



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL-S**
 MNSDB-DR
 MNDCT

Introduction

This hearing dealt an application by the landlord and two applications by the tenants.

The landlord brought an application under the *Residential Tenancy Act* (the *Act*) for the following:

- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

This hearing also dealt with applications by the tenant under the *Act* for the following:

- An order for the landlord to return the security deposit pursuant to section 38.
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

The tenants attended and are referenced in the singular.

The agent for the landlord M.C. attended for the landlord.

Each party acknowledged service of the documents of the other party. I find that each party served the other in compliance with the Act.

1. Preliminary Issue – Application by Landlord for Adjournment

At the outset of the hearing, the agent M.C. asked for an adjournment as the landlord was out of the country on vacation. The hearing was paused for ten minutes to allow the agent to attempt to contact the landlord so that he could call into the hearing. She reported her efforts were unsuccessful.

The tenants objected to any adjournment. They filed their application on September 21, 2023. They were both inconvenienced by attending the arbitration. The tenant L.G. stated that he was attending a scheduled class and had asked to be excused so that he could attend the hearing. They said the adjournment was not likely to result in a settlement as they had not heard from the landlord since they moved out of the rental unit in September 2023. They wanted to have the matter heard, receive the return of their deposits, and achieve an end to an upsetting and difficult tenancy.

.After hearing both parties and considering the criteria in Rule 7.9 of the RTB rules, I denied the landlord's request for an adjournment.

The landlord had ample time (over four months) to prepare for the hearing. The landlord did not contact the tenants to request an adjournment. The tenants took time out of busy schedules to attend at inconvenience to themselves. The landlord neglected his obligation to attend at the time specified and to be prepared to proceed. The landlord provided no valid reason for not attending.

The hearing proceeded.

2. Preliminary Issue – Name of Landlord

Discussion took place during the hearing about the correct identification of the landlord. The tenant believed their landlord was the individual M.B. The agent at the hearing said she believed the corporate entity was the landlord.

After hearing both parties on the proper identification of the parties, they agreed that I amend the name of the landlord to include both the name of the individual M.B. and the corporate name.

Accordingly, all proceedings are amended to reflect that M.B. and the corporate entity are landlords.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for compensation for damages and to retain the deposits?

Is the tenant entitled to a Monetary Order for compensation and the return of the deposits?

Background and Evidence

Overview

This is a cross application between the parties.

The landlord claimed the tenant left the unit requiring repairs because of which they incurred expenses in the amount of \$11,347.38. The landlord requested authorization to retain the deposits.

The tenant denied the landlord was entitled to any compensation except for \$267.38 for an outstanding hydro bill. They stated the unit became uninhabitable from black and grey water contamination and resultant mold on August 13, 2023. They had to vacate August 19, 2023. They claimed reimbursement of rent paid after August 19, 2023. They also claimed return of their deposits.

Tenancy

The parties agreed as follows. The tenancy began on September 1, 2021. Rent was \$2,750.00.

The tenant paid a security deposit and a pet deposit each in the amount of \$1,3750.00 ("the deposits").

Condition inspection Reports

The tenant testified there was no condition inspection report on moving in or moving out.

The landlord did not produce condition inspection reports and stated they did not know if they took place.

Forwarding address

The tenant stated they provided the landlord with their forwarding address in an email dated August 30, 2023, pursuant to an agreement between the parties allowing service by email. The tenant submitted the RTB form Proof of Service in support of service.

The landlord did not deny the veracity of the tenant's evidence.

Tenant's Claims: Overview

The tenant claimed the following:

ITEM	AMOUNT
Double security deposit	\$2,750.00
Double pet deposit	\$2,750.00
Reimbursement rent August 2023 - 12 days	\$1,064.52
Reimbursement rent September 2023 (1/2 month)	\$1,375.00
Interest on Deposits	\$63.31
(Less hydro bill tenant acknowledged owing)	(\$267.38)
TOTAL	\$7,735.45

Each claim is addressed.

Tenant's Claim – Deposits

The tenant claimed the landlord did not return their deposits within 15 days of the provision of their forwarding address. They did not authorize the landlord to retain the deposits.

The landlord is not entitled to retain the deposits because he did not carry out a condition inspection report on move-out.

Under the Act, the deposits should be doubled.

Landlord's Reply

The landlord did not deny the tenant's testimony.

Tenant's Claim – Damages

The tenant testified that there was a substantial leak of grey and black (sewage) water on August 13, 2023, resulting in black mold and unhygienic conditions making the unit uninhabitable. The tenant notified the landlord, and the landlord did not carry out remediation or repairs.

The tenant observed growth of mold, breakdown in functioning of the unit, and feared unsafe and unhygienic conditions.

Accordingly, the tenant, a family with a 7-year-old child, moved out on August 19, 2023. They paid rent for August 2023 and claimed reimbursement of 12 days rent with a prorated value of \$1,064.52.

The tenant paid half a month's rent for September 2023 in the amount of \$1,375.00. The unit was uninhabitable, and the tenant did not live there after August 19, 2023. They requested return of the rent for September in the above amount.

The tenant stated they are entitled to interest on their deposits in the amount of \$63.31.

The tenant agreed the landlord may deduct \$267.38 for an outstanding utility bill.

Landlord's Reply

The landlord did not deny the truth of the tenant's narrative.

Landlord's Claims

The landlord claimed compensation for unspecified damages described in general terms.

In their written application, the landlord stated in response to prompts:

Provide a complete list of the items you are requesting compensation for:

to cover some of the costs to remove all that was left behind either in the home , carport , basement and yard. Have a verbal estimate of bin rentals and dump fees from HL services of \$3,030.00

The landlord also stated:

Provide a complete list of the items you are requesting compensation for:

I have budgeted for carpet removal \$400 wall prep & painting \$2,500.00 yard repair \$2,400.00

The landlord did not submit any evidence in support of their claims such as copies of estimates, receipts, invoices, work orders or the like.

Tenant's Response to Landlord's Claims

The tenant denied they were responsible for any of the damages claimed by the landlord. The unit was severely damaged by grey and black water leakage. Any compensation claimed by the landlord related to the leak.

Analysis

I do not reference all the evidence. I refer to only relevant, admissible evidence and key facts in support of my findings.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the landlord to prove their claims. Also, it is up to the tenant to establish their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the landlord proven the amount or value of their damage or loss?
4. Has the landlord done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act.

Credibility

In considering the application, I weighed the credibility of the parties.

The landlord submitted sparse and unconvincing evidence about the condition of the unit when the tenant moved out. The landlord did not conform to their obligation to do a

condition inspection report at the beginning and end of the tenancy which would have provided clarity over what damages, if any, occurred during the tenancy.

I find the landlord's version of events that the tenant caused the damages complained of and should pay for all repairs claimed to be unreliable. The claims are not supported by any documentary evidence. The tenants credibly denied the landlord's narrative and provided matter of fact and straightforward testimony of what took place. I believe there was a substantial grey and black water leak as they claimed which occurred making the unit uninhabitable.

I find that the landlord is seeking to pass expenses onto a tenant for which the landlord is responsible., I find the landlord has failed to prove the tenant is in any way responsible for the damages claimed or the amount of any such damages.

So, where the versions of events differ, I give greater weight to the tenant's evidence.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

My findings are as follows:

Tenant's Claim – Deposits

No condition inspection report on moving in or out was conducted.

The tenant is entitled to a doubling of the security and pet deposits as the landlord's right to claim against the deposit was extinguished as the landlord did not carry out the required condition inspection report.

Section 38 of the Act requires the landlord to either return the 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 provision of a forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, under section 38(6)(b) of the Act, equivalent to double the value of the deposit.

However, this provision does not apply if:

- the tenant consented in writing that the landlord could keep some or all the deposit to offset damages (Section 38(4)(a)), or
- the tenant has been ordered to pay an amount to the landlord (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

The tenancy ended on August 19, 2023, when the unit became uninhabitable although the tenant paid rent until September 15, 2023. The tenant provided a written forwarding address on August 30, 2023, which the landlord received effective September 3, 2023.

The tenant did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenant.

The landlord applied for dispute resolution to claim against the deposit for damages on September 20, 2023

I find that the landlord extinguished their right to claim against the security and pet deposits for damages, under sections 24 and 36 of the Act, for failure to complete a move-out condition inspection report.

In accordance with section 38(6)(b) of the Act and *Policy Guideline 17*, the tenant is entitled to receive double the value of their security and pet deposits each in the amount of \$1,375.00 in the total amount of \$5,500.00. The landlord must pay interest in the amount claimed.

I grant the tenant an award of \$5,563.31 for the return of the security and pet deposits and interest.

Tenant's Claim – Damages – Frustration

Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event. This event must have drastically changed the circumstances of the tenancy. As a result, the tenancy agreement as planned cannot be carried out.

Residential Tenancy Act Policy Guideline 34: Frustration provides guidance on when contracts are frustrated and the liabilities of each party thereafter. The Guideline states in part as follows:

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

I have considered all the evidence and find the tenant has met the burden of proof that the tenancy was frustrated. I accept the tenant's credible and undisputed testimony that the unit became uninhabitable on August 19, 2023, when the landlord failed to respond to notice that there was a grey and black water leak in the unit six days earlier.

I find that the tenancy agreement was frustrated on August 19, 2023 as the landlord could not provide habitable conditions to the tenant from that date onward and failed to respond to their request for repairs in a timely manner. The tenant acted reasonably in moving out that day and considering the tenancy at an end.

I find the tenant has met all four parts of the above test.

As the tenancy was frustrated on August 19, 2023, the parties to the tenancy agreement are discharged from fulfilling their obligations under the tenancy agreement after that date.

These events as credibly described by the tenant drastically changed the circumstances of the tenancy. As a result, the tenancy agreement as planned could not be conducted after this day and the unit was, to all intents and purposes, uninhabitable.

As the contract was frustrated, I find the tenant has met the burden of proof on a balance of probabilities that the tenant is entitled to reimbursement of rent paid from August 19, 2023, until September 15, 2023 in the amount claimed:

ITEM	AMOUNT
Reimbursement rent August 2023 - 12 days	\$1,064.52
Reimbursement rent September 2023 (1/2 month)	\$1,375.00
TOTAL	\$2,439.52

I accordingly grant the tenant an award as claimed under this heading.

Landlord's Claims

I find the landlord has failed to meet the burden of proof on a balance of probabilities.

The landlord has not established any of the criteria under the 4-part test with respect to all claims. They have not established that the loss occurred during the tenancy, any damage or loss was caused by the tenant, the amount of compensation requested, or mitigation.

I find the landlord has not established the unit's condition at the start of the tenancy. The landlord did not submit a condition inspection report on move-in.

The landlord submitted no supporting documentary evidence of what the unit looked like when the tenant moved in. the landlord did not submit a condition inspection report on move-out.

I find the landlord has not established when the alleged damages occurred or what the cost of repairs were. There is no evidence the tenant is responsible for any damage.

I accept the tenant's credible testimony that any damages were caused by a leak over which they had no control and were not responsible.

Accordingly, the landlord's claims are dismissed without leave to reapply.

Summary

I grant the tenant a Monetary Order of **\$7,735.45** as follows:

ITEM	AMOUNT
Double security deposit	\$2,750.00
Double pet deposit	\$2,750.00
Reimbursement rent August 2023 - 12 days	\$1,064.52
Reimbursement rent September 2023 (1/2 month)	\$1,375.00
Interest on Deposits	\$63.31
(Less hydro bill tenants acknowledged owing)	(\$267.38)
TOTAL	\$7,735.45

The landlord's claims are dismissed without leave to reapply.

Conclusion

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

I grant the tenant a Monetary Order of **\$7,735.45**. This Order must be served on the landlord. The Order may be filed and enforced as an Order of the courts of the Province of B.C.

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: February 15, 2024

Residential Tenancy Branch