



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, MNSD, FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order in the amount of \$4,662.50 for damage to the rental unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and tenant DZ ("tenant") attended the teleconference hearing. The parties were affirmed and the opportunity to provide testimony and present any evidence that was served in accordance with the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

Preliminary and Procedural Matters

At the outset of the hearing, the service of evidence was addressed. The landlord admitted that other than six pages of their evidence, the landlord did not serve the tenants due to "the tenant would have already received those documents during the tenancy". The landlord was advised that the Rules require that the person serving documentary evidence ensure that all of the respondent's available evidence should be

Firstly, Rule 3.1(d) requires that the applicant must serve on the respondent any other evidence submitted to the RTB directly or through a Service BC Office. Rules 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].**

[My emphasis added]

And Rule 2.5 states in part:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [*Consideration of new and relevant evidence*].**

[My emphasis added]

Therefore, based on the above, I find the applicant landlord failed to serve the respondent tenants with all but the six pages the tenant confirmed having during the hearing (Notice of Hearing of 3 pages, Monetary Order Worksheet of 2 pages and a receipt for cleaning of 1 page) and as a result, I exclude all other pages of the landlord's documentary evidence as I find the landlord has failed to serve the tenants in accordance with the Rules.

I will now consider the service of evidence by the respondent tenants. The tenant admitted that he served the landlord's documentary evidence to an address that was

not listed on the application. The landlord stated that they did not receive any documentary evidence from the tenant as a result. Rule 3.15 states in part:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office.

The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

[My emphasis added]

Based on the above, I find the tenants' evidence must be excluded in full as the tenant admitted that he did not mail their evidence to the correct landlord address which was located on the landlord's application and as a result, I am unable to consider any the tenants' documentary evidence.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing. The parties also were advised that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a fixed-term tenancy began on August 10, 2017 and was scheduled to revert to month to month or another fixed-term as of August 31, 2018. The parties agreed that the tenant vacated the rental unit on October 15, 2017.

Monthly rent in the amount of \$3,000.00 was due on the first day of each month.

The landlord's monetary claim of \$4,662.50 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Suite cleaning	\$262.50
2. Breach of contract (liquidated damages)	\$1,500.00
3. Loss of rent	\$3,500.00
4. <i>Less \$700.00 monetary order (from previous decision)</i>	<i>-\$700.00</i>
5. Filing fee	\$100.00
TOTAL	\$4,662.50

At the outset of the hearing, the landlord was advised that I was unable to deduct a previous monetary order from any amount ordered in a previous decision so I would not be offsetting #4 described in the table above as a result. As a result, the parties were advised that I would not be dealing with #4 from the table above in this decision. The previous decision file number has been included on the cover page of this decision for ease of reference and indicated in that previous decision that the tenants have already received their \$1,500.00 security deposit back from the landlord.

Regarding item 1, the landlord stated that they are claiming \$262.50 for the cost of cleaning the suite after the tenants vacated the rental unit. The landlord submitted a receipt dated October 24, 2017 in evidence however no photographic evidence was submitted in accordance with the Rules so all photos were excluded from the hearing. The tenant testified that they hired a professional cleaner before they vacated the rental unit. The parties also agreed that both parties were at the move-out inspection and the tenant stated that cleaning was not mentioned at the inspection which the landlord did not dispute during the hearing.

Regarding item 2, the landlord has claimed \$1,500.00 for liquidated damages which the landlord stated was listed on the tenancy agreement. Unfortunately, the tenancy agreement was not submitted in evidence or served in accordance with the Rules and was not available for consideration as a result. The landlord testified that clause "12" on page three of the tenancy agreement indicated that the tenant would pay the landlord \$1,500.00 plus GST and advertising costs if the tenant ended the fixed-term tenancy early. The tenant testified that he did not recall that term of the tenancy agreement and stated that there was no tenancy agreement submitted in evidence for consideration.

The tenant stated that on October 5, 2017 the tenant emailed the landlord to advise that they were vacating the rental unit. The landlord stated in a reply dated October 14, 2017

that the landlord had received the tenant's move-out notice; however, there was no documentary evidence to verbal agreement during the hearing that the landlord released the tenant from rent or loss of rent for breaching a fixed-term tenancy/ending the tenancy contrary to the fixed-term tenancy agreement. The tenant did not dispute that the tenancy agreement was as fixed-term tenancy agreement.

Regarding item 3, the landlord has claimed \$3,500.00 which the landlord stated was comprised of two parts. The first part according to the landlord was due to the rental unit not being "new anymore" and that according to the landlord the monthly rent of \$3,000.00 was reduced by \$200.00 per month which according to the landlord would mean that she could only re-rent the rental unit for \$2,800.00 per month and that 10 months left in the fixed term tenancy at \$200.00 per month equals \$2,000.00. The second part according to the landlord was for compensation for the second half of October 2018 rent of \$1,500.00 for the period of October 15, 2018 to October 31, 2018 as a new tenancy began effective November 1, 2018. Therefore, \$2,000.00 for first part described above and \$1,500.00 for the second part described above equals the \$3,500.00 amount claimed for item 3.

The tenant stated that he gave written notice to end the tenancy based on the landlord breaching a material term of the tenancy. The landlord denied that the tenant provided written notice to end the tenancy that alleged a material breach only an email stating that they were leaving. The tenant failed to submit any documentation in evidence regarding writing to the landlord regarding a breach of a material term and that the tenants gave the landlord a reasonable opportunity to fix the breach of the material term. At the end of the hearing the tenant then stated that he signed a mutual agreement to end the tenancy however a copy of that alleged agreement was not submitted in evidence in accordance with the Rules.

As indicated above, I will not be dealing with item 4 as that relates to a previous monetary order and it is the responsibility of the tenants to enforce that monetary claim against the landlord and as a result, I will not be offsetting that amount from any claim before me in this matter.

Regarding item 5, I will deal with the filing fee later in this decision.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence before me and on the balance of probabilities, I find the following.

Test for damages or loss

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:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord 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 tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what is reasonable 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.

Item 1 – The landlord has claimed \$262.50 for cleaning costs. Section 37(2) of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) **leave the rental unit reasonably clean**, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[Reproduced as written]

As the landlord failed to provide documentary evidence in accordance with the Rules I do not have any photographic evidence or a condition inspection report in evidence to support that the rental unit was left in a condition that exceeded reasonable wear and tear which the *Act* allows for and is described above. I find that a receipt for cleaning itself is not compelling enough as the landlord's version of reasonably clean can be different than the tenants' version of reasonably clean and it is up to the landlord to provide sufficient evidence as the landlord has the burden of proof in the matter before me for cleaning costs. Therefore, I find the landlord has provided insufficient evidence to support item 1. As a result, I dismiss item 1 due to insufficient evidence, without leave to reapply.

Item 2 - The landlord has claimed \$1,500.00 for liquidated damages which the landlord stated was listed on the tenancy agreement. As the landlord failed to provide a copy of the tenancy agreement and the tenant testified that he was unsure of what agreement he signed, I find the landlord has failed to meet the burden of proof in the matter before me. Therefore, I dismiss item 2 due to insufficient evidence, without leave to reapply.

Item 3 - The landlord has claimed \$3,500.00 which has been described in detail above and which was broken down by the landlord into two parts. Firstly, I dismiss part one of item 3 as I find the landlord has failed to provide any rental ads or provide documentary evidence such as a new tenancy agreement that was served in accordance with the Rules to support that the rental unit was worth \$200.00 less than what the tenant was paying and that the landlord has not provided sufficient evidence to meet the burden of proof as a result.

The second part of item 3 however I find the landlord has established as I find the tenants provided insufficient evidence that they ended the tenancy in a method approved under the *Act*. I also find that the landlord cannot prove a negative, in other words, the landlord would be unable to prove that the tenants failed to provide notice if no notice was given. Therefore, I look to the tenants' evidence for proof that they allegedly wrote to the landlord and provided reasonable time to address any alleged breach of a material term or that the tenants had a signed Mutual Agreement To End Tenancy, neither of which were submitted by the tenants. Therefore, I find the tenants breached section 45(2) of the *Act* by breaching the fixed-term tenancy agreement by vacating the rental unit on October 15, 2017 versus waiting until the scheduled end of tenancy date, August 31, 2018. Given the above, I find the landlord has established **\$1,500.00** for the second part of item 3.

I have already addressed item 4 above, which leaves me to item 5, the filing fee.

As the landlord's application was partially successful, I grant the landlord the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim in the amount of **\$1,600.00** comprised of \$1,500.00 for the second part of item 3, plus \$100.00 for the recovery of the cost of the filing fee.

I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount owing by the tenants to the landlord in the amount of **\$1,600.00**.

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim in the amount of \$1,600.00 as described above. The landlord has been granted a monetary order pursuant to section 67 of the *Act* in the amount owing by the tenants to the landlord in the amount of \$1,600.00. The monetary order must be served on the tenants by the landlord and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: November 5, 2018

Residential Tenancy Branch