



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlords: MNRL-S, MNDL-S, MNDCL-S, FFL
Tenant: MNDCT, MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlords' application was made on January 11, 2023. The Landlords applied for the following relief pursuant to the Act:

- a monetary order for unpaid rent;
- a monetary order requiring the Tenant to pay for damage to the rental unit;
- a monetary order for compensation for monetary loss or other money owed;
- an order allowing the Landlords to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant's Application was made on January 31, 2023. The Tenant applied for the following relief pursuant to the Act:

- an order granting compensation for monetary loss or other money owed; and
- an order that the Landlords return the security deposit or pet damage deposit.

The Landlords and the Tenant attended the hearing and provided affirmed testimony.

The Landlords testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on January 19, 2023. The Tenant acknowledged receipt.

The Tenant testified that the Tenant's Notice of Dispute Resolution Proceeding package was served on the Landlords by registered mail on February 1, 2023. The Tenant testified a subsequent evidence package was served on February 14, 2023. The Landlords acknowledged receipt of both packages.

Neither party raised any issues with respect to service or receipt of the above documents and evidence during the hearing. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent?
2. Are the Landlords entitled to a monetary order requiring the Tenant to pay for damage to the rental unit?
3. Are the Landlords entitled to a monetary order for compensation for monetary loss or other money owed?
4. Are the Landlords entitled to an order allowing the Landlords to retain all or part of the security deposit or pet damage deposit?
5. Are the Landlords entitled to an order granting recovery of the filing fee?
6. Is the Tenant entitled to an order granting compensation for monetary loss or other money owed?
7. Is the Tenant entitled to an order that the Landlords return the security deposit or pet damage deposit.

Background and Evidence

The parties agreed the tenancy began on November 1, 2019. The parties have different interpretations regarding the end of the tenancy, examined in greater detail below. In any event, the parties agreed that rent of \$2,131.50 per month was due on the first day of each month, and that the Tenant paid a security deposit of \$1,050.00, which the Landlords hold.

The Landlords' Claim

The Landlord's claim was set out in the application.

First, the Landlords claim \$2,131.50 for unpaid rent for the month of January 2023. The Landlords testified that in a signed agreement dated June 26, 2022, the parties agreed the Tenant would vacate the rental unit by December 18, 2022, but would continue to pay rent to January 31, 2023. A copy of the signed agreement was submitted into evidence. The Landlords testified that the Tenant provided a cheque in this amount but that he stopped payment.

In reply, the Tenant testified that the parties did not agree to terminate the tenancy, and submitted it is against the law of British Columbia to "impose" a five-month fixed term. The Tenant acknowledged that he signed the agreement but that he had no choice but to do so. The Tenant also claimed to be unaware that dispute resolution was available.

The Landlords also claim \$4,263.00 for rent due in February and March 2023. Again, the Landlords relied on the signed agreement, dated June 26, 2022, which included the Tenant's agreement to pay rent to March 31, 2023 if he did not vacate the rental unit by December 18, 2022. The Landlords assert the Tenant did not provide vacant possession until December 27, 2022, which is when a move-out condition inspection was completed and the Tenant returned his keys to the rental unit.

In reply, the Tenant acknowledged that he delivered the keys to the rental unit on December 27, 2022, but asserted that he and his belongings were out of the rental unit on December 17, 2022. The Tenant inexplicably referred to the parties' inability to reach an agreement and referred to threats of police involvement. The Tenant testified that he signed the agreement because personal matters made it impossible to stay at the rental unit after December 18, 2022.

Second, the Landlords claim \$450.24 for the cost of a new stand-up shower base. In support, the Landlords submitted photographs depicting a crack in the base of a stand-up shower. The Landlords submitted that they believe the crack was caused by the Tenant on purpose. The Landlords also relied on a Condition Inspection Report. The move-in condition inspection, completed on October 31, 2019, makes no reference to the damage or the grout. In addition, the Landlord submitted a receipt for the expense.

In reply, the Tenant rejected the Landlord's assertion that he damaged the shower base intentionally, and questioned what the benefit would be of doing so. The Tenant testified that he showered at his new home at the end of the tenancy and suggested the damage may have been initiated by previous tenants.

Finally, the Landlords sought to recover the \$100.00 filing fee paid to make the application and requested an order permitting him to retain the security deposit held in partial satisfaction of the Landlord's claim.

NOTE: During the hearing, EP advised that he wished to add a claim for liquidated damages. However, Rule of Procedure 2.2 confirms a claim is limited to what is stated in the application. This claim was not made in the Landlords' application. I also note the Landlords did not amend the claim to include a claim for liquidated damages. The parties were advised that this request would not be considered in this Decision.

The Tenant's Claim

The Tenant's claim is set out in the Tenant's application.

First, the Tenant claimed \$29,969.00 for losses incurred in dealing with the dispute and for the cost to "safely store organic and landfill garbage at my friend's houses."

Specifically, the Tenant claimed the following amounts:

- \$6,000 for damage to his corporation (60 hours x \$100/hour)
- \$5,000 for damage to reputation related to a delayed audit process for his corporation
- \$18,969.00 for loss of time and convenience associated with taking garbage to be disposed of off-site for 140 weeks, including mileage (5,616 km x \$.60).

In reply, EP testified that the Tenant's own notes indicate losses occurred after January 6, 2023, even though the Tenant left the apartment on December 27, 2022. In addition, EP stated that the Tenant did not refer to any documentary evidence to support his claim, such as a diary of trips or receipts. Further, EP asserted that they are not responsible for the losses incurred by the Tenant's corporation as there was no contract with that entity.

Second, the Tenant claimed \$1,050.00 for the return of the security deposit. The Tenant testified that he provided the Landlords with a forwarding address in writing on December 27, 2022, the day the parties completed the move-out condition inspection. The address was written down by the Landlord.

In reply, KP testified she received the Tenant's forwarding address on December 27, 2022.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden of proving their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

With respect to the Landlords' claims totaling \$6,394.50 for rent due in January, February, and March 2023, I find there is insufficient evidence before me to grant the relief sought. The terms of the agreement dated June 26, 2022, appear to be an attempt to avoid the provisions of the Act relating to the end of a tenancy, which is prohibited under section 5 of the Act. Therefore, I find these provisions are of no force or effect. These aspects of the Landlords' claim are dismissed.

With respect to the Landlord's claim for \$450.24 for the cost to replace a stand-up shower base, I find there is insufficient evidence before me to grant the relief sought. While I accept that the stand-up shower base was damaged, I find there is insufficient evidence before me to conclude that the damage was caused intentionally due to the Tenant's alleged bitterness, or due to the Tenant's negligence. I find it is more likely than not that the damage was normal wear and tear. This aspect of the Landlord's claim is dismissed.

As the Landlords have not been successful with respect to the substantive portion of their claim, I find they are not entitled to recover the filing fee paid to make their application. This aspect of the Landlords' claim is dismissed.

Policy Guideline #17 states that when a landlord applies to retain all or part of a security deposit, but the application is dismissed, the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, whether or not the tenant has applied for dispute resolution for its return. In this case, as the Landlords' application is dismissed, I order the Landlords to return the security deposit to the Tenant forthwith.

The Tenant's Claim

With respect to the Tenant's claim for \$29,969.00 for losses incurred in dealing with the dispute and for the cost to store material at his friend's houses, I find there is insufficient evidence before me to grant the relief sought. There are several reasons for this. First, section 7 of the Act confirms that a party who makes a claim for damage or loss is obligated to do what is reasonable to minimize the damage or loss. I find that the Tenant, by waiting two years to make the claim, failed to minimize his losses. Second, I agree with the Landlords' assertion that any of the Tenant's claim for losses suffered by the Tenant's corporation are too remote to be compensated. The Tenant's corporate was not a party to the tenancy agreement. Third, I find there is insufficient evidence of

the value of the Tenant's losses. They were based primarily, for example, on the Tenant's estimates of the number of additional trips taken, the distance of each trip, and the value of his time. These aspects of the Tenant's claim are dismissed.

With respect to the Tenant's claim for \$1,050.00 for the return of the security deposit, section 38(1) of the Act confirms that a landlord must repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I find the Tenant provided the Landlords with a forwarding address in writing on December 27, 2022. Therefore, pursuant to section 38(1) of the Act, the Landlords had until January 11, 2023, to pay the security deposit to the Tenant or make a claim against it. I find the Landlords did the latter on time on January 11, 2023. As a result, I find the Landlords have been under no obligation to return the security deposit to the Tenant pending the outcome of this Decision. Further, I find that the security deposit is not doubled in accordance with section 38 of the Act. This aspect of the Tenant's claim is dismissed.

Conclusion

The Landlords' application is dismissed without leave to reapply.

The Tenant's application is dismissed without leave to reapply.

Pursuant to Policy guideline #17, the Landlords are ordered to return the security deposit held in trust to the Tenant. In support of this order, I grant the Tenant a monetary order in the amount of \$1,050.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 5, 2023

Residential Tenancy Branch