Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, 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 landlords applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord BK (the landlord) and tenant DJ (the tenant) attended the hearing. The landlord represented landlord LB. 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

Both parties agreed they agreed to serve documents via email.

The landlord emailed the tenant on April 29, 2022 the notice of hearing and a link for an online server with the evidence files.

The tenant confirmed she received the email with the notice of hearing. The tenant clicked on the link and was able to see the evidence files. However, the tenant can no longer see the evidence files, as they are not available anymore. The tenant did not download the evidence files, as she was not aware that they would expire.

The landlord affirmed he received an email from the server indicating the tenant downloaded the evidence files and that they would expire on May 06, 2022.

The landlord sent a second email to the tenant with 14 new evidence documents on December 18, 2022. The landlord stated that 13 of the new documents were previously available, but the landlord was not aware of the timeframes for service of evidence. The document entitled ‘payment 1a’ , a proof of payment for one of the expenses claimed, was only available on December 14, 2022.

The tenant confirmed she received the document entitled ‘payment 1a’ and did not serve her response evidence.

Section 89(1) of the Act states:

> An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
> (a)by leaving a copy with the person;
> (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
> (f)by any other means of service provided for in the regulations.

I accept both parties’ uncontested testimony that they agreed to serve documents via email and that the tenant received the email with the notice of hearing and the link for the evidence.

Sending a link for an online server is not an agreed method of service and is not a method of service authorized by section 89 of the Act.

Based on the tenant's more convincing testimony, I find the tenant was not aware that the evidence documents would no longer be available online and that the tenant was not able to access them online at a later time.

I find the landlord did not serve the evidence in accordance with section 89 of the Act or via email. Thus, I do not accept service of the landlord's evidence.

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.

I excluded the landlord's new evidence documents except document 'payment 1a', as they were available prior for 14 days before the hearing and the landlord served them less than 14 days prior to the hearing.

Based on the testimony of both parties, I find the document named 'payment 1a' is a new and relevant evidence. I accepted the service of the new evidence 'payment 1a', per Rule of Procedure 3.17.

Rule of Procedure 3.15 states:

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

I excluded the tenant's response evidence, per Rule of Procedure 3.15.

Issues to be Decided

Is the landlord entitled to:

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

Background and Evidence

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

Both parties agreed the tenancy started on December 01, 2019 and ended on March 30, 2022. Monthly rent was 700.00, due on the first day of the month. At the outset of the tenancy the landlord collected and currently holds in trust a deposit in the amount of $350.00.

Both parties agreed the tenant provided her forwarding address in writing and the landlord received it on April 14, 2022. The tenant authorized the landlord to retain the amount of $183.56 from the deposit for the payment of the March 2022 electricity bill and asked the landlord to return the balance of the deposit.

The landlord submitted this application on April 13, 2022.

The landlord testified the parties conducted a move in inspection and completed a condition inspection report (the report) at the outset of the tenancy.

The tenant said the parties inspected the rental unit at the outset of the tenancy but did not complete a report.

The landlord affirmed he is pretty sure that he sent "some paperwork" to the tenant and that he does not know if he signed the paperwork.

The landlord is claiming $366.51, as the tenant damaged the drywall in the bathroom during the tenancy. The landlord paid $280.00 for the labour and two invoices of $35.06 and $51.45 for the material to repair the drywall.

The tenant stated she did not damage the drywall and that it was already damaged when the tenancy started. The tenant testified she knows the contractor hired by the

landlord to repair the drywall and that the contractor informed her that the drywall was damaged when the tenancy started.

The landlord is claiming $695.00 for 23 hours of cleaning at the hourly rate of $30.00, as the tenant did not clean the 550 square feet, one bedroom rental unit. The landlord submitted the cleaning receipt indicating payment of $665.00. The landlord later paid an extra $30.00. The landlord said the oven, hood fan, woodstove, walls and windows were dirty and that there was mould in the rental unit.

The tenant affirmed the rental unit was clean when the tenancy ended, except the woodstove. The tenant stated that a representative of the landlord inspected the rental unit when the tenancy ended and concluded the rental unit was clean. The landlord testified it was not “fully clean”.

Both parties agreed that a document indicates the woodstove was cleaned for 15 minutes.

The landlord is claiming $308.85, as the tenant damaged the countertop. The landlord said the tenant did not regularly dry the countertop and the water damaged the countertop. The landlord affirmed that he paid two invoices of $306.74 and $2.11 and he repaired the countertop. The tenant stated the countertop was damaged when the tenancy started.

The landlord is claiming $183.56 for the electricity bill for March 2022. The tenant testified she authorized the landlord in writing to deduct this amount from the security deposit on April 14, 2022.

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:
>
> - 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.

Report and deposit

Section 23 of the Act states:

> (1)The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
> […]
> (4)The landlord must complete a condition inspection report in accordance with the regulations.

I find the landlord's testimony about completing the move in report was vague and confusing.

Based on the tenant's convincing testimony, I find the parties did not complete a move in report.

Section 24 of the Act states:

> (2)The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
> […]
> (c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find the landlord extinguished his right to claim against the deposit, per section 24(c) of the Act, as the landlord did not complete the move in report when the tenancy started.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The tenant provided the forwarding address in writing on April 14, 2022 and the tenancy ended on March 30, 2022. The tenant authorized the landlord in writing to retain $183.56 on April 14, 2022 for the payment of the March 2022 electricity bill. The landlord retained the full deposit in the amount of $350.00 and submitted this application on April 13, 2022.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished his right to claim against the deposit and did not return the balance of the deposit within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit retained.

Residential Tenancy Branch (RTB) Policy Guideline 17 states:

> The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
>
> Example C: A tenant paid $400 as a security deposit. The tenant agreed in writing to allow the landlord to retain $100. The landlord returned $250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained $50 without written authorization.
> The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is $350 ($400 - $100 = $300 x 2 = $600 less amount actually returned $250).

RTB Policy Guideline 17 also states that the arbitrator will double the value of the deposit when the landlord if the landlord submitted an authorization to retain the deposit after extinguishing this right:

> The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.
> […]
> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> […]
> if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to $332.88 (deposit in the amount of $350.00 subtracted the amount of $183.56 = $166.44 x 2).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit.

Drywall and countertop damages

The parties offered conflicting testimony about damages to the drywall and countertop. 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.

The landlord did not provide any documentary accepted evidence to support his claim that the tenant damaged the drywall and the countertop. The landlord did not call any witnesses.

I find the landlord failed to prove, on a balance of probabilities, that the tenant damaged the drywall and the countertop.

I dismiss the landlord's claims.

Cleaning

Section 37(2) of the Act states:

> Leaving the rental unit at the end of a tenancy
> 37(2) When a tenant vacates a rental unit, the tenant must
> (a)leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Residential Tenancy Branch Policy Guideline 1 states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

The parties offered conflicting testimony about the cleanliness of the rental unit, except the woodstove.

The landlord did not provide any documentary accepted evidence to support his claim that the tenant did not clean the rental unit, except the woodstove. The landlord did not call any witnesses.

I find the landlord failed to prove, on a balance of probabilities, that the tenant did not clean the rental unit, except the woodstove.

Based on the testimony of both parties, I find the landlord proved the tenant did not clean the woodstove when the tenancy ended and that the landlord paid a cleaner 15 minutes to clean it at the hourly rate of $30.00.

Based on the testimony of both parties, I find the landlord proved that he suffered a loss of $7.50 ($30.00 for 60 minutes / 15 minutes) because the tenant breached section 37(2) of the Act.

Thus, I award the landlord $7.50 for cleaning expenses.

<u>Electricity bill</u>
This claim is moot, as the parties agreed the tenant authorized the landlord in writing to retain the amount claimed from the deposit. This amount was considered in the heading ‘deposit’.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss this claim.

Filing fee and summary

As the landlord was partially successful in this application, I find the landlord is authorized to recover the $100.00 filing fee.

In summary, the landlord is awarded 107.50 and the tenant is awarded $332.88.

RTB Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

The tenant is awarded $225.38.

Conclusion

Pursuant to section 38 of the Act, I grant the tenant a monetary order in the amount of $225.38.

The tenant is provided with this order in the above terms and the landlords must be served with this order. Should the landlords 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: December 23, 2022

Residential Tenancy Branch