



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord applied for the following:

- a Monetary Order for compensation for monetary loss or other money owed by the Tenant pursuant to section 67;
- authorization to keep the Tenant’s security and/or pet damage deposit(s) under section 38; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 72.

The Landlord and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were 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 affirmed testimony, to make submissions and to call witnesses.

The Landlord stated he served the Notice of Dispute Resolution Proceeding and his evidence (collectively the “NDRP Package”) on the Tenant by registered mail on January 3, 2021. Although the Landlord was unable to provide the Canada Post tracking number for service of the NDRP Package on the Tenant, the Tenant acknowledged she received the NDRP Package by registered mail. I find the NDRP Package was served in accordance with the provisions of sections 88 and 89 of the Act.

The Tenant stated she did not serve any evidence on the Landlord for this proceeding.

Issues to be Decided

Is the Landlord entitled to:

- a Monetary Order for compensation for monetary loss or other money owed by the Tenant?
- authorization to keep the Tenant's security and/or pet damage deposit(s)?
- authorization to 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 Landlord stated there was a written tenancy agreement ("Tenancy Agreement") but, after returning from California to British Columbia, he lost it. The parties agreed the tenancy commenced on February 1, 2019, for a fixed term ending January 31, 2020, with rent of \$2,000.00 payable on the 1st day of each month. The Landlord stated the rent was increased to \$2,050.00 per month one year after the tenancy commenced pursuant to a Notice of Rent Increase. The parties agreed the Tenant paid \$1,000.00 for a security deposit and that the Landlord was holding it in trust for the Tenant. The Landlord stated the Tenant vacated the rental unit on October 31, 2021 while the Tenant stated she vacated the rental unit on November 15, 2021. Notwithstanding this discrepancy, I find that the actual date the Tenant vacated the rental unit is not relevant to the issues before me in this hearing.

The Landlord stated that the addendum to the Tenancy Agreement required the Tenant to pay for water services. The Landlord submitted into evidence a copy of a Utility Bill for water and sewer service from the city in which the rental unit is located and claimed the Tenant was responsible for payment of \$828.89 for those services.

The Tenant stated the Tenancy Agreement required that she pay for electrical services but denied the Tenancy Agreement required that she pay for water and sewer services. The Tenant admitted she paid the water bill on one occasion because she was afraid of losing her tenancy but stated that this did not mean she agreed the Tenancy Agreement required her to pay for the water and sewer services.

The Tenant stated she provided her forwarding address for the return of her security deposit to the Landlord by email. The Landlord stated he did not consent in writing to service of documents by the Tenant by email. However, the Landlord admitted that, as he was in California, the Landlord and Tenant always communicated by email.

Analysis

1. *Landlord's Claim for Compensation*

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

6.6 The standard of proof and onus of proof

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.

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.

Sections 7, 37(2) 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.
- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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.

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that he suffered a quantifiable loss as a result of this breach, and that he acted reasonably to minimize his loss.

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:

- 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. However, before I can consider the Landlords' testimony and evidence regarding the damages claimed, I must firstly consider whether the Landlord complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to section 23 of the Act.

Sections 23, 24(2), 35, 36(2) and 38(1) of the Act state:

- 23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
 - (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
 - (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
 - (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
 - (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
 - (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.
- 24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- 35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
 - (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.
- 36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis in italics added]

The Landlord did not submit move-in or move-out condition inspection reports signed by the Tenant. As such, there is no evidence the Landlord complied with the provisions of sections 23(1) and 35(1) of the Act. Sections 24(2) and 36(2) provide the Landlord's right to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished. In the present case, the Landlord is not seeking compensation for damages to the rental unit but is instead seeking recovery of unpaid

utilities. As such, the Landlord's claim for compensation for monetary loss is not extinguished by sections 24(2) and 36(2).

The Landlord claims the addendum to the Tenancy Agreement required the Tenant to pay for water and sewer services provided by the city in which the rental unit is located. The Landlord stated, based on the terms of the addendum to the Tenancy Agreement, the Tenant owes \$828.89 for unpaid water and sewer services. Although the Landlord submitted into evidence a copy of the invoices for the water and sewer services, he did not submit a copy of the tenancy agreement to corroborate his testimony. The Tenant stated she paid the invoice for the water and sewer on one occasion only as she feared losing her tenancy. The Tenant stated this one-time payment did not mean that she agreed to pay for the water and sewer services.

Based on the foregoing, I find the Landlord has failed to provide sufficient evidence to prove, on a balance of probabilities, that the Tenant was responsible for payment of the water and sewer services. As such, I dismiss the Landlord's claim for compensation from the Tenant for the \$828.99 for the water and sewer service as claimed in the Application.

2. Return of Tenant's Security Deposit

The Tenant stated she provided her forwarding address to the Landlord by email. The Landlord stated he did not give his consent to service of the notice of the Tenant's forwarding address by email. The Tenant did not submit any evidence to demonstrate the Landlord had acknowledged receipt of the email in which she provided her forwarding address. Section 88 of the Act states:

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
- (j) *by any other means of service provided for in the regulations.*

Section 43(1) of the *Residential Tenancy Regulations* state:

43(1) *For the purposes of section 88 (j) [how to give or serve documents generally] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.*

[emphasis in italics added]

As set out above, section 38(1) of the Act provides the obligation of the Landlord to return the security and/or pet damage deposit to a tenant, or make a claim against the deposit for damages or other moneys owed, is not triggered until the landlord receives the tenant's forwarding address.

Even though the Landlord used the forwarding address provided in the Tenant's email to serve the NDRP on the Tenant, this does not constitute service of the Tenant's

forwarding address on the Landlord as required by section 38(1) of the Act. As such, the Landlord was not obligated to return the deposit to her or to make an application for dispute resolution to claim compensation for the unpaid utilities within 15 days of receipt of the Tenant's email. As such the Tenant is not entitled to an amount equal to two times the amount of the original deposit pursuant to section 38(6) of the Act.

As the Landlord has not been successful in the monetary claim made in the Application, I find the Tenant is entitled to the return of her security deposit. As such, I Order the Landlord to pay the Tenant \$1,000.00 pursuant to section 67 of the Act.

As the Landlord has been unsuccessful in the Application, the Landlord is not entitled to recover the filing fee for the Application. I dismiss the Application in its entirety without leave to reapply.

Conclusion

The Application is dismissed in its entirety without leave to reapply.

The Tenant is granted a Monetary Order for \$1,000.00. It is the Tenant's obligation to serve this Order on the Landlord as soon as possible. If the Landlord does not comply with the Monetary Order, it may be filed with 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 26, 2022

Residential Tenancy Branch