



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on February 9, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$1,881.43 for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$1,400.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 53 minutes.

The hearing began at 1:30 p.m. The tenant suddenly disconnected from the hearing at 1:58 p.m. and called back in at 1:59 p.m. I informed the tenant that I did not discuss any evidence with the landlord in her absence. The hearing ended at 2:23 p.m.

The landlord and the tenant both confirmed their names and spelling. They both provided their email addresses for me to send copies of my decision to them after the hearing.

The landlord stated that she owns the rental unit, and she provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this

hearing, the landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them. Neither party made any adjournment or accommodation requests.

Both parties were given multiple opportunities at the beginning and end of this hearing, to settle this application and declined to do so. Both parties asked that I make a decision regarding this application.

The landlord affirmed that she was prepared to accept the consequences of my decision if she was unsuccessful in this application, received \$0, and was required to return the tenant's security deposit or double the value of the deposit. The tenant affirmed that she was prepared to accept the consequences of my decision if she was unsuccessful in this application, she had to pay the landlord \$1,981.43, including the \$100.00 filing fee, and she did not receive her security deposit back from the landlord.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2018 and ended on January 31, 2022. Monthly rent in the amount of \$2,800.00 was payable on the first day of each month. A security deposit of \$1,400.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant provided a written forwarding address to the landlord on January 31, 2022, by text message, and on February 3, 2022, by email. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission to keep any amount from the tenant's security deposit.

The landlord confirmed that she was seeking a monetary order of \$1,881.43 plus the \$100.00 filing fee paid for this application.

The landlord testified regarding the following facts. She provided a monetary order worksheet, estimates for damages, a copy of the tenancy agreement, and the condition inspection reports. She also provided a copy of the move-out condition inspection report from the previous tenant. The landlord's photographs, estimates, and evidence "speak for itself." She provided quotes and receipts. She replaced the blinds and had the carpet cleaned. The tenant's cleaning invoice is "really weird." All of her evidence is "self-explanatory" and the numbers correspond with the evidence in the monetary order worksheet.

The tenant testified regarding the following facts. The landlord has "trumped up charges" because she does not want to return the tenant's security deposit. The tenant hung photos on the wall. She cleaned the carpets, but they were old and the cleaner told her it was normal wear and tear. She took the blinds down and put her own curtains because it was broken, and the landlord did not want to pay for it. The previous tenant said there were a lot of things wrong with the rental unit, including the blinds. The tenant was "naïve" and signed everything, including the move-in and move-out condition inspection reports that the landlord filled out herself. The landlord's monetary claims are "bizarre." The tenant is not required to professionally clean the rental unit. The rental unit is a tiny one-bedroom suite. The tenant left the rental unit in better condition than when she moved in. There is no reason why the tenant should pay for brand new blinds. The landlord said that she had to renovate the rental unit for four to six weeks and the tenant was not allowed to live there, so she had to move out. The doors and cupboards did not fit properly. The landlord sent her friends, not any professionals, to fix repairs at the rental unit. The tenant provided a carpet cleaning invoice with the name and phone number of the person who cleaned, so it is a valid invoice. The tenant is not responsible to pay for any upgrades to the rental unit. The

tenant called the RTB and was told that providing a forwarding address by text message was not allowed to the tenant, but email was ok, so she sent it that way. The landlord was angry when the tenant told her what the RTB said about the forwarding address. The landlord was nitpicking everything during the move-out condition inspection, she was angry, and she is difficult to rent from.

The landlord stated the following facts in response to the tenant's submissions. There were leaks in the kitchen and dining room floor, so the landlord had to replace the vinyl flooring. No other work was done. Everything else "speaks for itself," including the previous tenant's move-out condition inspection report and the tenant's move-in and move-out condition inspection reports for this tenancy. The landlord's evidence is "very clear." The landlord did not provide any receipts for costs paid but they were paid. The carpet cleaning invoice was paid on February 8, 2022, by way of phone with a credit card. She did not provide any other invoices or receipts for the other costs. She hired a handyman from an online advertisement and paid him cash but did not provide a statement from him. She did not provide any bank records to show any withdrawals for cash payments. The blinds receipt was not provided, only a business card with a handwritten quote.

The tenant stated the following facts in response to the landlord's submissions. She did not cause any damages to the rental unit. The landlord is asking her to pay for upgrades to the rental unit, which the tenant is not responsible for. This is a 44-year-old house with problems.

Analysis

Burden of Proof

At the outset of this hearing, I informed the landlord about the following information. The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to prove her application and monetary claims. The *Act*, *Regulation*, *RTB Rules*, and *Residential Tenancy Policy Guidelines* require the landlord to provide evidence of her claims, in order to obtain a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord served her application to the tenant, as required. The landlord received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing her application. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document.

The landlord received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support her application, and links to the RTB website. It is up to the landlord to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of her claims, since she chose to file this application on her own accord.

Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claims. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

C. COMPENSATION

*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.*

...

D. AMOUNT OF COMPENSATION

*In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

I find that the landlord did not properly present her application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

During this hearing, the landlord failed to properly go through her claims and the documents she submitted as evidence, repeatedly claiming that it was "self-explanatory." The landlord did not review her monetary order worksheet in sufficient detail, did not review each item or the amount for same, and did not review the evidence in support of each item.

This hearing lasted 53 minutes, so the landlord had ample opportunity to present her application and evidence and respond to the tenant's evidence. I repeatedly asked the landlord if she had any other information to add and if she wanted to respond to the tenant's evidence.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application of \$1,881.43 without leave to reapply. I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The landlord failed to provide any receipts to show if, when, and how she paid for any costs claimed in her application. The landlord agreed at this hearing that she did not provide any receipts, credit card statements, bank statements, or a statement from her handyman, as evidence to support her application for damages.

The landlord provided an invoice for carpet cleaning, with a balance due of \$294.09. The landlord did not provide sufficient documentary evidence, such as a receipt or other proof of payment, to show if, when, how, and to whom she paid for carpet cleaning.

The landlord claimed that she made a payment over the phone by credit card on February 8, 2022, but she did not provide a copy of her credit card statement.

The landlord did not provide any invoices, receipts, or other sufficient documentary evidence, to show if, when, how, and to whom she paid for other costs, or from where these items were purchased. The landlord provided photographs from online websites to show estimates for costs. The landlord provided an online advertisement estimate for cleaning. The landlord provided a business card with a handwritten estimate for the blinds. The landlord did not provide sufficient documentary or testimonial evidence to indicate when any work was done, how long it took, how many people completed it, what their pay rate was per hour, per worker, or per job, or other such information. The landlord did not provide sufficient testimonial evidence to indicate when, how, and to whom any payments were made. The landlord stated that she hired a handyman to buy items and complete work but did not provide a statement, invoice, receipt, or witness testimony from this handyman, as evidence.

The landlord offered to provide evidence after this hearing. I informed her that I would not allow her to provide any evidence after this hearing, as the tenant would not have a chance to respond, and the landlord had ample time of almost eight months, from filing her application on February 9, 2022, to this hearing date of September 27, 2022, to provide the above evidence but failed to do so.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to retain the tenant's entire security deposit of \$1,400.00. Over the period of this tenancy, no interest is payable on the deposit. I order the landlord to return the tenant's entire security deposit of \$1,400.00, to the tenant. The tenant is provided with a monetary order for same. Although the tenant did not apply for the return of her deposit, I am required to consider it on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17. I find that the tenant did not extinguish her right to the return of her deposit.

I find that the tenant is not entitled to double the amount of her security deposit, since the landlord filed this application to retain it on February 9, 2022, which is within 15 days of the end of tenancy on January 31, 2022, and the tenant's forwarding address being provided to the landlord on February 3, 2022, by way of email, which is permitted by section 88 of the *Act*, since text message is not permitted.

Although the tenant did not apply for the return of double the amount of the deposit, I am required to consider it since the tenant did not specifically waive her right to it, as per section 38 of the *Act* and Residential Tenancy Policy Guideline 17.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary Order in the tenant's favour in the amount of \$1,400.00, against the landlord. The landlord must be served with a copy of this Order. Should the landlord 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: September 27, 2022

Residential Tenancy Branch