



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenants' application, filed on August 15, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$1,000.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation"), or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the remaining security deposit of \$301.00, totalling \$602.00, pursuant to section 38; 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 GP ("tenant") and "tenant AH," attended this 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 41 minutes from 1:30 p.m. to 2:11 p.m.

I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding. I also confirmed on the teleconference system that the two tenants and I were the only people who called into this hearing.

Both tenants confirmed their names and spelling. The tenant provided the landlord's name and spelling. The tenant provided his email address for me to send a copy of this decision to both tenants after this hearing.

The tenant provided the rental unit address. The tenant identified himself as the primary speaker for the tenants at this hearing. Tenant AH agreed to same.

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

I explained the hearing process to both tenants. I informed them that I could not provide legal advice to them. 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.

I provided the tenants with ample and additional time during this hearing to look up their evidence and information, as per their request, because they did not have all their documents in front of them.

Preliminary Issues – Service of Documents and Amendment

The tenant testified that the landlord was served with the tenants’ application for dispute resolution hearing package on August 31, 2022, by way of registered mail. The tenants provided a Canada Post receipt, tracking number, and tracking report with their application. The tenant confirmed the above Canada Post tracking number verbally during this hearing. He affirmed that the mail was sent to the rental unit address, which was provided by the landlord as an address for service in emails from June 30, 2022.

The rental unit address is also noted as the landlord’s service address on the parties’ written tenancy agreement, a copy of which was provided by the tenants with their application. The Canada Post tracking number and report provided by the tenants indicate that the mail was delivered and signed on September 2, 2022. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants’ application on September 5, 2022, five days after its registered mailing.

The tenant claimed that the landlord told the tenants that she received their application and sent evidence to them in response. The landlord uploaded her evidence to the RTB online dispute access site. However, the landlord did not attend this hearing, to present her response and evidence.

The tenant affirmed that the tenants did not amend their application to increase their monetary claim, by filing an amendment form, prior to this hearing. He agreed that the tenants provided an excel spreadsheet, asking for double the value of their entire claim of \$1,401.00 (\$1,000.00 for compensation, \$301.00 for the remaining security deposit, and \$100.00 for the application filing fee), for a total of \$2,802.00, because they thought they were entitled to it, as per the *Act*.

I notified the tenants that they did not file an amendment to increase their monetary claim, and no provision of the *Act* entitles them to double the value of their entire claim, including the filing fee, except for the security deposit. Therefore, I informed them that they are not entitled to double the value of their monetary compensation of \$1,000.00 or double the value of their \$100.00 application filing fee. They affirmed their understanding of same.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement?

Are the tenants entitled to recover double the amount of their security deposit?

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

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and 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 testified regarding the following facts. This tenancy began on September 1, 2020 and ended on May 31, 2022. Monthly rent of \$3,000.00 was payable on the first day of each month. A security deposit of \$1,200.00 was paid by the tenants and the landlord returned \$898.72 to the tenants and retained \$301.28. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed for this tenancy, but a move-out condition inspection report was not completed by the landlord. The tenants provided a written forwarding address to the landlord on July 22, 2022, by way of email, to the landlord's email address that was used as a primary method of communication during this tenancy. The landlord

responded acknowledging that she received the tenant's email with their forwarding address. The tenants did not receive an RTB application from the landlord, to retain any amount from the tenants' security deposit. The landlord did not have written permission to retain any amount from the tenants' security deposit.

The tenant testified regarding the following facts. The tenants seek double the amount of their security deposit back. The landlord was not entitled to deduct any amount from their security deposit. The tenants seek \$1,000.00 in compensation. The addendum to their tenancy agreement states that for building work at the property, the tenants are entitled to a rent reduction of \$500.00 per month for the inconvenience. The tenants were occupying an apartment on the third floor of a building and there was scaffolding, blue screen windows, and patio work being done during their tenancy. They had to work from home due to the covid-19 pandemic. This demolition was in September and October 2020 and the tenants want \$500.00 per month, for a total of \$1,000.00. They provided photographs of the building envelope being ripped and cladded from building work. There is a contract for \$500.00 off rent. They provided emails with the landlord where she disputed this cost. It is clear that the building work and demolition was happening. The tenants knew about the building work when they moved in, but the landlord said it would be completed by September. The landlord told them if there were any delays, the tenants would get compensation. The tenants' apartment windows were covered up.

The tenant stated the following facts. The tenants have emails with the landlord from September 2020, indicating that they could not settle the issue at that time, but they would deal with it later. The work was done in the first 3 months of their tenancy. They did not provide proof that they paid full rent to the landlord for September and October 2020, even though they sent the rent by e-transfer, and they have emails confirming same. It can be inferred that full rent was paid by the tenants to the landlord because the landlord would have given the tenants a notice to end tenancy for unpaid rent, she would not have extended their tenancy, and she would have retained more money from their security deposit for the rent, if they had not paid it. The exterior was removed and disposed from September 6 to 12, 2020. Further work was done from September 13 to 19, 2020 and from September 20 to 26, 2020. The tenants provided a graph chart of the work done in September and October 2020. The landlord provided this chart to the tenants from the demolition company because she was on strata, and it is the schedule of the work that was done, and it is a third-party document.

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, RTB Rules*, and Residential Tenancy Policy Guidelines require the tenants to provide evidence of their claims, in order to obtain monetary orders.

The tenants received an application package from the RTB, including instructions regarding the hearing process. They received a document entitled “Notice of Dispute Resolution Proceeding,” dated August 31, 2022 (“NODRP”) from the RTB, after filing this 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 (my emphasis added):

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 and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed the tenants that I had 30 days from this hearing date, to issue a written decision. They affirmed their understanding of same.

The tenants received a detailed application package from the RTB, including the NODRP document, 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 tenants to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenants 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 failed to sufficiently present their application 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 tenants failed to sufficiently review, reference, and explain their claims and the documents they submitted in support of this application.

This hearing lasted 41 minutes, so the tenants had ample time and opportunity to present this application, as the landlord did not attend. I repeatedly asked the tenants if they had any other information to present. I repeatedly asked them about their claims and evidence. I provided them with ample and additional time during this hearing to look up information and search through their evidence, since they did not have all of their documents in front of them.

Monetary Compensation of \$1,000.00

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.

I make the following findings on a balance of probabilities, based on the testimony and evidence of the tenants. I dismiss the tenants' application for \$1,000.00, without leave to reapply.

The tenants stated the following regarding this claim on the RTB online dispute access site:

"Repayment of money owed from an addendum to the contract that agreed to reduce rent by \$500 per month while demolition was ongoing." [sic]

Section 26 of the *Act* requires the tenants to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, unless the tenant has an Arbitrator's order to deduct rent or the tenant has paid for emergency repairs that can be deducted from rent, in accordance with section 33 of the *Act*. I find that the tenants did not have any entitlement to deduct rent, as per the above.

The tenants claimed that they were entitled to deduct \$500.00 per month, as per the addendum to their tenancy agreement, for ongoing construction work and delays at the rental property.

I find that the tenants failed to provide sufficient documentary evidence to show that they paid full rent for the months of September and October 2020, to the landlord, for this rental unit and tenancy. The tenant confirmed that the tenants paid rent to the landlord, by way of email e-transfers, and that there is a record of these emails, showing the money that was sent for rent by the tenants and received by the landlord. However, he agreed that the tenants did not provide copies of these e-transfer email documents to confirm that they actually paid rent to the landlord during the above time period. He said that it could be inferred.

However, I cannot infer that the landlord received rent from the tenants during the above time period. I find that the tenants are not entitled to a rent reduction of \$500.00 per month from September to October 2020, totalling \$1,000.00, because they failed to provide sufficient documentary evidence that they actually paid full rent to the landlord for the above time period. As noted above, the tenants, as the applicants, have the burden of proof, on a balance of probabilities, to provide sufficient documentary evidence, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The tenants had ample time of almost 9 months, from filing their application on August 15, 2022, to this hearing date of May 11, 2023, to provide the above evidence and failed to do so.

Tenants' Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, 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 deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities, based on the testimony and evidence of the tenants.

The following facts are undisputed. The tenants paid a security deposit of \$1,200.00 to the landlord. The landlord returned \$898.72 to the tenants and retained \$301.28. This tenancy ended on May 31, 2022. The landlord was deemed to have received a written forwarding address from the tenants on July 25, 2022, by way of email, three days after it was sent on July 22, 2022. Email is permitted by section 88 of the *Act* and section 43 of the *Regulation*. The landlord confirmed receipt of the tenants' forwarding address in a reply email, dated August 4, 2022, which was provided by the landlord, and uploaded to the RTB online dispute access site, as evidence for this hearing. The landlord sent evidence to the tenants in reply to this application. The landlord did not file an RTB application to retain any amount from the tenants' security deposit. The landlord did not have written permission to retain any amount from the tenants' security deposit.

The landlord did not return the remainder of the tenants' security deposit of \$301.28, whether within 15 days of the end of the tenancy on May 31, 2022, or deemed receipt of the tenants' written forwarding address date of July 25, 2022.

The landlord's right to retain the tenants' security deposit for damages, was extinguished for failure to complete a move-out condition inspection report with the tenants, contrary to section 36 of the *Act*.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the amount of their original security deposit of \$1,200.00, totalling \$2,400.00. The original amount of the security deposit must be doubled, and the returned portion is then deducted from this amount, as per Residential Tenancy Policy Guideline 17.

Interest is payable on the tenants' original security deposit of \$1,200.00, during the period of this tenancy. No interest is payable for the years from 2021 to 2022. Interest of 1.95% is payable for the year 2023.

Interest is payable from January 1 to May 11, 2023, since the date of this hearing was May 11, 2023. Although the date of this decision is May 15, 2023, this is not within the control of either party. This results in \$8.40 interest on \$1,200.00 based on the RTB online deposit interest calculator. Interest is calculated based on the original amount of the security deposit of \$1,200.00, and is not doubled, as per Residential Tenancy Policy Guideline 17.

I find that the tenants are entitled to receive double the value of their security deposit of \$1,200.00, totalling 2,400.00, plus \$8.40 in interest, minus the portion already returned of \$898.72, leaving a balance of \$1,509.68.

As per section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I am required to consider the doubling provision, even though the tenants did not amend their application prior to this hearing, to add this claim. The tenants did not specifically waive their right to it, and actually requested it at this hearing. I informed the tenants of same during this hearing and they affirmed their understanding of same.

The tenants only requested double the value of their remaining security deposit of \$301.00. rather than \$301.28, the actual amount retained by the landlord. The tenants only requested double the amount of \$301.00, for a total of \$602.00, rather than double the amount of \$1,200.00, the original amount of their deposit, totalling \$2,400.00. However, as noted above, I am required to double the original amount of the security deposit of \$1,200.00, totalling \$2,400.00, add interest of \$8.40 on the original amount of \$1,200.00, even though the tenants did not request it, and then deduct the amount

returned by the landlord of \$898.72. This is required as per section 38 of the *Act* and Residential Tenancy Policy Guideline 17.

Filing Fee

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

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,509.68 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: May 15, 2023

Residential Tenancy Branch