Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, FFL, MNSD, MNDCT, FFT

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution, in which they applied for a monetary Order for money owed, for the return of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant with the initials “FC” (FC) stated that the Tenants’ Application for Dispute Resolution and evidence submitted to the Residential Tenancy Branch on February 09, 2023 was served to the Landlord, by registered mail, on February 17, 2023. The Landlord acknowledged receiving these documents and the Tenants’ evidence was accepted as evidence for these proceedings.

The Landlord stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in November and December of 2022 was sent to the Tenants, via registered mail, although he could not recall the date of service.

FC stated that the Landlord’s Dispute Resolution Package and evidence was sent to the Tenants on December 22, 2022. The Tenant submitted a copy of a package addressed to the female Tenant (CC). On the basis of this testimony, I find that these documents

were received by the Tenants and the Landlord's evidence was accepted as evidence for these proceedings.

FC submits that this package was not served within the timelines established by the Residential Tenancy Branch Rules of Procedure. In support of this submission the Tenants submitted a copy of the Landlord's Notice of Dispute Resolution, which was generated by the Residential Tenancy Branch on November 29, 2022.

Even if I concluded that the Landlord's Dispute Resolution Package was not served to the Tenants within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, as is required by Rule 3.1 of the Residential Tenancy Branch Rules of Procedure, I find it reasonable to continue with the proceedings.

Rule 9.1 of the Residential Tenancy Branch Rules of Procedure stipulates that failing to comply with these Rules of Procedure will not "in itself stop or nullify a proceeding, a step taken, or any decision or order made in the proceeding". The deciding factor on whether an Application for Dispute Resolution should proceed is whether the responding party has had a reasonable opportunity to respond to the claims being made by the other party.

In circumstances where a Respondent has not had sufficient time to consider the claims being made by an Applicant because the Dispute Resolution Package was not served in a timely manner, I would consider dismissing the Application for Dispute Resolution or adjourning the proceedings. In these circumstances, the Tenants have had ample time to consider and respond to the claims being made by the Landlord and I find that the Tenants are not disadvantaged by the fact the Landlord's Dispute Resolution Package was not mailed until December 22, 2022.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?
Should the security deposit be returned to the Tenants or retained by the Landlord?
Are the Tenants entitled to compensation for repairs made to the unit?

Background and Evidence

The Landlord and the Tenants agree that:

- the Tenants were living in the rental unit when the Landlord purchased it in 2006;
- rent was due by the first day of each month;
- the rental unit was vacated on September 30, 2022;
- the Tenants first provided the Landlord with a forwarding address in writing, via email, on January 19, 2023;
- the Tenants did not give the Landlord written authority to retain any portion of their security deposit; and
- the Landlord has not returned the security deposit.

FC stated that he thinks a security deposit of $750.00 was paid to the original landlord on August 02, 2005. The Landlord stated that a security deposit of $753.28 was paid to the original landlord, although he does not know when it was paid.

The Landlord stated that the written tenancy agreement which the parties allegedly signed after the tenancy began and which he submitted as evidence for these proceedings, declares that a security deposit of $753.28 was paid. FC stated that the Tenants did not receive a copy of the tenancy agreement in the evidence served to them by the Landlord and he does not recall signing one. As the Tenants have clarified that this particularly document was not received, it was not considered as evidence for these proceedings. I am satisfied I can fairly determine the issues in dispute without physically viewing this agreement.

FC stated a condition inspection report was completed when they first moved into the unit, which the Landlord does not dispute. The parties agree that a condition inspection report was completed on December 01, 2006, after the Landlord purchased the unit.

The Landlord and the Tenants agree that the rental unit was jointly inspected on September 27, 2022, however the Landlord did not complete a final condition inspection report in the presence of the Tenant. The Landlord stated that he completed the report

on September 27, 2022, after the Tenant left the unit. The Landlord and the Tenants agree that a copy of this report was sent to the Tenants, via email, on October 21, 2022.

The Landlord is seeking compensation, in the amount of $553.69, for repairing the shower door. The Landlord and the Tenants agree that the glass shower door was shattered during the tenancy.

FC stated that the door shattered when it was opened during normal use. He stated that when it was repaired, the technician advised that the rubber bumper was missing and that the glass was broken when it came into contact with a screw that should have been protected by the rubber bumper. He stated that the Tenants were not aware the rubber bumper was missing.

The Landlord stated that the technician did not tell him a bumper was missing and that the Tenants did not report any problem with the shower door prior to the glass shattering. He stated that the door was installed in 2005.

In the Application for Dispute Resolution the Landlord claimed compensation of $200.00 for “excessive damage over and above wear and tear” and because they did not request permission to have a dog. At the hearing the Landlord stated that this claim related to damage to the carpet and marks on the walls. FC stated that the Tenants did not understand this claim related to damage to the carpet and/or walls.

At the hearing the Landlord stated that he is also claiming compensation for a strata fine and some bounced cheques.

The Tenants are seeking compensation for time spent repairing various items at the rental unit. The Landlord stated that he never agreed to pay any specific amount for repairing any of the items in the rental unit. FC stated that the Landlord implied he would be compensated for his time.

In an email, dated November 16, 2022, the Landlord declares that he “will take care of the Tenant” if he installs a garburator. (Page 41 of Tenants’ evidence)

The Landlord stated that he forgot to pay the Tenants for the cost of the garburator, although he has since done so. The Tenants agree they have been reimbursed for the cost of the garburator, but he has not paid the interest the Tenants are claiming.

The Landlord stated that he forgot to pay the Tenants to install the garburator. He stated that they never agreed on an amount but he is now willing to pay the Tenants $100.00 for the installation. FC stated that he is not willing to accepted $100.00 for the installation. In the monetary claim the Tenants have claimed compensation for labor in the amount of $427.50.

At the hearing the Tenants were told I would not be considering any claims for repairing the rental unit unless those costs related to an emergency repair.

When asked if any of the Tenants' claims relate to an emergency repair, CC stated that the Tenants removed several branches that fell on their driveway after an ice storm. She stated that this was an emergency because the branches needed to be removed so they could move their vehicle from the property. FC stated that this emergency was not reported to the Landlord prior to the branches being removed.

When asked if any of the Tenants' claims relate to anything other than emergency repairs or repairs made by the Tenant to the unit, the Tenants referred to a $300.00 claim for their "insurance deductible". (Item 4)

FC stated that a snow removal contractor damaged the Tenant's vehicle while the contractor was removing snow on behalf of the strata corporation. He stated that The Tenants have not been compensated for the insurance deductible paid the repair their vehicle.

The Tenants are seeking compensation, in the amount of $750.14, because there was a cold spot in the kitchen. FC speculates that the cold spit was due to a lack of proper insulation. FC calculates that they paid an additional $750.14 in heating costs as a result of the cold spot.

The Tenants submitted a heat loss assessment at page 46 of their evidence package. FC stated that he is an engineer and he believes he is capable of completing this assessment.

FC stated that there is a cold area of approximately 4 square meters in the kitchen; that it was reported to the Landlord in 2006; and that it was never repaired.

The Landlord stated that the Tenant is not certified to complete a heat loss assessment.

Analysis

On the basis of the undisputed evidence, I find that the Tenants were living in the rental unit when it was purchased in 2006 and that the unit was vacated on September 30, 2022.

On the basis of the undisputed testimony, I find that the Tenants and the new Landlord entered into a written tenancy agreement which declared that the tenancy would begin on April 01, 2007.

I favor the testimony of the Landlord, who declared that a security deposit of $753.28 was paid, over the FC's testimony that a deposit of $750.00 was paid. I favor the Landlord's testimony, in part, because his testimony is based on a document he allegedly possesses and because FC's testimony is based on memory. More importantly, I favour the Landlord's testimony because his testimony benefits the Tenants and I can see no reason why the Landlord would declare that the Tenants paid more than they actually paid.

On the basis of FC's testimony and in the absence of any evidence to the contrary, I find that the security deposit was paid to the original owner on August 02, 2005.

Section 35(1) of the *Act* stipulates that the landlord and the tenant must jointly inspect the rental unit at the end of the tenancy. On the basis of the undisputed evidence, I find that this occurred on September 27, 2022.

Section 35(3) of the *Act* stipulates that the landlord must complete a condition inspection report. On the basis of the undisputed evidence, I find that the Landlord completed a condition inspection report, albeit in the absence of the Tenants.

Section 35(4) of the *Act* stipulates, in part, that the landlord and the tenant must sign the condition inspection report. I find that the Tenants did not have an opportunity to sign the report in a timely manner, as it was not presented to them until many weeks after it was completed.

Section 35(4) of the *Act* stipulates, in part, that the landlord must give the tenant a copy of the report "in accordance with the regulations". Section 18(b) of the Residential Tenancy Regulation stipulates that the report must be provide to the tenant within 15

days after the later of the date the condition inspection is completed, and the date the landlord receives the tenant's forwarding address in writing. As the evidence shows that the Tenants' forwarding address was not provided to the Landlord, in writing, until January 19, 2023 and the report was provided to the Tenants on October 21, 2022, I find that the Landlord complied with section 35(4) of the *Act.*

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Landlord complied with section 38(1) of the *Act*, as the Landlord filed an Application for Dispute Resolution less than 15 days after the tenancy ended and the forwarding address was received.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

On the basis of the undisputed evidence, I find that the glass in the shower door shattered during the tenancy.

On the basis of the FC's testimony, I find it likely that the door shattered because a rubber bumper was missing. Given the age of the door, I find that the bumper fell of due to normal wear and tear, rather than misuse by the Tenants.

As the resulting damage to the door occurred because the missing bumper, I find that the Tenants are not obligated to repair the damaged door. I therefore dismiss the claim to repair the shower door.

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Landlord's Application for Dispute Resolution does not provide full details of the Landlord's claim for $200.00.

In the Application for Dispute Resolution the Landlord declared that the claim for $200.00 was for "excessive damage over and above wear and tear" and because the Tenant did not request permission to have a dog. I find that this declaration does not clearly explain to the Tenants the reasons the Landlord is seeking compensation for $200.00. At the hearing the Landlord stated that this claim related to damage to the carpet and marks on the walls, however I find that was not made clear to the Tenants in the Application for Dispute Resolution. This conclusion was based, in part, by FC's testimony that the Tenants did not understand the nature of the $200.00 claim.

As the Landlord did not clearly explain the nature of the $200.00 claim in the Application for Dispute Resolution, I decline to consider that claim, pursuant to section 59(5)(a) of the *Act*.

I find that the Application for Dispute Resolution does not clearly inform the Tenants that the Landlord is seeking compensation for "bounced cheques" and a strata fine. Although the Landlord refers to bounced cheques and a strata fine the Landlord does not clearly specify that the Landlord is seeking compensation for those issues.

In the Application for Dispute Resolution the Landlord claimed $553.69 for the shower door, $200.00 for "excessive damage", and $100.00 for the filing fee, for a total of $853.69. As the Landlord's total claim was for $853.69, I find that the Tenants could not reasonably have understood that the Landlord was seeking compensation for anything other than those 3 items. I therefore decline to consider any claims other than those 3 items.

There is nothing in the *Act* that requires a tenant to make repairs on behalf of the landlord. In the event a tenant chooses to make repairs to the rental unit and the landlord agrees to pay the tenant an amount for the cost of those repairs, the parties have entered into an employment contract and there would be an expectation that the landlord would pay the agreed amount once the repairs were complete.

The employment contract is separate from their tenancy agreement and is not subject to the rights and obligations granted by the *Act* or associated legislation. I do not have

authority to determine disputes that relate to employment contracts that are not directly tied to a tenancy and, as such, I decline to consider the Tenants' claims for making various repairs.

I might have jurisdiction in circumstances where a landlord agreed to allow a tenant to withhold rent in exchange for labor completed at the residential property, as that is directly tied to the tenancy. That is not the situation here, as there has never been an agreement that the Tenant could withhold rent in exchange for labor.

The Tenants retain the right to claim compensation for repairs made to the unit in a court of competent jurisdiction.

Section 33(5) of the *Act* requires landlords to compensate tenants who make "emergency repairs" in certain circumstances. As the parties were advised at the hearing, the *Act* defines "emergency repairs: as repairs that are urgent and made for the purpose of repairing:

(i)major leaks in pipes or the roof,
(ii)damaged or blocked water or sewer pipes or plumbing fixtures,
(iii)the primary heating system,
(iv)damaged or defective locks that give access to a rental unit,
(v)the electrical systems, or
(vi)in prescribed circumstances, a rental unit or residential property.

Even if I concluded that the need to remove the branches constituted an emergency repair, pursuant to section 33(5)(iv) of the *Act*, I would conclude that the Tenants were not entitled to compensation for removing the branches.

Section 33(3)(b) of the *Act* stipulates that a tenant may have emergency repairs made only if the tenant has made at least two attempts to advise the landlord of the emergency. On the basis of FC's testimony, I find that the Landlord was not informed of the need to remove the branches prior to the branches being removed. I therefore find that the Tenants did not comply with section 33(3)(b) of the *Act*.

Section 33(6) of the *Act* stipulates that a landlord does not have to reimburse a tenant for emergency repairs if the tenant made the repairs before one or more of the

conditions in section 33(3) were met. As the Tenants removed the branches before notifying the Landlord of the need to remove the branches, as required by section 33(3)(b) of the *Act*, I find that they are not entitled to compensation for moving branches.

I find that I do not have authority to determine whether the Landlord is obligated to compensate the Tenants for the insurance deductible they paid after their vehicle was struck by a snow removal vehicle hired by the strata corporation. That is a claim beyond the jurisdiction of the *Act*. The Tenants retain the right to file a claim for this loss in a court of competent jurisdiction.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Although the condition inspection report that was completed in 2006 declares there is a "cold spot" in the kitchen, I find that the Tenants have submitted insufficient evidence to establish that the "cold spot" does not comply with health, safety and housing standards or that it renders the unit unsuitable for occupation. In the absence of such evidence, I find that the Tenants have failed to establish that the Landlord was required to repair the cold spot. I therefore find that the Tenants are not entitled to compensation flowing from the Landlord's failure to repair the cold spot.

I find that the Landlord has failed to establish the merit of the Landlord's Application for Dispute Resolution I dismiss the claim for recovering the fee for filing an Application for Dispute Resolution.

I find that the Tenants' Application for Dispute Resolution is largely without merit and I dismiss their application to recover the fee for filing an Application for Dispute Resolution. Although I am ordering the return of the security deposit, I would have granted that order on the basis of the Landlord's Application for Dispute Resolution. The security deposit would have been ordered returned to the Tenants even if they had not filed an Application for Dispute Resolution.

Conclusion

The Tenants have failed to establish they are entitled to compensation from the Landlord.

The Landlord has failed to establish he is entitled to compensation from the Tenants. As the Landlord has failed to establish a right to keep any portion of the Tenants' security deposit, I find it must be returned to the Tenants.

Based on these determinations I grant the Tenants a monetary Order for $785.21, which includes $753.28 for the security deposit plus interest of $31.93.
In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: May 10, 2023

Residential Tenancy Branch