Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S MNDL-S FFL**

Introduction

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

- a monetary order for compensation for monetary loss or other money owed by the Tenants pursuant to section 67;
- a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused to the rental unit during the tenancy pursuant to section 67;
- authorization to keep the Tenants' security damage deposit pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Tenants pursuant to section 67.

The two Landlords ("JZ" and "KM") and one of the two Tenants ("JN") 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.

JZ stated the Landlords only served JN with the Notice of Dispute Resolution and their evidence (collectively the "NDRP Package") by email on January 29, 2022. JZ submitted into evidence a copy of the email dated January 29, 2022 and a signed Address for Service on Form RTB-51 in which JN and the Landlords agreed that they may give or serve documents related to the tenancy at the email addresses provided therein. JN acknowledged he received the NDRP Package from the Landlords by email

on January 29, 2022. I find JN was served with the NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Non-Service of NDRP Package by Landlords on a Tenant

The Landlords did not submit an Address for Service on Form RTB-51 that was signed for the other Tenant ("YZ"). JZ acknowledged the Landlords did not serve ZY with the NDRP Package because ZY does not speak English.

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
b) the Respondent Instructions for Dispute Resolution;
c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

The Landlords did not serve ZY with the Notice of Dispute Resolution Proceeding ("NDRP"). It is irrelevant that ZY does not speak English. ZY could have had someone translate the content of the NDRP for her. Rule 3.1 requires that each respondent named in the Application must be served by the applicant with a copy of the NDRP and the other documents listed in Rule 3.1. As the Landlords did not serve ZY with the NDRP, they have not complied with Rule 3.1. As such, I dismiss the Landlords' claims against ZY.

Preliminary Matter – Removal of Infant as Respondent

At the outset of the hearing, I noted that there was a party ("JAN") who was named in the Application as a respondent who was not listed as a tenant on the tenancy agreement. JZ stated JAN was the infant child of the other two tenants named as respondents in the tenancy agreement. JZ stated JAN was born after the date of the signing of the tenancy agreement. When I asked if the Landlords and Tenants had added JAN as a tenant on the tenancy agreement, JZ requested that I amend the Application to remove JAN as a respondent in the Application. JN did not object to the proposed amendment. Rule 4.2 of the RoP states:

> **4.2 Amending an application at the hearing**
>
> 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.

At the request of JZ, and with the consent of JN, I order the Application be amended by the removal of JAN as a respondent in the Application.

Preliminary Matter – Failure of Tenants to Serve Evidence on Landlords

JN stated he filed his evidence with the Residential Tenancy Branch but did not serve it on the Landlords. JN stated the Tenants submitted their evidence to the Residential Tenancy Branch ("RTB"). Rule 3.15 of the RoP states:

> **3.15 Respondent's evidence provided in single package**
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> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package

JN stated that, although the Tenants submitted their evidence to the RTB, they did not serve their evidence on the Landlords. As such, the Tenants did not comply with the

requirements of Rules 3.15. I find the Tenants' evidence is not admissible for this proceeding. I told JN that he had the option of providing, or calling witnesses to provide, testimony on the content of the inadmissible evidence.

Issues to be Decided

Are the Landlords entitled to:

- a monetary order for compensation for monetary loss or other money owed by the Tenants?
- a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy?
- authorization to keep the Tenants' security and pet damage deposits?
- authorization to recover the application fee of the Application from the Tenants?

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.

JZ submitted into evidence a copy of the tenancy agreement dated April 28, 2020 ("Tenancy Agreement") between the Landlords and Tenants. The parties agreed the tenancy commenced on May 1, 2020, for a fixed term ending April 30, 2021, with rent of $1,200.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of $600.00 by April 27, 2020. JZ stated the Tenants paid the security deposit and that the Landlords were was holding it in trust for the Tenants.

JZ submitted into evidence a BC Hydro account summary for the rental address that stated $192.87 had been paid on January 8, 2022 and a summary for natural gas at the rental address that stated that $465.15 was due on February 3, 2022 and that the last payment of $277.69 was made on December 29.21. JZ stated the Tenants owed the Landlords $164.00 for electricity and gas but JZ did not explain how the Landlords calculated the amount they claimed the Tenants owed them. JZ stated the Tenants had consumed more electricity and gas as they left the windows open in the rental unit. JZ also stated that the tenancy ended on April 30, 2021 and that the Landlords were entitled to charge the Tenants for 1/8th of the electricity and gas utilities. JZ submitted

into evidence a “30 Day Written notice to pay utilities” dated November 10, 2021 addressed to the two Tenants that stated:

> Well the cost for living in Vancouver are soaring and all fee about the house are rising including house mortgage.
>
> Comparing last year, now we pay higher cost for relate house expense and replacement. As landlord we also paid government for more suite annual sewer charge fee and property tax. We did digest all the increase bill for the past six months.
>
> Please see the attached BC Hydro and Fortis BC bills comparison with last year. So now we have to regretfully inform you that we need you to share part of the utilities. It would be started in 30 days with the bill circle. All individual need to share 1/8 expense with BC Hydro and Fortis BC. We still kindly provide free interest.
>
> Landlord: [Signed]

JZ submitted into evidence a Monetary Order Worksheet on Form RTB-37 and stated the Landlords were seeking $30.00 for damage to the dryer and were seeking $100.00 for other damages the Landlords claimed the Tenants caused during the tenancy. JZ submitted into evidence a copy of the move-in condition report that was dated May 2020 and a move-out condition inspection report that was undated but signed by the Landlords and Tenants. The parties agreed the move-out inspection was performed on December 31, 2021. The move-out inspection report indicated a kitchen cabinet was scratched, a stovetop was dirty and scratched, the oven was dirty and the freezer was dirty and damaged. The move-in inspection report indicated the kitchen cabinet, stovetop, oven and freezer were clean and undamaged. JZ submitted into evidence photos of the cabinet, stovetop, oven and freezer that showed the damage to those items. JZ also stated there was a dent on the dryer that the Tenants agreed to pay $30.00 on the inspection report. JZ did not submit any receipts or estimates for the $100.00 damage the Landlords were claiming for the kitchen cabinet, scratched stovetop for cleaning the dirty oven and freezer.

JN stated that the Tenants were new to Canada when they rented the rental unit. JN stated the Tenants did not sign a new tenancy agreement with the Landlords or sign an amendment that would require the Tenants pay for a portion of the electrical or gas utilities. JZ stated that, although the Tenants agreed to pay $30.00 for the dent on the

dryer, the dryer had a dent at the time the Tenants moved into the rental unit. JZ admitted the Tenants missed cleaning the top of the inside of the freezer and oven.

Analysis

Rule 6.6 of the 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.
>
> 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 Landlords.

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.
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> 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 Landlords must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

1. Landlords' Claim for Electrical and Gas Utilities

JZ claimed the Tenants were required to pay for 1/8th of the electrical and gas utilities. JZ stated the Tenancy Agreement ended at the end of its fixed term on April 30, 2022. JZ also stated the Tenants consumed an unreasonable amount of electricity and gas as they left the windows open to the rental unit. I have reviewed the Tenancy Agreement and find there was no provision, pursuant to section 13.1 of the *Residential Tenancy Regulations*, that required the Tenants vacate the rental unit at the end of the fixed term

on the basis that the Landlords or a close family member of the Landlords intend in good faith to occupy the rental unit at the end of the fixed term.

Sections 14 and 44(3) of the Act state:

> 14(1) A tenancy agreement may not be amended to change or remove a standard term.
>
> (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.
>
> (3) The requirement for agreement under subsection (2) does not apply to any of the following:
>
> (a) a rent increase in accordance with Part 3 of this Act;
>
> (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;
>
> (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.
>
> 44(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, *the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.*
>
> [emphasis added in italics]

I find there was no term in the Tenancy Agreement requiring the Tenants to move out of the fixed term on April 30, 2021 pursuant to section 13.1. As such, section 44(3) provides the tenancy was deemed to have continued on a month to month basis on the same terms as stated in the Tenancy Agreement. JN stated the Tenants did not enter into a new tenancy agreement nor did they sign a consent to amend the Tenancy Agreement that would require the Tenants pay 1/8th of the electrical or gas utilities. The Landlords did not submit a new tenancy agreement or an amendment to the Tenancy Agreement that would have required the Tenants to pay 1/8th of the electrical or gas utilities. The Landlords did not provide any evidence, such as actual electrical and gas

utility statements showing consumption for the period in which they claim the Tenants used excessive amounts of gas and electricity with electrical and gas utility statements for the one-year period preceding those statements. As such, I find the Landlords have not established pursuant to section 7(1) of the Act, on a balance of probabilities, that the Landlords are entitled to recover $164.00 from the Tenants either on the basis that the Tenants were required to pay 1/8th of the utilities or on the basis the Tenants used an excessive amount of electricity and gas. Based on the foregoing, I dismiss, without leave to reapply, the Landlords' claim for $164.00 for electricity and gas utilities.

2. Landlords' Claim for Damages to Rental Unit

The Landlords made a claim for $30.00 for damage to the dryer and $100.00 for other damages the Landlords claimed the Tenants caused during the tenancy. JZ submitted a copy of the move-in condition report that was dated May 2020 and a move-out condition inspection report that the parties agreed was performed on December 31, 2021. The move-out inspection report indicated a kitchen cabinet was scratched, a stovetop was dirty and scratched, the oven was dirty and the freezer was dirty.. The move-in inspection report indicated that the kitchen cabinet, stovetop, oven and freezer were clean and undamaged. JZ submitted into evidence photos of the kitchen cabinet and stovetop showing they were damages and the freezer was dirty.

ZN claimed the dent to the dryer was pre-existing when the Tenants moved into the rental unit. Although the inspection report did not specifically note the damage to the dryer, the Tenants nevertheless signed on the move-out condition inspection report that they would pay $30.00 for damage to the dryer. I find the Landlords are entitled to recover the $30.00 for damage to the dryer. The Landlords did not submit any receipts or estimates for the $100.00 damage they are claiming in the Monetary Order Worksheet for damages to the kitchen cabinet and stovetop and the cleaning of the oven and freezer. However, the photos submitted by JZ clearly show damage to the stovetop and kitchen cabinet. As such, I find the $100.00 claimed by the Landlords to be a reasonable estimate of the damages claimed for the kitchen cabinet and stovetop and, as the monetary claim is relatively small, I find it is unnecessary for the Landlords to have submitted receipts or estimates to support their claim for repairs to the kitchen cabinet and stovetop.

Based on the foregoing, I find the Landlords have provided sufficient evidence to prove they have satisfied the four elements set out in PG 16 in respect to the damages to the stove and kitchen cabinet. I find the Tenants agreed to pay for the damage to the dryer. As such, I find the Landlords are entitled to $130.00 for damages the Tenants caused to

the rental unit during the tenancy. Pursuant to section 67 of the Act, I order the JN pay $130.00 to compensate the Landlords for their loss. Pursuant to section 72(2) of the Act, the Landlords may retain $130.00 from the security damage deposits of $600.00 in satisfaction of their monetary claim.

As the Landlords have been substantially successful in the Application, pursuant to section 72 of the Act, I award the Landlords $100.00 for the filing fee of the Application. Pursuant to section 72(2) of the Act, I order that the Landlords may retain $100.00 from the security deposit of $600.00 to recover the filing fee for the Application.

Conclusion

I order the Landlords retain $230.00 from the security damage deposit in satisfaction of the $130.00 compensation owed by the Tenants for damage to the rental unit and the $100.00 filing fee of the Application awarded to the Landlords.

I order the Landlords return $370.00 of the security deposit and grant the Tenants a Monetary Order calculated as follows:

Purpose	Amount
Compensation for Damages to Rental Unit	$130.00
Filing Fee of Landlord's Application	$100.00
Less: Tenants' Security Damage Deposit	-$600.00
Total:	$370.00

The Tenants must serve the Monetary Order on the Landlords as soon as possible. Should the Landlords 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 31, 2022

Residential Tenancy Branch