Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes Landlord: MNDL-S, LRSD, FFL
Tenants: MNDCT, MNSD, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The landlord's application pursuant to the Act is for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit, under section 38; and
- an authorization to recover the filing fee, under section 72.

The tenants' application pursuant to the Act is for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an order for the landlord to return the security deposit, under section 38; and
- an authorization to recover the filing fee, under section 72.

Landlord PG (the Landlord) and tenants FH and JM (the Tenant) attended the hearing. All parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The parties each confirmed receipt of the Notice of Dispute Resolution Application and the evidence (the materials) and that they had enough time to review them.

Based on the testimonies I find that each party was served with the materials in accordance with section 89(1) of the Act.

Landlords' Application

The Landlord is seeking compensation for a sink repair, removing mould in the bedroom and cleaning the rental unit (The Unit).

The Landlord affirmed she purchased a new sink, but it has not arrived yet due to Canada Post strike and she will still incur expenses related to installing the sink.

The Landlord submitted a total of 115 documents into evidence. They are not numbered. The Landlord apologized for not organizing these documents, as she is not 'tech savvy'.

The Landlord asked to dismiss her claim with leave to reapply in order to submit all her evidence in a more organized fashion, and also because she will still incur expenses to install the sink due to the delay caused by Canada Post strike.

The Tenant stated the Landlord had enough time to submit and organize her evidence.

Rule of Procedure 3.7 requires the parties to provide documents in a clear, organized and legible way to ensure fairness.

I find that it is not fair to proceed with the Landlord's claim, as the Landlord struggled to organize her evidence due to her lack of knowledge and because the Landlord has not received the new sink due to Canada Post strike.

Thus, I find it fair to dismiss the Landlord's claim with leave to reapply, except for the filing fee.

Based on the foregoing, I dismiss the Landlord's application with leave to reapply, except for the filing fee.

Leave to reapply is not an extension of timeline to apply.

Issues to be Decided

Are the Tenants entitled to:

1. a monetary order for loss?
2. an order for the return of the security deposit?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the Tenants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on January 1, 2023 and ended on September 30, 2024. Monthly rent when the tenancy ended was $2,500.00, due on the first day of the month. The Landlord collected a $1,000.00 pet deposit and returned it in February 2024. The Landlord collected a $1,000.00 security deposit (the Deposit) and currently holds it.

The Tenants did not authorize the Landlord to retain the Deposit.

The Landlord received the forwarding address in writing on August 30, 2024 and applied for an authorization to retain the Deposit on October 15, 2024. The Tenants applied on December 9.

The Landlord testified the parties completed a move in inspection report when the tenancy started.

The Tenants submitted a hand-written document with 10 pages (the Document). The Tenants said the parties did not complete a condition inspection report, as the Document does not have the required information in the legislation for an inspection report, the pages were not numbered, and the Tenants numbered them when they submitted it to the Residential Tenancy Branch (RTB).

The Tenants are seeking $5.00 per month for 21 months (total of $105.00), as the Landlord did not install an obscure privacy glass door.

The Tenants are seeking $15.00 per month for 21 months (total of $315.00), as the Landlord did not install the curtain rods.

The Tenants are seeking $10.00 per month for 21 months (total of $210.00), as the Landlord did not install the weatherstripping and it was harder to heat the Unit.

The Tenants are seeking $25.00 per month for 13 months (total of $325.00), as the Landlord did not repair the deck and they could not use it.

The Tenants affirmed they did not submit an application for dispute resolution regarding their four claims earlier because they did not know they needed to do so.

The Landlord stated she does not agree with the Tenants' claims.

The Tenants submitted a monetary order worksheet listing all their claims.

Analysis

Pursuant to Rule of Procedure 6.6, 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 the case is on the Tenant.

Move In Condition Inspection Report

Section 23(4) of the Act requires landlords to complete a condition inspection report in accordance with the Residential Tenancy Regulation (the Regulation) when the tenancy starts.

Regulation section 19 states the condition inspection report must be "written so as to be easily read and understood by a reasonable person." Furthermore, section 20(1) states the condition inspection report must contain the following information:

> (k)the following statement, to be completed by the tenant:
> I, ...
> Tenant's name
> [ ] agree that this report fairly represents the condition of the rental unit.
> [ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:
> .....

.....;

At issue is if the Document is a move in condition inspection report in accordance with sections 19 and 20 of the Regulation.

I find the Document does not comply with section 20(1)(k) of the Regulation, as the required statement is not part of the Document. It also does not contain the correct legal names of the parties, as required under section 20(1)(a) and the date on which the Tenants were entitled to possession, as required under section 20(1)(c) of the Regulations.

Furthermore, I find the Document is not easily read and understood, as the pages were not originally numbered and the handwriting is confusing with arrows (page 5 of the Document).

Thus, I find the Document is not a condition inspection report in accordance with sections 19 and 20 of the Regulation.

Section 24(2) of the Act states, regarding the start of tenancies:

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

As the Landlord did not complete a condition inspection report in accordance with the Regulation, the Landlord extinguished her right to claim against the Deposit, per section 24(2)(c) of the Act.

The RTB provides a condition inspection report form that complies with the Regulations, namely form RTB 27. Landlords do not have to use this form, but if they choose to use their own paperwork, they must make sure it complies with the Regulations. In this case, the Landlord failed to do so.

Deposit

I accept the uncontested testimony the Landlord holds the $1,000.00 Deposit, the Landlord received the forwarding address in writing on August 30, 2024, the tenancy

ended on September 30 and the Landlord applied for an authorization to retain the Deposit on October 15.

Section 38(1) of the Act requires landlords to either return the tenant's deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

In accordance with section 38(6)(b) of the Act, as the Landlord extinguished her right to claim against the Deposit and did not return the Deposit in full within the timeframe of section 38(1) of the Act, the Landlord must pay the Tenants double the amount of the Deposit.

It is not relevant that the Landlord submitted an application for a monetary order due to losses and an authorization to retain part of the Deposit and this application was dismissed. The Landlord had to return the full amount of the Deposits because she extinguished her right to apply to retain the Deposit.

Policy Guideline 17 states the Tenant is entitled to double the deposit if the Landlord claimed against the deposit when the Landlord's right to do so has been extinguished under the Act: "Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit: if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act".

The Act does not indicate until when the interest in the Deposit should be calculated. I find it fair to calculate until the hearing's date, as the Landlord confirmed she held the Deposit on that date.

According to the deposit interest calculator (available at http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html), the interest accrued on the Deposit is $47.08.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the the Tenants are entitled to $2,047.08 (double the $1,000.00 Deposit plus the interest accrued).

Losses

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results, and whoever claims compensation must minimize the losses.

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss, and reasonably minimized the loss suffered.

Furthermore, Policy Guideline 5 states that compensation will not be awarded for damage or loss that could have been reasonably avoided:

> A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.
> In general, a reasonable effort to minimize loss means taking practical and commonsense
> steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
> • remove and dry the possessions as soon as possible;
> • promptly report the damage and leak to the landlord and request repairs to avoid further damage;
> • file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.
> Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Based on the Tenant's testimony, I find the Tenants failed to minimize their alleged losses. The Tenants could have submitted an application for dispute resolution regarding all the alleged losses during the tenancy and avoided all of them. The Tenants were aware of the alleged breaches at least 13 months prior to the end of the tenancy and did not submit an application until after the tenancy ended.

Thus, I dismiss the Tenants' claims without leave to reapply.

Filing fee and summary

As the Tenants are partially successful with their application, pursuant to section 72 of the Act, I authorize them to recover the $100.00 filing fee.

In summary, I award the Tenants $2,147.08.

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the Tenants a monetary order in the amount of $2,147.08.

The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order in accordance with section 88 of the Act. 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: January 14, 2025

Residential Tenancy Branch