



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSD, FFT

Introduction

This hearing dealt with the landlord's application for dispute resolution, filed on October 14, 2023, under the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit of \$393.38, under section 67 of the *Act*;
- authorization to retain the remainder of the tenant's security deposit of \$393.38, under section 38 of the *Act*; and
- authorization to recover the \$100.00 filing fee paid for its application from the tenant, under section 72 of the *Act*.

This hearing also dealt with the tenant's application for dispute resolution, filed on October 22, 2023, under the *Act* for:

- authorization to obtain a return the remainder of the tenant's security deposit of \$393.38, under section 38 of the *Act*; and
- authorization to recover the \$100.00 filing fee paid for her application from the landlord, under section 72 of the *Act*.

The landlord's agent, the tenant, and the tenant's translator 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 43 minutes from 1:30 p.m. to 2:13 p.m.

All hearing participants confirmed their names and spelling. The landlord's agent and the tenant both provided their email addresses for me to send copies of this decision to both parties.

The landlord's agent stated that he is employed as a property manager by the landlord company ("landlord") named in this application. He said that the landlord was an agent for the owner of the rental unit. He confirmed that he had permission to represent the landlord and the owner. He provided the legal name of the landlord and the rental unit address.

The tenant stated that her translator had permission to assist her at this hearing.

The tenant's translator stated that she would only provide translation services for the tenant, not personal testimony. I repeatedly warned the tenant's translator about providing personal testimony, not translating information, and not following my directions, throughout this hearing.

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.

Preliminary Issues – Hearing and Settlement Options, Service of Documents

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. 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 did not want to settle this application, and they wanted me to make a decision. Both parties were given multiple opportunities to settle at the beginning and end of this hearing, but declined to settle.

I cautioned the landlord's agent that if I dismissed the landlord's entire application without leave to reapply and granted the tenant's entire application, the landlord would receive \$0 and would be required to pay the tenant for the full amount of her application. The landlord's agent affirmed that the landlord was prepared to accept the above consequences if that was my decision.

I cautioned the tenant that if I granted the landlord's entire application and dismissed the tenant's entire application without leave to reapply, the tenant would receive \$0 and would be required to pay the landlord for the full amount of its application. The tenant

affirmed that she was 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.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the remainder of the tenant's security deposit?

Is the tenant entitled to the return of the remainder of her security deposit?

Is either party entitled to recover the filing fees paid for their applications?

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 summarized below.

Both parties agreed to the following facts. This tenancy began on February 6, 2020, and ended on September 30, 2023. Monthly rent in the amount of \$2,847.00 was payable on the first day of each month. A security deposit of \$1,375.00 was paid by the tenant. The landlord returned \$981.62 to the tenant, and retained \$393.38 from the tenant's security deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant provided a written forwarding address, which was received by the landlord, by way of email on October 4, 2023. The tenant did not provide written permission for the landlord to retain any amount from her security deposit.

The landlord's agent stated that the landlord filed its application to retain the tenant's security deposit on October 14, 2023. He said that a move-in condition inspection report was completed with both parties; the tenant said that she could not remember. The landlord's agent claimed that a move-out condition inspection report was completed with both parties' present, but the tenant did not sign the report. The tenant said that no move-out condition inspection report was completed.

The landlord's agent testified regarding the following facts, regarding the landlord's application. There was a water leak in the rental unit. It affected 3 to 4 other properties below. The strata had to make an emergency call to a restoration company. The tenant denied access for strata to stop the leak. There was additional water damage, which could be dried. There was damage to the flooring and mold under the baseboards. The restoration company was not allowed access for one to two weeks. The landlord wants to retain the remainder of the tenant's security deposit of \$393.38. This is to fix the baseboards that were swollen from the water. The documents were submitted by the restoration company, including a letter denying access by the tenant, even with 24 hours' notice. The strata needed to attend and gave 24 hours' notice.

The tenant testified regarding the following facts, regarding the landlord's application. The leak was in April 2023. The tenant was not in Canada at the time. She responded with an email immediately, within 24 hours, to go ahead. The strata had the key and entered the rental unit to check. She does not know why there was no access to the rental unit. She returned to Canada in July. She got covid-19 and told the landlord. She refused access to people once to get in, because she was sick. She always had a cleaner come once every two weeks to ensure the rental unit was in good condition, while she was away. The leak was not her problem, as it was a building issue. The tenant was cooperative. The tenant disputes the landlord's entire application. The tenant moved out because the owner had to do repairs. The tenant hired a cleaner to clean the rental unit. The landlord refused the inspection, and the tenant has a video of it.

The landlord's agent stated that he did not want to respond to the tenant's testimony, in response to the landlord's application, even though I specifically provided him with the opportunity to do so.

Analysis

Burden of Proof

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to present and prove its application and monetary claims. The *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of its claims, in order to obtain a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord received a document entitled “Notice of Dispute Resolution Proceeding,” dated October 16, 2023 (“NODRP”) from the RTB, after filing this application. This document contains the phone number and access code to call into this hearing.

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

The landlord received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of its claims, since it chose to file this application on its own accord.

RTB Rules

The following RTB *Rules* state, in part (my emphasis added):

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

...

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...

I find that the landlord's agent did not sufficiently present or prove the landlord's application, as required by Rules 6.6 and 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*.

During this hearing, the landlord's agent failed to sufficiently review and explain the landlord's claims and the documents submitted in support of the landlord's application. He mentioned the existence of documents but did not sufficiently review or explain them in specific detail.

This hearing lasted 43 minutes. The landlord's agent had ample time and multiple opportunities to present and prove the landlord's application and evidence.

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.

Is the landlord entitled to a monetary order for damage to the rental unit?

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 tenant 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 landlord 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.***

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application of \$393.38 for damages, without leave to reapply. I find that the landlord failed the above four-part test, as per section 67 of the Act and Residential Tenancy Policy Guideline 16.

I find that the landlord failed to prove damages beyond reasonable wear and tear, caused by the tenant, as required by Residential Tenancy Policy Guideline 1.

The landlord's agent did not sufficiently review or explain any move-in or move-out condition inspections report for this tenancy. Therefore, I cannot sufficiently determine the condition of the rental unit and what damages, if any, were present when the tenant moved into the rental unit, and what damages, if any, were present when the tenant moved out. I cannot sufficiently determine if any damages, if any, were caused by the tenant, beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1.

The landlord's agent did not sufficiently review or explain the landlord's documents submitted, including any invoices, quotes, or estimates, to show if or when the landlord had any damages 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's agent did not provide sufficient testimony about the above information during this hearing. He referenced the total amount of the invoices and the companies they were from, but not other specific details.

The landlord's agent failed to sufficiently review, explain, and provide any receipts to show if, when, or how the landlord paid for any damages, as per Residential Tenancy Policy Guideline 16 above. The landlord's invoices show balances due, not amounts paid. The landlord's agent did not indicate if, when, or how the above invoices were paid by the landlord.

The landlord had ample time to provide sufficient evidence and adequately prepare for this hearing, as it filed its application on October 14, 2023, and this hearing occurred almost 5 months later on March 8, 2024.

Is the landlord entitled to retain the remainder of the tenant's security deposit or is the tenant entitled to the return of the remainder of her deposit?

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the security deposit, 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 landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on September 30, 2023. The tenant provided a written forwarding address to the landlord by email on October 4, 2023. Email service is permitted by section 88 of the *Act* and section 43 of the *Regulation*.

The landlord filed this application on October 14, 2023, which is within 15 days of October 4, 2023, the written forwarding address date.

I accept the affirmed testimony of the landlord's agent that a move-in condition inspection report was completed for this tenancy. The tenant testified that she could not recall whether it was completed but the landlord provided a copy of it with both parties' signatures. I accept the affirmed testimony of the landlord's agent that a move-out condition inspection report was completed for this tenancy, despite the fact that the

tenant stated that it was not completed. I find that neither party's right to the deposit was extinguished.

Therefore, I find that the tenant is not entitled to the return of double the amount of her security deposit.

Interest is payable on the tenant's security deposit of \$1,375.00, during the period of this tenancy. No interest is payable for the years from 2020 to 2022. Interest of 1.95% is payable for the year 2023. Interest of 2.7% is payable for the year 2024.

Interest is payable from January 1, 2023 to March 8, 2024, since the date of this hearing and decision is March 8, 2024. This results in \$33.84 interest on \$1,375.00, totalling \$1,408.84, based on the RTB online deposit interest calculator. Interest is calculated on the full amount of the original security deposit, before any deductions are made, as per Residential Tenancy Policy Guideline 17.

As the landlord already returned \$981.62 from the security deposit to the tenant, this amount is deducted from \$1,408.84. I issue a monetary order to the tenant, for the balance of \$427.22.

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

As the landlord was unsuccessful in its application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant. This claim is also dismissed without leave to reapply.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order to the tenant for the above amount.

Conclusion

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

I grant the tenant a monetary order in the amount of \$527.22.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 *Act*.

Dated: March 08, 2024

Residential Tenancy Branch