Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSDB-DR, FFT

Introduction

This hearing dealt with the landlords' application, filed on November 16, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $7,120.00 for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit of $2,325.00 and pet damage deposit of $2,325.00, totalling $4,650.00 (collectively "deposits"), pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for his application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on November 29, 2022, pursuant to the *Act* for:

- authorization to obtain a return of the tenants' deposits, totalling $9,400.00, pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for their application, pursuant to section 72.

"Landlord NT" did not attend this hearing. The landlord and the two tenants, tenant AH ("tenant") and "tenant SH," 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 59 minutes from 1:30 p.m. to 2:29 p.m.

All hearing participants confirmed their names and spelling. The landlord provided his mailing address, and the tenant provided her email address, for me to send copies of this decision to both parties after this hearing.

The landlord stated that he previously co-owned the rental unit with his wife, landlord NT, during this tenancy. He said that he had permission to represent landlord NT at this hearing (collectively "landlords"). He provided the rental unit address.

The tenant identified herself as the primary speaker for the tenants. Tenant SH 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 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. I informed both parties that I could not provide legal advice to them. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle both applications. Both parties were offered multiple opportunities to settle, discussed settlement during this hearing, and declined to settle.

I cautioned the tenants that if dismissed their application, they could receive $0. I cautioned them that if I granted the landlord's application, they could be required to pay the landlord. The tenants affirmed that they were prepared to accept the above consequences if that was my decision.

I repeatedly cautioned the landlord that if I dismissed the landlords' application, the landlords could receive $0. I cautioned him that if I granted the tenants' application, the landlords could be required to pay the tenants. The landlord affirmed that the landlords were prepared to accept the above consequences if that was my decision.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both parties were duly served with the other party's application.

I dismiss the tenants' application for the return of their deposits of $4,750.00, without leave to reapply, pursuant to section 38 of the *Act*. Both parties agreed that the tenants only paid a total of $4,650.00 for their deposits, not $9,400.00 total. I do not amend the tenants' application to add a claim for one month rent compensation of $4,750.00, under section 51 of the *Act*, pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The tenants did not apply for the above claim in their application, and I do not make a decision regarding the merits of this claim. They only included the above amount of $4,750.00 with their deposits claim under section 38 of the *Act*, which is a separate application and a different section of the *Act*. The tenants did not provide a copy of the 2 Month Notice for this hearing. I find that the landlords did not have notice to respond to same. Therefore, I find prejudice to the landlords if I amend the tenants' application. The tenants had ample time to amend their application, prior to this hearing, as they filed this application on November 29, 2022, and this hearing occurred on August 29, 2023, 9 months later.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to remove the name of the landlord's former property management company. The landlord confirmed that the company was the landlords' former property manager, but it does not work for them any longer and it does not have authority to speak on their behalf. He confirmed that the company does not own the rental unit, only the landlords do. Both parties consented to this amendment during this hearing. I find no prejudice to either party in making this amendment.

Issues to be Decided

Are the landlords entitled to a monetary order for damages?

Are the landlords entitled to retain the tenants' deposits?

Are the tenants entitled to a return of their deposits?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy ended on November 2, 2022. Both parties signed a written tenancy agreement. Monthly rent in the amount of $4,750.00 was payable on the first day of each month. The tenants paid a security deposit of $2,325.00 and a pet damage deposit of $2,325.00, totalling $4,650.00, and the landlords continue to retain both deposits in full. Move-in and move-out condition inspection reports were completed for this tenancy. The landlords did not have written permission to retain any amount from the tenants' deposits. The landlords received a written forwarding address from the tenants on November 2, 2022, by way of the move-out condition inspection report.

The landlord stated that this tenancy began on August 30, 2021, while the tenant claimed it was September 1, 2021.

The landlord testified regarding the following facts about the landlords' application. There was a written agreement. The tenants' two cars blocked the landlord's driveway. The landlord is a farmer and has tractors. He had to pay parking fees. He had to fix the landscaping. There are pictures. There was "dog poo and pee." It took four hours to clean. There were marks on the porch at the back of the house. The tenants paid rent and a deposit. There was a third party property management company. The landlords did not provide any evidence for this hearing, but the landlord can provide it after the hearing.

Tenant SH testified regarding the following facts in response to the landlords' application. The tenants dispute the landlords' entire application. The landlord came by the house many times. There were no issues with the tenants' cars in the driveway. If the landlord told the tenants to move their cars, it would have been ok. What the landlord is saying is untrue. The gardener weeded. The tenants put 10 bales of topsoil across the front yard and turned it into the "most beautiful lawn." The tenants' dog never "pooed or peed" in the house. On the walk-out, there was wear and tear. The tenants are "angry" and find it "insulting and obscene." The landlord kept $10,000.00 of the tenants' money. The landlord is a "businessman." The landlord tried to make the tenants move on December 31, 2022, but the tenants said they could not move with three kids, one of which had special needs. The bank was foreclosing on the landlord.

The landlord stated the following in response. The issues regarding his bank foreclosure are his personal life.

Analysis

Burden of Proof

Both parties, as the applicants, have the burden of proof, on a balance of probabilities, to prove their applications and monetary claims. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines requires both parties to provide evidence of their claims, in order to obtain monetary orders.

Both parties received application packages from the RTB, including instructions regarding the hearing process, when they filed their applications. Both parties received four-page documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, when they filed their applications and received the other party's application. The NODRP documents contain the phone number and access code to call into this hearing.

The NODRP documents state 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 documents indicate that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document.

Both parties received detailed application packages from the RTB, including the NODRP documents, with information about the hearing process, notices to provide evidence to support their applications, and links to the RTB website. It is up to both parties to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to both parties, as the applicants, to provide sufficient evidence of their claims, since they chose to file their applications 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…*

Pursuant to section 67 of the *Act*, when parties make claims for damage or loss, the burden of proof lies with the applicants to establish their claims. To prove a loss, the applicants 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 respondents 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 applicants 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.***

Landlords' Application

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application for damages of $7,120.00 without leave to reapply. This includes the landlords' application to retain the tenants' deposits totalling $4,650.00.
I find that the landlord did not sufficiently explain or present the landlords' evidence regarding damages, 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.*

This hearing lasted 59 minutes so the landlord had ample time and multiple opportunities to present the landlords' application and evidence and respond to the tenants' claims. During this hearing, I repeatedly asked the landlord if he had any other evidence to present and provided him with multiple opportunities for same.

The landlord did not explain the landlords' damages in sufficient detail, during this hearing. The landlord did not provide any specific amounts for the damages, during this hearing. I find that the landlords failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The landlords did not provide any documentary evidence at all, to support their application. I informed the landlord that the landlords had ample time to provide their evidence prior to this hearing, as they filed their application on November 16, 2022, and this hearing occurred on August 29, 2023, over 9 months later, so I would not accept any evidence from the landlords after this hearing, as the tenants would not have notice or an opportunity to respond.

I find that the landlords failed to prove damages beyond reasonable wear and tear, caused by the tenants, as required by Residential Tenancy Policy Guideline 1. The landlord indicated that there were damages but did not indicate what these were, how the tenants were responsible, whether any damages were repaired or replaced by the landlord, the costs of same and if or when they were paid, or other such specific information.

The landlord did not review, explain, or provide any move-in or move-out condition inspection reports for this tenancy. Therefore, I cannot determine if any damages or losses were caused by the tenants during their tenancy or whether these damages were pre-existing when they moved into the rental unit.

The landlord did not review, explain, or provide any quotations, estimates, invoices, or receipts, to show if or when the landlords had any damages or losses repaired, when the work was completed, who completed it, how many people completed it, what the rate per hour or per worker was, what tasks were completed, how long it took to complete, when the work was paid for, how it was paid, or who paid it. The landlord did not provide any testimony about the above information during this hearing.

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

Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, 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 landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposits 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 landlords, 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 evidence and testimony of both parties. The landlords continue to hold both of the tenants' deposits. The landlords did not have written permission to retain any amount from the tenants' deposits. The tenants provided a written forwarding address, which was received by the landlord on November 2, 2022, by way of the move-out condition inspection report.

The landlords filed their application on November 16, 2022, which is within 15 days of the end of tenancy date and the forwarding address date of November 2, 2022.

Therefore, I find that the tenants are not entitled to the return of double the amount of their deposits. While the pet damage deposit can only be used for pet damage, the landlords applied for damages due to the tenants' pets, as the landlord described during this hearing.

Over the period of this tenancy, interest is payable on the tenants' deposits, totalling $4,650.00. 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 August 29, 2023, which was the date of this hearing. Although the date of this decision is August 31, 2023, this is not within the control of either party. This results in $59.88 interest on $4,650.00, based on the RTB online deposit interest calculator.

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 deposits, totalling $4,650.00, plus interest of $59.88 for both deposits, totalling $4,709.88. I issue a monetary order to the tenants against the landlords.

As the tenants were mainly successful in their application, I find that they are entitled to recover the $100.00 filing fee from the landlords.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I dismiss the tenants' application for the return of their deposits of $4,750.00, pursuant to section 38 of the *Act*, without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $4,709.88 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: August 31, 2023

Residential Tenancy Branch