



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 27, 2023.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. I find this was sufficiently served. The Landlord confirmed receipt of the Tenants Notice of Dispute Resolution Proceeding. The Tenant stated that she put a link to her google drive (where she had uploaded all her evidence) on a piece of paper, and printed it as part of the Notice of Dispute Resolution Proceeding package she sent to the Landlord. The Tenant stated that she did not follow up directly with the Landlord to ensure he was able to open and view the files. The Landlord stated that he was unable to open any of the files in the link the Tenant provided. I turn to the following Rule of Procedure:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

I note the Tenant did not directly confirm with the Landlord whether he could gain access to the files she provided digitally. I find the Tenant should have taken steps to ensure and confirm her digital evidence was accessible. I find the Tenant's digital evidence is not admissible, as it was not properly served in accordance with the Rules of Procedure (3.10.5).

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- is the Tenant entitled to the return of double the security deposit held by the Landlords?
- Is the Tenant entitled to monetary compensation for the other items she is seeking?

Landlord

- Are the Landlords entitled to compensation for damage or loss under the Act?
- Are the Landlords entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

Both parties agree that:

- The tenancy began in October of 2022, and that it ended on March 15, 2023, the day the Tenant moved out.
- The Tenant was under a fixed term tenancy agreement until October 2023.
- The Landlord still holds \$700.00 as a security deposit
- The Tenants provided, and the Landlords received, the forwarding address in writing on March 15, 2023, by putting it on the bottom of the move-out inspection report.
- The Landlord and the Tenant did a walkthrough at the start and end of the tenancy but the Landlord never gave the Tenant a copy of the move-in condition inspection report.

The Landlord applied for monetary compensation for \$700.00, but alongside that application they provided a monetary order worksheet for the following items, totalling \$439.00:

1)\$150.00 – advertising fees for re-renting the unit

The Landlord stated that they paid this amount to re-list the rental unit for rental, after the Tenant gave her notice that she would be leaving. The Landlord pointed to an invoice they paid to another company for the advertising of this, and many other rental units, all combined together. The overall bill was for \$630.00 for all these units.

The Tenant stated that it is unclear how this amount was calculated, and given the Landlord was able to re-rent the unit right away, she does not feel the Landlord should be able to ask for this much money.

2) \$189.00 – Locksmith fees

The Landlord stated that this is the amount they paid to have the locks changed in the rental unit, since this is something they do after every tenancy.

The Tenant does not feel she should have to pay this amount, since she returned all keys to the unit at the time she moved out.

3)\$100.00 – Management Fee for re-renting

The Landlord stated that this is the fee that is charged by the property management company for re-renting the unit.

The Tenant stated that this amount is not itemized or broken down anywhere.

The Landlord stated that the Tenant signed an addendum on the tenancy agreement specifying that she would forfeit her deposit as “liquidated damages” if she broke the lease. The Landlord did not specify on his application that he is seeking liquidated damages.

Tenant's application

The Tenant cross applied for the return of her security deposit, and also for the following items:

1)\$2,500.00 – rent reduction for lack of heat

2)\$100.00 – filing fee from previous hearing

The Tenant stated that the heat was inadequate in her rental unit for around 105 days from October 2022 till March 2023. The Tenant is seeking this amount as compensation for her loss of enjoyment of the space, due to it being too cold. The Tenant is also seeking \$100.00 for the filing fee she paid for her previous dispute resolution where her claim was dismissed, with leave, after she failed to serve her Notice of Dispute Resolution Proceeding properly.

The Landlord opined that there was never any real problem with the heat. However, despite this, he made every attempt to investigate the concerns she had, and even brought in a plumber to investigate the heating system in the building. The Landlord also stated that he even gave the Tenant a space heater to help her but it did not satisfy the Tenant.

The Tenant stated the space heater was either not working, or was not given to her for long enough, so she was still cold.

Analysis

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

The burden of proof is on the applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's application

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and Residential Tenancy Regulation (the "Regulations"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Section 24 of the *Act* states:

(2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) *does not comply with section 23 (3) [2 opportunities for inspection],*

(b) *having complied with section 23 (3), does not participate on either occasion, or*

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the testimony of the parties, I find the Tenant was not given a copy of the move-in condition inspection report. Given this, the Landlord did extinguish their right to claim against the security deposit for damage to the rental unit pursuant to section 24 of the Act. However, since this claim is for more than damage, I find extinguishment does not apply.

Based on the testimony of the parties, I find the tenancy ended March 15, 2023.

Based on the testimony of the parties, I accept that the Tenant provided their forwarding address to the Landlord on that same day.

Pursuant to section 38(1) of the Act, the Landlord would have had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim against it for something other than damage. The Landlord filed their claim on March 21, 2023, which was within the acceptable 15 day window. I decline to award double the deposits. The Landlord holds \$700.00 and is required to pay interest, but only for 2023. This amounts to \$12.39. The deposit of \$712.39 will be addressed further below.

Next, I turn to the Tenant's request for compensation related to her loss of heat in the rental unit. I note the Tenant has no admissible documentary evidence and there is no breakdown as to how she arrived at the amount she sought. Further, there is no record of what temperatures were in the rental unit, such that I could be satisfied that the heat was not at a reasonable level as to maintain quiet enjoyment of the rental unit.

Ultimately, without further proof, I find the Tenant has failed to sufficiently demonstrate that she ought to be entitled to this amount.

With respect to the filing fees paid by the Tenant, I decline to award either of the filing fees, as she was not successful in her claims.

Landlord's application

1)\$150.00 – advertising fees for re-renting the unit

3)\$100.00 – Management Fee for re-renting

I agree with the Tenant that neither of these amounts have been sufficiently explained, or detailed. There is no breakdown of how the advertising fee was calculated, and the Landlord only provided a vague invoice that includes fees for many other units. I find the Landlord has failed to sufficiently demonstrate the value of his loss for both of these items, and they are dismissed, in full, without leave.

2) \$189.00 – Locksmith fees

I do not find this is an amount the Tenant is liable for, since she returned all keys to the Landlord, and it was the Landlord's decision to rekey the locks.

I note the Landlord pointed to the term in the addendum, regarding liquidated damages in the event the lease is breached. However, I note the Landlord must specifically apply for compensation for liquidated damages if that is what he is seeking. In this case, he only identified the three items on his worksheet.

I decline to award the filing fee to the Landlord, since he was unsuccessful. I order the Landlord to return the security deposit, plus interest.

Conclusion

The Tenants are granted a monetary order pursuant to Section 38 and 67 in the amount of **\$712.39**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: December 20, 2023

Residential Tenancy Branch