



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: RR, RP, FF
For the landlord: MND-S, MNR-S, FF

Introduction, Preliminary and Procedural Matters-

This hearing was scheduled for September 6, 2022, as a result of the landlords' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act), filed on January 22, 2022. The landlord applied for compensation for alleged damage to the rental unit by the tenant, a monetary order for unpaid rent, authority to keep the tenant's security deposit to use against a monetary award, and recovery of the cost of the filing fee.

On March 1, 2022, a hearing convened as a result of the tenant's application for dispute resolution (application) seeking remedy under the Act, filed on December 31, 2021. The tenant applied for a reduction in monthly rent, an order requiring the landlord to make repairs to the rental unit, and recovery of the cost of the filing fee. In that hearing, another arbitrator ordered that the landlords' application be joined with the tenant's application and made a cross application. This decision resulted in the other arbitrator adjourning the tenant's application in order to be heard by me at the hearing on the landlord's application. Other orders were made by the other arbitrator in their Interim Decision of March 2, 2022 relating to evidence issues. That Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

At the hearing, the landlord and tenant attended and were affirmed. The parties were informed of the hearing process and as the tenant's application was filed first, the tenant's application would be considered first in the hearing.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

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

Issue(s) to be Decided

Is either party entitled to monetary compensation from the other?

Background and Evidence

The written tenancy agreement filed in evidence indicated that this tenancy began on November 1, 2020, for a fixed-term through March 31, 2020, monthly rent of \$1,650 and a security deposit of \$825 being paid to the original landlord. The rental unit was in the basement level of a home owned by the landlord, who purchased the home from the original landlord. The tenant confirmed that the date on the fixed-term clause contained an error, as the term was set through March 31, 2021. The tenant asserted that she also paid a pet damage deposit of \$825. The landlord confirmed having a security deposit on hand of \$825, but that they did not receive a pet damage deposit from the original landlord in the transfer of ownership.

The parties agreed the tenancy ended on January 31, 2022, as the tenant vacated the rental unit by that date.

Tenant's application –

The tenant's application for an order for repairs is now moot, as the tenancy has ended.

As to the tenant's request for a monthly rent reduction, the tenant requested the amount of \$3,025. In her application, the tenant wrote the following:

Denied rent reduction for Dec/Jan while living with mold and constant cutting of holes to remove water damaged/moldy sections of wall. Paid out of pocket for air quality testing that landlord agreed to have done but appointment were cancelled multiple times without informing tenant. rent reimbursement: Alternate accommodation found for Jan: space unsafe for myself and 3yr old to reside in. reimbursing cost of internet as it is on contract and unable to be used while having to live elsewhere

[Reproduced as written]

Landlords' application –

The landlords' monetary claim listed in their application was \$900. Since their application was made the landlord submitted further evidence, including three separate monetary order worksheet containing different claim amounts. One monetary order worksheet was labelled as "Final Monetary Order", with a total claim amount of \$11,671.48. I note that the landlords deducted the tenant's security deposit from this amount, without authority to do so, as they listed their total monetary claim as \$10,846.48. Although the date on this document was January 24, 2022, the document was filed with the RTB on March 8, 2022.

Analysis

Tenant's application –

I dismiss the tenant's request for an order for repairs, without leave to reapply, as the tenancy ended by January 31, 2022. This matter relates to an ongoing tenancy.

As to the tenant's request for a reduction in monthly rent, I find the tenant's request should have been appropriately listed as a general monetary claim. I find the explanation provided was not for a reduction in rent, but rather a request for compensation equivalent to two months rent. From a review of the tenant's evidence, I find the tenant failed to provide a breakdown or particulars of the claim as to how the tenant arrived at the amount listed.

Landlords' application –

The landlords' application listed a claim of \$900, which amount was not matched in any of their evidence that continue to be filed after the application file date of January 22, 2022. The landlord confirmed not filing an amended application to increase their monetary claim, in the final amount of \$11,671.48.

Both applications –

Both parties were advised that their applications were being refused, pursuant to section 59(5)(c) of the Act because I find that neither application provided sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the Act. Additionally, Rule 2.5 states that the applicant must submit a detailed calculation of any

monetary claim being made and copies of all other documentary and digital evidence to be relied on in the proceeding. The applicants are provided with instructions in the application package as to these evidence requirements.

The objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

Specifically, neither party provided a breakdown of their amount claimed at the time they applied, which would have been served to the other party in a single package.

I find that proceeding with either claim at this hearing would be prejudicial and procedurally unfair to the other party, as the absence of particulars that sets out how the parties arrived at the amounts being claimed makes it difficult, if not impossible, for the other to adequately prepare a response to the claim.

Both parties have the right to a fair hearing and the respondents are entitled to know the full particulars of the claim made against them at the time the applicant submits their application in order to prepare a response.

Rule 4.1 allows parties to amend their claims, by completing an Amendment (Amendment) to an Application for Dispute Resolution form and filing the completed Application form and supporting evidence on the Dispute Access site or with the RTB directly or through a Service BC Office. These documents must be served to the other party in accordance with the required timeframes.

I therefore **dismiss** the tenant's application and the landlords' application, **with leave to reapply**. The tenant's request for an order for repairs was dismissed, without leave to reapply.

I do not grant either party the recovery of the cost of the filing fee as I have not considered the merits of their application.

Leave to reapply does not extend any applicable time limitation period.

As I have refused the landlords' application in which they claimed against the tenant's security deposit, I find the tenant's security deposit must be returned. Pursuant to section 62(3) of the Act, I order the landlord to return the tenant's security deposit of \$825, immediately.

To give effect to this order, I grant the tenant a monetary order pursuant to section 67 of the Act for the amount \$825.

Should the landlords fail to pay the tenant this amount without delay, the monetary order must be served upon the landlords for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlords are cautioned that costs of such enforcement are recoverable from the landlord.

I note that I am unable to grant the tenant's request that a pet damage deposit be returned. The landlord denied receiving a pet damage deposit from the original landlord and the written tenancy agreement did not reflect that the tenant paid a pet damage deposit. As there was no hearing on the merits of the matter, and the issue was not identified on the tenant's application, I did not make a finding regarding whether a pet damage deposit was paid. The matter may be a subject of a future dispute resolution proceeding.

Conclusion

The tenant's application for repairs to the rental unit is dismissed, without leave to reapply.

The tenant's and the landlords' applications for a monetary claim were dismissed, with leave to reapply, due to the issues identified above.

The landlords were ordered to return the tenant's security deposit of \$825, and the tenant was granted a monetary order of \$825.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 07, 2022

Residential Tenancy Branch