fee the Landlord was charged by the strata corporation. As such, I dismissed this claim from the Application without leave to reapply.

As the Landlord has been substantially successful in the claims made in the Application, pursuant to section 72 of the Act, I award the Landlord $100.00 for the filing fee of the Application. Pursuant to section 72(2) of the Act, I order that the Landlord may retain $100.00 from the Tenant's security deposit of $750.00 to recover the filing fee of the Application.

Conclusion

The Tenant is granted a Monetary Order for $50.00, being the balance of the Tenant's security deposit, calculated as follows:

Purpose	Amount
Unpaid Rent Owed by Tenant to Landlord	$600.00
Landlord's Filing Fee Owed by Tenant	$100.00
Less: Tenant's Security Deposit	-$750.00
Balance Owing to Tenant:	$50.00

The Tenant is provided with this Order on the above terms and 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 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 17, 2022

Residential Tenancy Branch