Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*"), for:

- a monetary order of $3,433.97 for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the $100.00 filing fee for this application, pursuant to section 72.

The landlord and the two tenants, tenant MS ("tenant") and "tenant RW," 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 43 minutes from 1:30 p.m. to 2:13 p.m.

The landlord and the two tenants provided their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord and the tenant both provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recording of this hearing by any participant. During this hearing, the landlord and two tenants all separately affirmed, under oath, that they would not record 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. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

During this hearing, I was required to repeatedly warn the tenant about her inappropriate behaviour. I notified the tenant that she could be heard laughing multiple times while the landlord was speaking, and that she repeatedly interrupted me and the landlord, while we were speaking. However, I allowed the tenant to attend the full hearing, despite her inappropriate behaviour, in order to provide her with a full and fair opportunity to present the tenants' application.

The tenant stated that she served the tenants' application for dispute resolution hearing package to the landlord by registered mail. The tenants did not provide a date or a registered mail tracking number to confirm service. The landlord stated that he did not receive the tenants' application. He said that he found out about this hearing from an RTB email reminder sent directly to him. He confirmed that he wanted to proceed with this hearing, despite not receiving the tenants' application. The landlord did not submit any evidence for this hearing.

The tenant confirmed that the tenants did not submit any evidence for this hearing. She asked if she could have an extension of time to submit the tenants' evidence because her advocate did not submit evidence and quit to go to another place. I notified her that I would not provide the tenants with an extension of time to submit evidence for this hearing. I informed her that the tenants had ample time of over 7.5 months, to submit evidence prior to this hearing on September 6, 2022, since the tenants' application was filed on January 20, 2022. I notified her that the tenants had ample time to find another advocate, if they required, to assist them with this application, prior to this hearing, but they failed to do so. Any delay in this hearing or providing evidence would unfairly prejudice the landlord, who was ready to proceed.

I notified the tenant that according to the RTB online dispute access site, she was sent an email on August 8, 2022, asking whether she wanted to proceed with this hearing. I informed her that according to the RTB online dispute access site, she spoke to RTB supervisors and information officers on September 1 and 2, 2022, indicating that she forgot about this hearing, asking if she wanted to proceed with this hearing, cautioning her that she may not be successful without any evidence submitted, and confirming that she still wanted to proceed with this hearing. I notified her that the tenants had multiple

opportunities to submit evidence or cancel this hearing, prior to this hearing date, and failed to do so. The tenant agreed that she called into the RTB on September 1 and 2, 2022, that she was cautioned about providing no evidence for this hearing, that she did not cancel this hearing, and that she confirmed she wanted to proceed with this hearing. She said that she did not "forget" about this hearing but that she was only "made aware" of it when she received RTB email reminders to call into this hearing. She claimed that she did not have her application in front of her during this hearing, and she initially thought this dispute was regarding her previous rental unit and tenancy with the landlord, at a different address.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to include the landlord's full first legal name, rather than a nickname, and to remove the name of the tenant's advocate HP as a tenant-applicant party. I also amend the tenants' application to remove the tenants' claim to recover the $100.00 filing fee, since none was paid for this application, and a fee waiver was granted to the tenants. Both parties consented to the above amendments during this hearing. I find no prejudice to either party in making the above amendments.

Issue to be Decided

Are the tenants entitled to a monetary award for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Background and Evidence

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

The landlord stated the following facts. This tenancy began on August 31 or September 1, 2021 and ended possibly on December 20, 2021. Monthly rent in the amount of $3,800.00 was payable on the first day of each month. No security deposit was paid by the tenants, and none was transferred over from the tenants' previous rental unit and tenancy, for which he was also the landlord. A written tenancy agreement was signed by both parties and another occupant tenant. Copies of the tenancy agreement and condition inspection reports were provided by the landlord to the tenants.

The tenant stated the following facts. This tenancy began on August 31, 2021, and ended on December 20, 2021. Monthly rent in the amount of $3,000.00 was payable on the first day of each month. A security deposit of $1,350.00 was transferred over from the tenants' previous rental unit and tenancy, with the same landlord, and another $150.00 was paid by the tenants to the landlord. The security deposit was not returned by the landlord to the tenants. A written tenancy agreement was signed by both parties, but the tenants signed at different times. Copies of the tenancy agreement were not provided to the tenants by the landlord.

The tenant stated the following facts. The tenants want their security deposit back. The tenants want their cleaning costs back because the rental unit smelled like "pee." The landlord had storage at the rental unit, which he used. The tenants' hydro costs and bills "skyrocketed" because they were sharing the costs with the ensuite occupant, which they did not know about. He used to blast the heat, so the tenants were required to pay hydro costs in installments. The hydro bill was $1,500.00 for two months. It was unfair for the tenants to clean the rental unit because the landlord did not care that there was a mess. The tenants wished they had time to look for another place instead of living with mold. The stove was not working properly, and it was "ugly," as the landlord brought the stove from the previous unit. The tenants had to move out by text message and the landlord took money from tenant RW. The landlord was "horrible" and "not nice." The tenants had to move three times.

Tenant RW stated the following facts. He thought the rental unit would be clean because the landlord gave the tenants notice to move out of their old place and it was the same landlord for the new rental unit. There was mold and cobwebs. The tenants had to clean it up and he has pictures as evidence with the dates. There were text message evictions at both places, and he has the text messages, as evidence. He suffered a bad brain injury, and it was hard to go through on December 20, as there were no kids there for Christmas.

The landlord stated the following facts. He disputes the tenants' entire application. The tenants moved to a new rental unit, and they viewed it before moving in. The tenants did not have enough money to transfer their items from the former unit, where he was also the landlord, so he "let it go." Tenant RW was good in the previous unit. The landlord asked for a security deposit and there were damages in the previous unit. Tenant RW paid for some damages but then he stopped paying, as the tenant said she was unhappy with the new rental unit. The landlord told the tenants to give him one month's notice before moving out of the rental unit. The tenants moved out without notice and abandoned the rental unit. The rental unit was clean before the tenants

moved in. The landlord and his son helped the tenants take 14 loads of their items to the new rental unit for free, because the tenants said they had no money to move. The other occupant signed the tenancy agreement with the tenants. The landlord gave a copy of the tenancy agreement, and the condition inspection reports to the tenants. The tenants were aware of everything with the rental unit. The tenant did not like the stove in the new place, so he "swapped" it. The landlord found out that the tenants had left when they sent a text message to him saying that they had moved out. The rental unit was almost empty, but it was not cleaned by the tenants.

The tenant stated that she disagrees with the landlord, and she found fur in the fridge even though the tenants did not have any pets.

Tennant RW said that he found fur in the fridge, and he wanted a copy of the tenancy agreement from the landlord.

Analysis

Burden of Proof

At the outset of this hearing, I repeatedly informed the tenants, that as the applicants, they had the burden of proof, on a balance of probabilities, to prove their application and monetary claims. The *Act, Regulation*, *Rules*, and Residential Tenancy Policy Guidelines require the tenants to provide evidence of their claims, in order to obtain a monetary order.

The tenants received an application package from the RTB, including instructions regarding the hearing process. The tenant claimed that this application was served to the landlord, as required. The tenants received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing this application. This document contains the phone number and access code to call into the 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. During this hearing, I repeatedly informed both parties that I had 30 days to issue a decision in writing, regarding the tenants' application.

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

I find that the tenants did not properly present their claims and evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

During this hearing, the tenants failed to properly review or explain their claims or provide monetary amounts. The tenants did not provide any documentary or digital evidence to support this application.

During this hearing, I repeatedly asked the tenants whether they wanted to add any information, present any further submissions, and respond to the landlord's testimony. This hearing lasted 43 minutes, so the tenants were given ample and multiple opportunities to present their application and respond to the landlord's claims.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish their claims. To prove a loss, the tenants 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 landlord 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 tenants 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.***

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony of both parties at this hearing.

I dismiss the tenants' entire application for $3,433.97 without leave to reapply. This includes $1,526.97 for hydro, $500.00 for cleaning, "unknown time missed from work," $282.00 for transportation for children, and $1,125.00 for a moving truck. The above amounts and descriptions have been taken directly from the tenants' paper application. The tenants did not have their application in front of them during this hearing. The tenants did not provide any of the above amounts or descriptions during this hearing.

The tenants did not indicate how they arrived at the above amounts. They did not indicate what work was done, when it was done, who did the work, why the work was done, how long it took, how many workers did the work, the cost per hour or per worker, or other such information. The tenants did not describe any of the above claims or amounts during this hearing.

The tenants did not provide any documentary evidence, showing that they paid for any work, when it was paid, how it was paid, who it was paid to, or other such information. The tenants did not provide any quotes, estimates, invoices, receipts, or other documentary evidence to support their monetary claims.

During this hearing, tenant RW stated that he had photographs with dates and text messages, as evidence. However, the tenants did not provide the above evidence for this hearing.

I find that the tenants voluntarily chose to move from the rental unit, as they did not provide sufficient documentary or testimonial evidence showing otherwise, so they are not entitled to moving costs, time off work, or transportation costs.

I find that the tenants are required to clean the rental unit upon moving out, as per Residential Tenancy Policy Guideline 1, so they are not entitled to cleaning costs from the landlord. I find that the tenants viewed the rental unit prior to moving in and accepted its condition, as per the landlord's testimony at this hearing, so they are not entitled to cleaning costs upon moving in.

I find that the tenants did not provide any hydro invoices or receipts, to show that they paid for any hydro costs, as claimed in their application.

In their application, the tenants indicated that the costs of time missed from work was "unknown" and that they would obtain "employee info time sheets" as evidence. However, the above evidence was not provided by the tenants for this hearing. The tenants did not provide any time sheets, paystubs, work letters, or other such documentary evidence to support their time off work claim.

As noted above, the tenants had ample time from filing this application on January 20, 2022, to this hearing date of September 6, 2022, a period of over 7.5 months, to provide the above evidence and failed to do so. I find that the tenants failed all four parts of the above test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

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 06, 2022

Residential Tenancy Branch