Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSDB-DR, FFT

Introduction

This hearing dealt with the landlord's application, filed on March 4, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on July 8, 2022, pursuant to the *Act* for:

- authorization to obtain a return of the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord and the two tenants, tenant ME ("tenant") and "tenant SE" 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 64 minutes from 1:30 p.m. to 2:34 p.m.

All hearing participants confirmed their names and spelling. The landlord and the tenant both provided their email addresses for me to send copies of this decision to both parties after this hearing.

The landlord confirmed that he owns the rental unit. He provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* 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.

At the outset of this hearing, I explained the hearing process to both parties. They had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle both applications, and they wanted me to make a decision. Both parties engaged in settlement discussions but did not settle. Both parties were given multiple opportunities to settle at the beginning and end of this hearing and declined to do so.

The landlord and the tenant identified themselves as the primary speakers. Tenant SE consented to the tenant being the primary speaker for both tenants.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 88 and 89 of the *Act*, I find that both parties were duly served with the other party's application.

Tenant SE stated that she served the tenants' second evidence package to the landlord on October 4, 2022, to the rental unit address, which was the address for service provided by the landlord, but it was returned to sender. The landlord stated that he did not receive a copy of the tenants' second evidence package. He said that even though he provided the rental unit address as an address for service to the tenants, he moved, and he did not think he had to notify the tenants.

The tenants provided a Canada Post receipt and tenant SE confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' second evidence package on October 9, 2022, five days after its registered mailing, to the landlord's last known service address. I find that the landlord failed to notify the tenants that he moved and his service address changed, even though the landlord knew that there was an upcoming RTB hearing with the tenants on October 27, 2022, since both parties filed applications for this hearing.

I find that the landlord was deemed served in a timely manner, at least 14 days prior to this hearing, in accordance with Rule 3.15 of the RTB *Rules*. I considered the tenants'

second evidence package in this decision. The landlord did not object to me considering the evidence or demonstrate any prejudice regarding same.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to add a monetary claim against the tenants' pet damage deposit of $1,100.00. At this hearing, I informed the landlord that he could not amend his application at this hearing to add this claim or split his claim to add it in the future. However, upon further review, I find that the landlord was confused by the application and hearing process, as he explained at this hearing. He said that he intended to apply to retain both deposits of $2,200.00 but only indicated $1,100.00 as the total amount. I also note that when the landlord filed this application online it indicates "request to retain security and/or pet damage deposit." I find that it would be more efficient and effective to deal with the landlord's total claim against both deposits, since it is for the same type of carpet damage.

I cautioned the tenants that if I dismissed their application without leave to reapply, they would receive $0, and the landlord would be entitled to retain both their deposits of $2,200.00 and receive the $100.00 filing fee. The tenants repeatedly affirmed that they were prepared for the above consequences if that was my decision.

I cautioned the landlord that if I granted the tenants' application, that I would issue a monetary order for $4,500.00 against him, to pay the tenants double the value of both deposits, totalling $4,400.00, plus the $100.00 filing fee. The landlord repeatedly affirmed that he was prepared for the above consequences if that was my decision.

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 tenants' deposits?

Are the tenants entitled to the return of their deposits?

Is either party entitled to recover the filing fee for their 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 both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2020 and ended on February 28, 2022. Monthly rent in the amount of $2,200.00 was payable on the first day of each month. A security deposit of $1,100.00 and a pet damage deposit of $1,100.00 were paid by the tenants and the landlord continues to retain both deposits in full. A written tenancy agreement was signed by both parties. The tenants provided a written forwarding address to the landlord on February 28, 2022, by way of email. No move-in condition inspection report was completed by both parties. A move-out condition inspection report was completed by the landlord only, after the inspection was over, without the tenants' input, and a copy was provided to the tenants. The tenants did not provide written permission for the landlord to retain any amount from their deposits.

The landlord confirmed that he seeks to retain the tenants' deposits, totalling $2,200.00, plus the $100.00 application filing fee.

The tenants confirmed that they seek the return of double the value of their deposits of $2,200.00, totalling $4,400.00, plus the $100.00 application filing fee.

The landlord testified regarding the following facts. During the move-out condition inspection, the landlord and two witnesses noticed two stains on the carpets upstairs, related to pet urine. The landlord could not get it cleaned. There was a hole in the carpet in the master bedroom. The damages were not brought to the landlord's attention by the tenants. The landlord had a warranty on the carpets, but it had expired by the time the move-out inspection occurred. The landlord spoke to a couple of companies, and they said they could replace the carpets. He did not complete a move-in condition inspection because he was not fully aware of the process, and he is a new landlord. This were his first tenants. This is a brand-new build and he got the keys two days before the tenants moved into the rental unit, so there were no damages. There was $3,000.00 of damages on the move-out inspection date, and the landlord had no knowledge of it before. The landlord could not try to fix or replace it with the warranty because he did not know about it before. Whenever the tenants notified the landlord about any issues during the tenancy, the landlord took care of their concerns.

The tenant testified regarding the following facts. The tenants dispute the landlord's application. The tenants provided evidence with exhibits and a table of contents. There was no move-in inspection. The landlord's right to keep the tenants' deposits is

extinguished because no reports or copies were provided to the tenants. This was a new build and there were issues with the carpets from the beginning, as per the emails provided by the tenants. The landlord said that he missed it, and it would be fixed. The tenants spent $204.75 to clean the carpet at the rental unit. The tenants had no opportunity to clean the carpet for a second time because the landlord gave them a quote for $3,000.00 to replace the carpet. The landlord was ignorant about the tenancy process. The tenants provided a courtesy move-out notice to the landlord. The tenants allowed the landlords to show the unit with no notice.

Tenant SE testified regarding the following facts. There were no pet urine stains on the carpet and tenant SE told the landlord's girlfriend this, when the tenants moved out. There were only two coffee stains on the carpet, caused by the tenants. The stains did not come out when the tenants tried to clean it. The tenants thought that they would receive a carpet cleaning quote from the landlord for $100.00 to $200.00. However, the tenants got a quote to replace the carpet, just for two stains. The tenants provided an email chain from the developer to fix the carpets because it was worn down. The other stains in the landlord’s photographs were not caused by the tenants, so they are not responsible it. He was a good landlord during this tenancy. The tenants agree to pay the landlord $200.00 for the two stains that they caused to the carpet at the rental unit.

The landlord stated the following facts in response. The carpet was replaced before the tenants moved in because the landlord told the developer about the issues. The landlord has not replaced or cleaned the carpet, so he has not paid any costs for it yet. The landlord has to pay $1,200.00, as per the quote he provided, just to replace the hole in the master bedroom carpet. The landlord provided a quote for cleaning the carpet, in a text message, of $177 plus GST, so he rounded it up to $200.00 because GST is 12%. The landlord did not provide any invoices or receipts for the carpet cleaning or replacement. The quote, dated March 3, 2022, for the carpet replacement of $2,930.54, states that it can be withdrawn within 30 days. New tenants moved into the rental unit on March 1, 2022, the day after the tenants moved out on February 28, 2022. The new tenants still live there and currently pay a rent of $2,500.00 per month to the landlord, which is a $300.00 profit per month, as compared to the amount that the tenants were paying of $2,200.00 per month. The new tenants have not complained about any of the carpet issues. The landlord would have to ask the new tenants if they are agreeable to replacing the carpet during their tenancy, otherwise the landlord might have to do it after they leave. The landlord can provide evidence after the hearing, if required.

Analysis

Burden of Proof

I informed both parties, that as the applicants, they have the burden of proof, on a balance of probabilities, to prove their applications and monetary claims. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the applicants to provide evidence of their claims, in order to obtain monetary orders.

Both parties received application packages from the RTB, including instructions regarding the hearing process. Both parties served their applications to the other party, as required. Both parties received documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing their applications. These documents contain 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. I informed both parties that I had 30 days to issue a decision in writing after this hearing.

Both parties received detailed application packages 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 applicants to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the applicants to provide sufficient evidence of their claims, since they chose to file their applications 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…*

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 applicants 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 respondents 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 applicants 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.***

Landlord's Application

I find that the landlord did not properly present his 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 his claims and the documents he submitted.

This hearing lasted 64 minutes, so the landlord had ample opportunity to present his application and respond to the tenants' application and evidence. I repeatedly asked the landlord if he had any other information to add and if he wanted to respond to the tenants' submissions. I repeatedly asked the landlord about his claims, amounts, and evidence.

The landlord continues to hold the tenants' security and pet damage deposits, totalling $2,200.00. Over the period of this tenancy, no interest is payable on the deposits.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain $200.00 from the tenants' security deposit of $1,100.00, in full satisfaction of the monetary award. The tenants agreed to pay the above amount for carpet damage, at this hearing. I find that the above amount is reasonable and sufficient for the landlord's total costs claimed for carpet damage.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application to retain the remainder of the tenants' deposits of $2,000.00, 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 invoices or receipts to show if, when, or how he paid for carpet cleaning or replacement at the rental unit. The landlord has not completed any of the above work at the rental unit.

The landlord failed to complete a move-in condition inspection or report, as required by section 24 of the *Act*. Therefore, I cannot determine what carpet damages, if any, were present when the tenants moved in, even if this was a new unit. Both parties agreed that there were issues with the carpet before the tenants moved in, such the landlord said it had to be replaced. Further, the landlord completed the move-out condition inspection report alone without the tenants, after the inspection was over, even though the tenants were present during the inspection. Therefore, I cannot determine what damages, if any, were caused by the tenants to the carpet upon move-out.

I find that the landlord failed to provide sufficient evidence of why the entire carpet needs replacing rather than just cleaning or repair. While the landlord claimed that cleaning may not get rid of the stains and one of the carpets has a hole in it, the landlord failed to provide sufficient evidence that the tenants caused damages beyond reasonable wear and tear, warranting replacement of the carpet, as per Residential Tenancy Policy Guideline 1. I find that the two coffee stains mentioned by the tenants, does not warrant replacement of the entire carpet.

The landlord re-rented the unit to new tenants at a higher rent of $2,500.00, where he is collecting a profit of $300.00 per month, as compared to the tenants' previous rent of $2,200.00. The new tenants moved in on March 1, 2022, immediately after the tenants moved out on February 28, 2022. The landlord did not lose any money for rent, he did not have any issue finding new tenants, and the new tenants are still living at the rental unit, despite the carpet damage, without complaint. The landlord did not indicate how or

when he would complete any carpet cleaning or replacement, stating that he would have to ask the new tenants first and then determine whether it could be done during their tenancy or after. The landlord did not provide any specific details including any dates or time ranges when he could complete the above work.

The landlord requested $200.00 for carpet cleaning at this hearing. He provided one text message quote for carpet cleaning of $177.00 plus GST. There is no total amount with GST included in the quote. The landlord claimed that GST was 12% rather than 5%. The landlord did not provide a valid invoice, or receipt from a cleaning company on proper letterhead with the date, company name, estimated cost, number of workers required, work tasks required, or rate per hour or per worker or per task, or other such information.

The landlord provided one "proposal" for estimated carpet replacement of $2,930.54 total. The proposal for replacement of the master bedroom carpet only is $1,193.29, but the landlord requested $1,200.00 at this hearing. The proposal is dated March 3, 2022, after the new tenants moved in on March 1, 2022, so it is not clear whether any further potential damage was included in the proposal, from the new tenants. The proposal states that it can be withdrawn after 30 days of March 3, 2022. The landlord did not provide a valid invoice or receipt from a carpet company on proper letterhead with the date, company name, estimated cost, number of workers required, work tasks required, or rate per hour or per worker or per task, or other such information.

The landlord had ample time of almost eight months, from filing his application on March 4, 2022, to this hearing date of October 27, 2022, to provide the above evidence of proper receipts and invoices but failed to do so. I informed the landlord that he could not provide any evidence after this hearing, as the tenants would not have an opportunity to respond, and the landlord had ample time to provide it prior to this hearing.

As the landlord was only partially successful in his application, based only on what the tenants agreed to pay at this hearing, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenants.

Tenants' Application

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in

writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on February 28, 2022, and the tenants provided a written forwarding address to the landlord on the same date. Email service is permitted by section 88 of the *Act* and section 43 of the *Regulation*. The landlord did not have written permission to retain any amount from the tenants' deposits.

Although the landlord filed his application on March 4, 2022, which is within 15 days of February 28, 2022, I find that the landlord's right to claim against the tenants' deposits for damages was extinguished for failure to complete a move-in condition inspection and report, as required by section 24 of the *Act.*

In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the amount of their security and pet damage deposits of $2,200.00, totalling $4,400.00, from the landlord.

Although the tenants did not apply for double the value of their deposits, I am required to consider it since the tenants did not specifically waive their right to it, as per Residential Tenancy Policy Guideline 17. Further, the tenants testified at this hearing that they were seeking the return of double the value of their deposits.

As the tenants were successful in their application, I find that they are entitled to recover the $100.00 filing fee from the landlord.

Since the tenants agreed to pay the landlord $200.00 during this hearing, I have deducted the above amount from the tenants' total monetary award of $4,500.00, leaving a balance of $4,300.00 owed by the landlord.

Conclusion

I order the landlord to retain $200.00 from the tenants' security deposit of $1,100.00, in full satisfaction of the monetary award.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $4,300.00 against the landlord. The landlord must be served with this Order as soon as possible. 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: October 27, 2022

Residential Tenancy Branch