



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, DRI, OLC, FFT

Introduction

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

- a monetary order of \$2,350.00 for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order regarding a disputed additional rent increase of \$375.00, pursuant to section 43;
- an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord did not attend this hearing. The two tenants, tenant DT ("tenant") and "tenant VT," 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 27 minutes.

This hearing began at 9:30 a.m. and ended at 9:57 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the two tenants and I were the only people who called into this hearing.

The two tenants provided their names and spelling. Tenant VT provided her email address for me to send this decision to the tenants after the hearing. The tenant provided the rental unit address.

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, the two tenants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the two tenants. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests. They confirmed that they were ready to proceed with this hearing.

The tenant stated that the landlord was served with the tenants’ application for dispute resolution hearing package on November 16, 2022, by registered mail. The tenants provided a Canada Post receipt, and the tenant confirmed the tracking number verbally during this hearing. Tenant VT said that the mail was returned to the sender tenants as unclaimed. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants’ application on November 21, 2022, five days after its registered mailing.

The tenant confirmed that the tenants did not submit or serve any documentary or digital evidence to support this application. I informed them that the tenants had ample time to submit evidence prior to this hearing on March 13, 2023, since the tenants’ application was filed on October 31, 2022.

According to the RTB online dispute access site, the tenants were sent an email by the RTB on February 2, 2023, asking whether they wanted to proceed with this hearing, and they responded on February 3, 2023, saying that they wanted to proceed.

At the outset of this hearing, the tenant confirmed that the tenants are moving out of the rental unit on April 15, 2023. He said that the rental unit was sold to new owners on November 1, 2022, the tenants’ tenancy continued with the new owners, and the tenants did not name the new owners as landlords-respondents in this application. He confirmed that the tenants named their former landlord (“landlord”) as a landlord-respondent in this application.

I notified the tenants that their claim for an order to comply was dismissed without leave to reapply. I informed them that their tenancy is ending on April 15, 2023, and the above claim relates to an ongoing tenancy only. I notified them that they named the landlord as a respondent, who is a former owner of the rental unit, not the current owners, in this application. I informed them that I cannot make an order against a non-

owner of a rental unit for an ongoing tenancy claim. They affirmed their understanding of same.

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?

Are the tenants entitled to an order regarding a disputed additional rent increase?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the testimony of the tenants 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 tenant stated the following facts. This tenancy began on November 1, 2005, with a former owner. Monthly rent in the amount of \$925.00, minus \$100.00 for hydro, is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenants to the former owner, and it was transferred to the landlord, and then transferred again to the new owners. No written tenancy agreement was signed.

The tenant testified regarding the following facts. In February 2022, a person was looking after the rental unit for the landlord, and they said they were moving into the house for 6 months. The tenants were supposed to get a 2 Month Notice to move out from March 1 to May 1. The tenants were offered to pay \$1,800.00 to stay at the rental unit, then \$1,600.00, and finally \$1,300.00 plus hydro for the whole house. The tenants agreed to pay \$1,300.00 for increased rent to the landlord because they had no other place to go or rent. The tenants can send documents after this hearing. The landlord had no intention to move in and he painted the whole house. The tenants were told by the RTB and their advocate not to pay the increased rent to the landlord because it was extortion. The landlord was going to sell the place but decided to rent it out. The landlord sold the rental unit in October and new owners took over. The tenants were told not to pay the rent. The tenants want the \$375.00 back for the rent increase they paid plus the \$100.00 filing fee. The tenants paid rent by cash or e-transfer. The tenants did not provide e-transfer documents or bank statements to prove that they paid a rent increase by e-transfer or cash, with this application. The \$2,350.00 for

compensation is for extra rent paid on top of the \$925.00 to \$1,300.00, plus the \$100.00 filing fee.

Analysis

Burden of Proof

The tenants, as the applicants, have 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 confirmed that they received a document entitled “Notice of Dispute Resolution Proceeding,” dated November 15, 2022 (“NODRP”) from the RTB, after filing this application, and they had a copy in front of them during this hearing. 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 (which I read aloud during this hearing):

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.*

I informed the tenants that the NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document. I notified them that I had 30 days to issue a written decision, regarding their 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*, despite having multiple opportunities during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

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

During this hearing, I asked the tenants whether they wanted to add any information and present any further submissions. This hearing lasted 27 minutes, and only the tenants attended the hearing, not the landlord. The tenants were given ample and multiple opportunities to present their application 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 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 the tenants at this hearing.

I dismiss the tenants' application for \$2,725.00 without leave to reapply. This includes \$2,350.00 for monetary compensation from paying a rent increase and \$375.00 for a disputed rent increase. The above amounts have been taken directly from the tenants' application on the online RTB dispute access site, which I repeatedly asked them during this hearing, because they provided different amounts and were unsure of their own application.

The tenants did not testify about the date they started paying a rent increase to the landlord, how long they paid it for, how they arrived at the above number of \$2,350.00, or other such information.

The tenants did not provide any documentary evidence, such as bank documents or e-transfer emails, to prove that they paid a rent increase by e-transfer or withdrew cash from their bank accounts, to pay the landlord. They did not provide documents to prove that they paid a rent increase to the landlord, how much was paid, when it was paid, how it was paid, who it was paid to, or other such information.

The tenants confirmed that they had e-transfer documents to confirm rent payments, but they did not provide same as evidence for this hearing, but they offered to provide it after this hearing. I informed them that they had ample time from filing this application on October 31, 2022, to this hearing date of March 13, 2023, a period of almost 4.5 months, to provide the above evidence and failed to do so. I find that the tenants failed the above test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

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: March 13, 2023

Residential Tenancy Branch