Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

MNRL-S, MNDL-S, FFL
MNSDB-DR, FFT

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the "Act"):

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

The Tenants have filed their own application in which they seek the following relief under the Act:

- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

The Tenants' application was filed as a direct request but was scheduled for a participatory hearing pursuant to interim reasons dated July 28, 2023.

This matter had been scheduled for hearing on December 19, 2023 but was adjourned as per my interim reasons of December 19, 2023.

G.P. attended as the Landlord. A.B. and I.M. attended as the Tenants.

At the outset of the hearing, the Landlord had two witnesses who called into the teleconference line. I dismissed them from the hearing as per Rule 7.20 of the Rules of

Procedure until they were called to provide evidence. The Landlord did not call either witness.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Application and Evidence

The matter was adjourned on December 19, 2023 due to issues with service and to facilitate service, I permitted service via email.

At the reconvened hearing, the parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Previous Settlement

I am advised by the parties that the Landlord had previously filed an application for unpaid rent and damages against the deposits. The file number for the previous matter is noted on the cover page of this decision.

Review of the previous application shows that the previous claims are largely similar to the claim presently advanced by the Landlord, with some small revisions in the amounts sought. The underlying basis of the claims, as pled within both applications, are the same.

The parties advise that the Tenants vacated the rental unit on January 25, 2023. The Tenants indicate they provided their forwarding address on February 2, 2023. Finally, review of the previous application shows that the Landlord filed it on February 19, 2023 and that it had been scheduled for hearing on November 6, 2023.

The Landlord's evidence contains an agreement, signed by the Landlord on April 25, 2023 and by the Tenant A.B. on April 24, 2023. I reproduce the text of the agreement, redacting personal identifying information:

> By signing below, both parties agree to compensation in the amount of $4,549.45 for damages incurred during the tenure of lease for [the Tenants].
>
> Balance of damage deposit $3,463.80 to be issued to tenants by cheque and mailed to forwarding address on file % [C.C.].
>
> The landlord accepts this as final settlement, and will not pursue any further damages from the tenants. The landlord will withdraw dispute File Number: 910101743

In addition to the above, the agreement contained an itemized page of damages the Tenants agreed to pay for, which was initialled by the parties and totalled $4,549.45.

The Landlord says that he did withdraw his previous application and had sent the balance of the deposits to the Tenants. There were some issues related to delay as the Landlord says he was in Italy and sent the cheque to the Tenants from there.

Correspondence in the Landlords evidence shows that matters had become particularly fraught by the time the parties signed the agreement in April 2023. I am told that the first cheque was cancelled by the Landlord and a second cheque was sent. As told by me by the Landlord, the Tenants hold a cheque for $3,463.80 and have not deposited it.

The Tenants filed their application for the double return of their deposit on May 12, 2023. The Landlord says that he filed his response application after receiving the Tenants' application. The Landlord's claim in the present application for damages to the rental unit is the same amount as the Tenants agreed to pay in the April 2023 agreement, being $4,549.45.

The April 2023 agreement was a settlement of the issues raised in the Landlord's previous application. They agreed to a payment, the Landlord withdrew the application, and sent the Tenants a cheque. There may have been some delay in that cheque's delivery to the Tenants, however, that does not negate that fact that there was a clear settlement agreement, which the Landlord performed on his obligations flowing from it.

Once a settlement is reached on an issue in dispute, a party cannot resile themselves of it absent evidence of undue influence. Indeed, to permit parties to generally walk back from a settlement would negate the clear interest of ensuring finality in disputes.

The Tenant I.G. argued that the previous agreement was signed in response to what he viewed as the Landlord's spurious claim for unpaid rent. Though the Tenants did not express it this strongly, they argued that the previous application was extortionate in nature and intended to create risk for the Tenants to feel compelled to settle.

With respect to the Tenants arguments, I do not find they have demonstrated their will was unduly influenced by the Landlord's conduct. The Tenants struck me as sophisticated and were not unknowing of their rights under the *Act*. They were more than capable of bargaining with the Landlord.

Looking at the broader question of the previous application could be viewed as coercive, I do not find that it was. Upon review of the previous application and in consideration of the arguments raised by the parties themselves at the hearing before me, the Landlord's claims were certainly arguable. Without making findings on those claims, I find that they were not frivolous.

All this returns to the effect of the April 2023 agreement. I find that it was made within the context of an active claim advanced by the Landlord and that the parties struck a bargain to settle the claims for the amounts listed within the agreement. Neither party was under an obligation to agree to the settlement and could have proceeded to hearing on the previous application. They did not do that. Instead, they came to a settlement The parties cannot now abandon the settlement by filing the present applications.

I have also considered the question of whether the text of the agreement prevented the Tenants from filing their own application, as they have done here. I find that the agreement did so implicitly as it dealt directly with the deposits themselves. I also note that Policy Guideline #17 provides the following guidance with respect to the process on applications against a deposit:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
    - a landlord's application to retain all or part of the security deposit; or
    - a tenant's application for the return of the deposit.

In other words, the Landlord's previous application squarely raised the prospect of the return of the Tenants' deposits and the associated consideration that would flow from that. By agreeing to the settlement, the Tenants also agreed that the issues concerning the deposits, claims against them, and their retention by the Landlord were also settled.

I find that both applications cannot proceed on the basis that the issues raised therein have been settled pursuant to the April 2023 agreement. Both applications are hereby dismissed without leave to reapply in their entirety.

In the interest of ensuring the April 2023 agreement is enforced, I grant the Tenants under s. 63(2) of the *Act* a monetary order in the amount of $3,463.80, which shall be paid by the Landlord. To be clear, this is not an additional amount and is simply a means of enforcing the April 2023 agreement. If the Tenants have a cheque from the Landlord in this amount, they may simply deposit it and move on.

It is the Tenants obligation to serve the monetary order on the Landlord. Should the Landlord fail to comply with it, the Tenants may enforce it at the BC Provincial 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: January 30, 2024

Residential Tenancy Branch