



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, FFL

Introduction

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

- a monetary order of \$3,400.00 for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' entire security deposit of \$950.00 and entire pet damage deposit of \$425.00, totalling \$1,375.00 (collectively "deposits"), pursuant to section 38; and
- authorization to recover the \$100.00 filing fee for this application, pursuant to section 72.

"Tenant ME" did not attend this hearing, which lasted approximately 45 minutes from 1:30 p.m. to 2:15 p.m. The two landlords, landlord SAN ("landlord") and "landlord FN," and tenant KE ("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.

All hearing participants confirmed 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.

Landlord FN identified herself as the primary speaker for the landlords at this hearing.

The tenant confirmed that she had permission to represent tenant ME, who is her daughter, at this hearing (collectively "tenants").

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“*Rules*”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. Both parties had an opportunity to ask questions. 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 and confirmed that they were ready to proceed with this hearing.

The landlords affirmed that they were prepared to accept the consequences of my decision if they were unsuccessful in this application and received \$0. The tenant affirmed that the tenants were prepared to accept the consequences of my decision if they were unsuccessful in this application, and they had to pay the landlords the full amount of their application of \$3,500.00, including the \$100.00 filing fee.

The tenant confirmed receipt of the landlords’ application for dispute resolution hearing package and the landlord confirmed receipt of the tenants’ evidence. In accordance with sections 88 and 89 of the *Act*, I find that both tenants were duly served with the landlords’ application and both landlords were duly served with the tenants’ evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords’ application to correct the spelling of both tenants’ surnames. The tenant consented to this amendment during this hearing. I amend the landlords’ application to correct the rental unit address, as the landlords did not indicate a unit number or a complete street address. I used the rental unit address indicated on the parties’ written tenancy agreement, provided by the landlords as evidence with this application, as the landlords did not confirm the rental unit address during this hearing. I also amend the landlords’ application to add a monetary claim to retain the tenants’ deposits, totalling \$1,375.00, as both parties agreed about the deposits information during this hearing. I find no prejudice to either party in making these amendments.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and for damage to the rental unit?

Are the landlords entitled to retain the tenants' deposits?

Are the landlords 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 at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 14, 2020, for a fixed term ending on November 13, 2021, although a typographical error on the tenancy agreement indicates the end year is 2020 and not 2021. This tenancy ended on September 26, 2021. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month, at the end of this tenancy. A security deposit of \$950.00 and a pet damage deposit of \$425.00 were paid by the tenants and the landlords continue to retain both deposits in full, as the tenants agreed that the landlords could retain both deposits for unpaid rent. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord confirmed that the landlords seek a monetary order of \$3,400.00 plus the \$100.00 application filing fee.

The landlord stated the following facts. The landlords seek \$3,300.00 in rent from the tenants, which includes \$675.00 for September 2021 rent, \$1,750.00 for October 2021 rent, and \$875.00 for two weeks of November 2021 rent. In May 2021, both parties made a separate agreement to reduce the rent from the original amount of \$1,900.00 to \$1,650.00 for June, July, and August 2021, and then the rent would revert to \$1,750.00 from September 2021. In September 2021, the landlords informed the tenant that she owed \$300.00 for rent from June, July, and August 2021, to be paid back to the landlords. Therefore, the tenants owed \$1,750.00 for September 2021 rent plus an additional \$300.00 for rent from June to August 2021, for a total of \$2,050.00. The tenant then asked for a release from the tenancy agreement early. The tenant told the

landlords that they could keep the full security and pet damage deposits of \$1,3750.00, which left a balance of \$675.00 owed for rent for September 2021. The landlords did not receive any money from the tenants for the \$675.00 owed for September 2021 rent, so the lease continued, and the landlords did not sign the release form to release the tenants from the tenancy agreement. The tenants owe \$1,750.00 for October 2021 rent and \$875.00 for half of November 2021 rent. The landlords re-rented the rental unit of as of November 15, 2021, for a one year lease, but the landlords are unsure of the amount of rent, as they believe it was lower than \$1,900.00 but it could have been around \$1,750.00 to \$1,800.00 per month. In April 2021, the landlords sold the rental unit.

The landlord testified regarding the following facts. The landlords hired a management company to take over the property but did not provide any evidence of same for this hearing. The landlords sent emails from November 15, 2021, and the company was actively searching for new tenants for the rental unit. The landlords did not provide any advertisements, inquiries, showings, prospective tenant information, or emails regarding their search for new tenants, as evidence for this hearing, as it was an error on the landlords' part. The landlords provided copies of four emails requesting the September 2021 rent from the tenant, to which they did not receive a response. The landlords could not sign the document to release the tenant from the fixed term tenancy, so it continued past September 2021. The landlords also seek \$100.00 from the tenants for a strata move-out deposit fee. The cost of the fee was \$250.00 and only \$50.00 from the deposit was returned by strata to the landlords. Strata told the landlords that there was a large amount of garbage, that had to be hauled by their contractor, that was left behind by the tenants. The landlords paid the entire amount of the \$250.00 deposit to the strata. The landlords are agreeing to pay half the cost of the remaining \$200.00, so the tenants only owe \$100.00, for this fee. This is because the tenants replied to the landlords in a timely manner. The landlords provided photographic evidence of the garbage pile-up, and emails between the landlords, tenants, and strata, for this hearing. The landlords did not provide proof of the cost of the strata payment of \$250.00 or any other documents relating to same, as this was an error on the landlords' part. The landlords also seek \$100.00 for the filing fee paid for this application.

The tenant stated the following facts. The tenants dispute the \$100.00 strata move-out fee. The tenants provided the same photographs as the landlord of the garbage at the rental property. Only one item in those photographs was from the tenants' items and it was in the proper bin. Therefore, the tenants do not owe any money for the move-out fee. The tenant emailed the landlord and strata asking for proof of the garbage that was left behind by the tenants and it was never provided by strata. The tenants dispute the

landlords' claims for rent loss for October and November 2021. The tenant asked to be let out of the lease and the landlords agreed to same by way of email. The tenants agreed for the landlords to keep their security and pet damage deposits towards the unpaid rent and to pay the \$675.00 remaining for September 2021 rent. The tenant did not have any money on her when she moved out so she could not pay the \$675.00 to the landlords at that time. However, the landlords agreed to let the tenants out of the lease 1.5 months early, so the tenants do not owe any rent for October November 2021 because they were not living at the rental unit. The tenants provided copies of the emails from the landlords, agreeing to let them out of the lease. Tenant ME moved out of the rental unit, so the tenant could not afford rent on her own, and she told the landlord right away. The landlords showed the rental unit to multiple prospective tenants right away, so the tenant does not know why the landlords were unable to re-rent the unit until November 2021. The tenant believes that the landlords were waiting for the lease to run out, so they could charge the tenants for October and November 2021 rent. The tenants provided six weeks notice to the landlords, to move out of the property. The tenants dispute the \$100 filing fee, as this application was not required, since the tenant already agreed to pay the \$675.00 owed, prior to this hearing.

Analysis

Burden of Proof

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

The landlords received an application package from the RTB, including instructions regarding the hearing process. The landlords served their application to the tenants, as required. The landlords received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing their 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 landlords received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the landlords to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlords to provide sufficient evidence of their claims, since they chose to file this application on their own accord.

Rules and Legislation

The following RTB *Rules of Procedure* state, 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 landlords did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

During this hearing, the landlords failed to properly go through their claims and the documents submitted in support of their application. The landlord mentioned the existence of documents but did not properly review these documents in sufficient detail during this hearing. This hearing lasted 45 minutes, so the landlords had ample opportunity to present their application and evidence. I repeatedly asked the landlords if they had any other information or evidence to present, during this hearing.

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 the claim. To prove a loss, the landlords 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 tenants 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 landlords 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.***

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

Rent

I order the landlords to retain the tenants' entire security deposit of \$950.00 and entire pet damage deposit of \$425.00, totalling \$1,375.00, for unpaid rent from June to September 2022. The tenants agreed to same during this hearing.

I award the landlords \$675.00 for unpaid rent for September 2022, as the tenants agreed to pay same during this hearing.

I find that the landlords and tenants entered into a fixed term tenancy for the period from November 14, 2020 to November 13, 2021. Both parties agreed to same during this hearing. I accept that there was a typographical error in the year of the fixed term end date in the tenancy agreement.

Subsection 45(2) of the Act sets out how tenants may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlords. I find that the tenants breached the fixed term tenancy agreement. As such, the landlords may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I dismiss the landlords' application for rent loss of \$1,750.00 for October 2022 and \$875.00 for November 2022, without leave to reapply. The tenants disputed these claims during this hearing.

I find that the landlords failed to provide sufficient documentary or testimonial evidence including copies of rent advertisements, to show if or when it was advertised for re-rental, the rent amount per month, the term of length of the tenancy, how long the unit was advertised for, what details were given in the advertisement, and other such information. I find that the landlords failed to provide sufficient documentary or testimonial evidence to indicate how many inquiries were made for re-rental, how many showings were done, when any showings were done, how many applications were received, how many applications were accepted or rejected, and other such information.

I find that the landlords failed to provide sufficient documentary or testimonial evidence of how they properly mitigated losses in efforts to re-rent the unit. The landlords claimed that the rental unit was rented to new tenants on November 15, 2021, for a one-year term, until it was sold to new owners in April 2022. The landlords did not provide a copy of the new tenancy agreement, nor did the landlords know the amount of rent that

was charged to the new tenants, guessing that it may be around \$1,750.00 or \$1,800.00 per month.

The landlords had ample time to provide the above information prior to this hearing, as the landlords filed this application on January 20, 2022, and this hearing occurred over 8.5 months later on October 3, 2022.

Strata Move-Out Fee and Filing Fee

I dismiss the landlord's application for \$100.00 for a strata move-out deposit fee, without leave to reapply.

The landlords did not provide any invoices or receipts for the above cost. When I asked the landlord about same during this hearing, he said that the landlords made an error by not providing the information. The landlords did not provide sufficient documentary or testimonial evidence indicating if or when the landlord paid the above cost, who/where the cost was paid to, the method of any payment, or other such information.

The landlords had ample time to provide the above information prior to this hearing, as the landlords filed this application on January 20, 2022, and this hearing occurred over 8.5 months later on October 3, 2022.

As the landlords were unsuccessful in this application, except for what the tenants agreed to pay, I find that they are not entitled to recover the \$100.00 filing fee from the tenants. This claim is also dismissed without leave to reapply.

Conclusion

I order the landlords to retain the tenants' entire security deposit of \$950.00 and entire pet damage deposit of \$425.00, totalling \$1,375.00.

I issue a monetary order in the landlords' favour in the amount of \$675.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The remainder of the landlords' 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: October 04, 2022

Residential Tenancy Branch