Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord TL (the landlord) and tenants JT and KC attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Preliminary Issue – Service

The tenants confirmed receipt of the notice of hearing and the landlord’s evidence served on March 03, 2022.

The landlord confirmed receipt of the tenants’ evidence served on August 25 and October 03, 2022.

Based on the testimony of both parties, I find that each party was served with the respective notice of hearing and evidence in accordance with section 89 of the Act.

The landlord served new evidence documents (the new evidence) via email on October 03, 2022. The landlord affirmed she could not serve the new evidence earlier because of a serious matter in her life. I asked the landlord to specifically explain why she could not serve the new evidence earlier and the landlord stated that she is dealing with a serious family life situation.

The tenants testified they did not have enough time to review the evidence served on October 03, 2022.

Rule of Procedure 3.14 states:

> Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.
> In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

The hearing was on October 17, 2022.

The Rule of Procedures definition states that: “In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.”

I find the landlord served the new evidence late, as the landlord had to serve it by October 02, 2022.

I find the landlord provided a vague testimony to explain why she served the new evidence late. As such, I did not accept the new evidence.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on May 01, 2021 and ended on April 01, 2022. Monthly rent was $1,580.00, due on the first day of the month. The landlord collected and returned the security deposit. The tenancy agreement was submitted into evidence.

Both parties agreed that there are three rental units in the approximately 80 year-old rental building and the tenants rented the basement unit. The laundry is shared by the three rental units.

The parties texted on December 22, 2021:

> Landlord: Good morning, wondering if one of you can check and confirm the temperature setting by the laundry unit is at least 5C. This will make sure the pipes don't freeze which can burst in the cold weather that's coming this weeks. Thanks.
> Tenant JT: Just checked and it is at 5 degrees. We will keep an eye on it for the next few days.
> Landlord: Thank you.

The landlord said that the rental building's water main is in tenant JT's bedroom. The landlord believes that tenant JT left the rental unit on December 27, 2022 and turned off the heat in her bedroom when she left the rental unit. The water pipes froze and burst in the kitchen on January 01, 2022 due to the cold weather. The landlord submitted a photograph of a frozen pipe in the kitchen.

Tenant JT affirmed that she left the rental unit on December 24, 2021 and that she does not recall if she turned off the heat in her bedroom. Later JT stated that she kept the heat in her bedroom low. The heal control does not have a temperature indicator.

Tenant JT testified that the landlord did not provide information to the tenants about an appropriate temperature in the rental unit, except for the laundry. The landlord said that

the landlord does not need to ask the tenants to maintain an appropriate temperature in the rental unit, as this is a tenants' obligation.

Tenant KC affirmed that she arrived in the rental unit on December 26, 2021, the water was available throughout the rental unit and the heat was turned on in the kitchen and her bedroom. Tenant KC could walk around the rental unit wearing shirts only.

Tenant JT stated that the water runs from her bedroom to the living room, then to the bathroom and the kitchen and that the frozen pipe was in the kitchen.

I asked the landlord to explain why the temperature in JT's bedroom caused the frozen pipe in the kitchen. The landlord testified that if the rental unit is not occupied and maintained warm the pipes can freeze.

The landlord said that she paid a plumber $527.02 to repair the frozen pipe, $260.61 to rent a dehumidifier and $178.85 to rent a carpet blower.

The landlord affirmed that frozen pipes are a common problem, but she has owned this rental property for 30 years and never had a frozen pipe. The landlord stated the tenants are responsible for the frozen pipe because they turned off the heat in JT's bedroom.

The tenants testified they are not responsible for the frozen pipe.

The landlord submitted a monetary order worksheet indicating a claim in the total amount of $971.53.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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.

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 the case is on the person making the claim.

At issue is the responsibility for the frozen pipe in the kitchen.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I am aware that turning off the heat or keeping the heat very low may allow the pipes to freeze. However, the landlord has to prove that the tenants' actions are more likely than not to be the cause of the frozen pipe in the kitchen.

I accept tenant JT's testimony that the water runs from her bedroom to the living room, then to the bathroom and the kitchen.

The landlord did not provide any documentary evidence to support her claim that the tenants are responsible for the frozen pipe in the kitchen, such as a plumbing specialist indicating that the low temperature in parts of the rental unit is the cause of the frozen pipe in the kitchen. The landlord did not call any witnesses. The landlord admits that frozen pipes are a common problem. The kitchen pipe froze during a cold front. The rental unit is approximately 80 years old.

Considering all of the above, I find the landlord failed to prove, on a balance of probabilities, that the tenants are responsible for the frozen pipe.

Thus, I dismiss the landlord's claim for compensation.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

Conclusion

I dismiss the landlord's claim 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 20, 2022

Residential Tenancy Branch