



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on September 14, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$100.00 for damage to the rental unit, pursuant to section 67;
- authorization to retain a portion of the tenants' security deposit of \$1,100.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord's agent and the two tenants, tenant JR ("tenant") and "tenant CL" 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 24 minutes from 1:30 p.m. to 1:54 p.m.

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

The landlord's agent confirmed that the landlord owns the rental unit. She provided the rental unit address. She said that she had permission to represent the landlord at this hearing.

The tenant identified himself as the primary speaker for the tenants at this hearing. Tenant CL 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, all hearing participants separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. I informed them that I could not provide legal advice to them. 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 this application, and they wanted me to make a decision. Both parties were given multiple opportunities to settle during this hearing but declined to do so.

I repeatedly cautioned the tenants that if I granted the landlord’s full application, the tenants could be required to pay the landlord \$200.00, including the \$100.00 filing fee. The tenants repeatedly affirmed that they were prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlord’s agent that if I dismissed the landlord’s application without leave to reapply, the landlord could receive \$0, and the landlord may have to return the tenants’ security deposit of \$1,100.00. The landlord’s agent repeatedly affirmed that the landlord was prepared for the above consequences if that was my decision.

The tenant confirmed receipt of the landlord’s application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both tenants were duly served with the landlord’s application.

The tenant confirmed that the tenants did not provide any documentary or digital evidence for this hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain a portion of the tenants’ security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the landlord's 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 the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2021 and ended on September 1, 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 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address by registered mail, which was received by the landlord on September 29, 2022. The tenants did not provide written permission for the landlord to retain any amount from their security deposit.

The landlord applied for a monetary order for damages of \$100.00, to retain a portion of the tenants' security deposit of \$1,100.00, and to recover the \$100.00 application filing fee.

The landlord's agent testified regarding the following facts. When the tenants moved in, the locks were good on the upper level. When the tenants moved out, the lock was damaged and destroyed. The landlord hired a locksmith to replace it for \$100.00.

The tenant testified regarding the following facts. A walk-through inspection was done when the tenants moved in. The landlord said that the tenants could not use a bedroom in the rental unit because the landlord's stuff was in there. The landlord's agent H opened the door, it was not locked, and they looked inside the room. The tenants put a table and chairs in the bedroom to make space. The door to the bedroom was open the whole time during the tenants' one year tenancy. The tenants did not break the lock and the door was opened by the landlord's agent H.

The landlord's agent stated the following facts in response. There was an addendum after the tenancy agreement. The one bedroom was always locked, and the tenants had no access to go inside. In the move-in inspection, if something was wrong the tenants needed to point it out and put it on the move-in report. The move-in report was

good, and the tenants signed it. On move-out, the inspection showed that the lock was damaged.

Tenant CL stated that the tenants did not break any lock.

Analysis

Burden of Proof

I informed both parties of the following information during this hearing. The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to prove the landlord's application and monetary claims. The *Act*, *Regulation*, *RTB Rules*, and *Residential Tenancy Policy Guidelines* require the landlord to provide evidence of her monetary claims, in order to obtain a monetary order. Both parties affirmed their understanding of same.

The landlord received an application package from the RTB, including instructions regarding the hearing process. She received a document entitled "Notice of Dispute Resolution Proceeding," dated September 26, 2022 ("NODRP") from the RTB, after filing this application. This document contains 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 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 written decision after this hearing.

The landlord 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 landlord to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of her claims, since she chose to file this application on her 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 landlord's agent did not sufficiently present the landlord's 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's agent failed to sufficiently review and explain the landlord's claims and the documents submitted with the landlord's application.

This hearing lasted 24 minutes, so the landlord's agent had ample time and opportunity to present the landlord's application and respond to the tenants' evidence. I repeatedly

asked the landlord's agent if she had any other information to add and if she wanted to respond to the tenants' submissions.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claims. To prove a loss, the landlord 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 tenants 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 landlord 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 dismiss the landlord's application for \$100.00, 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 a receipt to show if, when, or how she paid for the damages to the lock, as per Residential Tenancy Policy Guideline 16 above. The landlord provided an invoice which does not state her name, the specific area/door where the lock was fixed, who caused the damage, or the signature of the person who produced the invoice. It is a blurry invoice that is difficult to read the name of the company and appears to state "paid in" but does not indicate whether any payment was made in full, the amount paid, when it was paid, how it was paid, who paid it, or other such information. It does not provide a breakdown of materials or labour, just one cost of \$100.00. The landlord's agent did not sufficiently reference or explain this invoice during this hearing.

I also note that the photographs provided by the landlord show a door with a door handle, where I cannot see any damages to the lock. I find that any potential damages to the lock are not beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1. The landlord's agent did not sufficiently reference or explain these photographs during this hearing.

The landlord had ample time of almost 9 months, from filing this application on September 14, 2022, to this hearing date of June 6, 2023, to provide the above evidence but failed to do so.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenants. This claim is also dismissed without leave to reapply.

Tenants' Security Deposit

The landlord applied to retain a portion of the tenants' security deposit in this application. The landlord continues to hold the tenants' security deposit of \$1,100.00.

Although the tenants did not apply for the return of their deposit, I am required to consider it since the landlord filed this application to retain the deposit, as per Residential Tenancy Policy Guideline 17.

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 tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on September 1, 2022. The landlord did not have written permission from the tenants to retain any amount from their security deposit. The tenants provided a written forwarding address to the landlord, by way of registered mail, which was received by the landlord on September 29, 2022.

The landlord filed this application on September 14, 2022, which is within 15 days of the end of tenancy date of September 1, 2022, and the written forwarding address date of September 29, 2022. Therefore, I find that the tenants are not entitled to double the value of their security deposit.

Over the period of this tenancy, interest is payable on the tenants' security deposit. No interest is payable for the years 2021 and 2022. Interest of 1.95% is payable for the year 2023. Interest is payable from January 1, 2023 to June 6, 2023, since the date of this hearing was June 6, 2023. This results in \$9.23 interest on \$1,100.00 based on the RTB online deposit interest calculator.

Although the date of this decision is June 12, 2023, this is not within either party's control. Although the RTB hearing date of June 6, 2023 is not within the control of either party, the landlord continues to retain the tenants' security deposit in full and did not return any amount to the tenants, pending this hearing, which was scheduled after the landlord filed this application.

In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to the return of their security deposit of \$1,100.00, plus interest of \$9.23, totalling \$1,109.23. I issue a monetary order to the tenants against the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1,109.23 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: June 12, 2023

Residential Tenancy Branch