Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL, MNSD, FFT

Introduction

This hearing involved cross applications made by the parties. On July 10, 2019, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to retain the security deposit in partial satisfaction of these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On July 16, 2019, this Application was set down for a participatory hearing on October 24, 2019 at 1:30 PM.

On July 14, 2019, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Act*. On July 17, 2019, this Application was set down to be heard as a cross-application with the Landlord's file.

Both Tenants attended the hearing on time; however, the Landlord attended the hearing late, approximately eight minutes after it commenced. All in attendance provided a solemn affirmation.

At the outset of the proceeding, the hearing process was outlined where the parties were advised that with this being a teleconference, none of the parties could see each other, so this would rely on each party taking a turn to present their case, and then the other party would have an opportunity to respond. They were advised that when one party is talking, the other party was asked not to interrupt or respond unless prompted by myself. If they had an issue with what was said, they were asked to make a note of it and when it was their turn, they would have an opportunity to address these concerns. I apologized in advance as it may be necessary to interrupt either party to ask questions, clarify what has been stated, or to determine the relevance of the evidence in order to

assist me in conducting an efficient hearing and receive enough pertinent information to reach a decision. All parties were reminded that recording of the hearing was prohibited.

The Landlord advised that a Notice of Hearing package was served to the Tenants either by Xpresspost or by registered mail; however, he was not sure of what method or when it was served as the Landlord did not do this himself. He then found a registered mail tracking number indicating that it was mailed on July 19, 2019 and delivered on August 3, 2019 (the registered mail tracking number is on the first page of this decision). The Tenants advised that they did not receive this package and they only found out about the hearing via an email from the Landlord's realtor on October 15, 2019. They then stated that they received this package on August 6, 2019. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served with the Notice of Hearing package.

The Tenants advised that they served their Notice of Hearing and evidence package to the Landlord's address by registered mail on July 20, 2019 (the registered mail tracking number is on the first page of this decision). The Landlord stated that he did not receive this as he was out of the country. Despite this, as this package was served in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Notice of Hearing and evidence package five days after it was mailed. As such, the Tenant's evidence was accepted and considered when rendering this decision.

The Landlord advised that his evidence was served to the Tenant in the Notice of Hearing package; however, the Tenants advised that they did not receive any evidence from the Landlord. Up to that point in the hearing, the Landlord provided uncertain or unclear answers to questions related to service of documents. Given the doubts the Landlord's uncertainty raised, and based on records indicating that the Landlord submitted this evidence to the Residential Tenancy Branch late, and not in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I am satisfied on a balance of probabilities that this evidence was not served to the Tenants or submitted to the Residential Tenancy Branch in accordance with the Rules of Procedure. As such, this evidence was not considered when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recovery of the filing fee?
- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 11, 2019 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on June 30, 2019. Rent was established at $4,500.00 per month and was due on the first day of each month. A security deposit of $2,500.00 was also paid; however, the Landlord was advised that this exceeded the amount allowable to be collected pursuant to Section 19 of the *Act*. A copy of the signed tenancy agreement was submitted as documentary evidence and the Landlord was advised of other unenforceable terms included in the agreement that were attempts to contract outside of the *Act*, contrary to Section 5 of the *Act*.

When the Landlord was asked if a move-in inspection report was conducted, he stated that the house was brand new. The Landlord was then asked again if a move-in inspection report was conducted and he stated, “You’re not listening, it’s a brand new fucking house, buddy.” The Landlord was asked again if he could directly answer the question and he again repeated his profane response by stating, “It’s a 1.9 million dollar [profanity] house, buddy.” He was advised that in order to claim against the security deposit, the *Act* requires the Landlord to conduct a move-in and move-out inspection report and this was the reason that I needed a direct answer; however, the Landlord continued to be combative, evasive, and profane. He was also advised that as the hearing was scheduled for an hour, I needed direct answers to questions to efficiently conduct the proceeding in order to hear the extent of the parties’ claims within the time allotted. In addition, as he had attended the hearing late already, his ambiguous answers would only be to his detriment.

After three unsuccessful attempts to ascertain an answer, I inferred from this that a move-in inspection report was never completed, and one was not submitted as documentary evidence. The Tenants were asked to confirm if a move-in inspection report was ever conducted and they verified that this was never done with them by the person who provided them with access to the rental unit. In addition, a move-out inspection report was never conducted with the Tenants; however, the Landlord advised that he had his "people do this after the Tenants vacated the rental unit."

The Tenants advised that they provided their forwarding address to the Landlord via text message on June 29, 2019 and the Landlord believed this to be accurate.

In the Landlord's Application, he requested compensation in the amount of $5,500.00. In his late evidentiary submissions, that were not considered, the Landlord attached a document with nine lines, listing his claims for damages, now totaling $9,954.81. The Landlord was asked if he had amended his Application by completing an Amendment to an Application for Dispute Resolution form and by filing this form with supporting evidence to the Residential Tenancy Branch or through a Service BC Office. However, he was "not sure" if this was amended and then he stated that he "does not believe" the Amendment for was filled out. As it was becoming more apparent that the Landlord had other people handling the administrative responsibilities on this file and that he had limited knowledge of what was done, I was satisfied that his claims were not amended in accordance with Rule 4.1 of the Rules of Procedure nor was any amendment served to the Tenants.

As the Tenants had not been advised of any updated claims through an Amendment served to them by the Landlord, he was advised that he could proceed with his claims only on the $5,500.00 that he originally applied for and that he could attempt to file a separate Application for the additional claims. However, as his claims were vague, unclear, and disorganized, it would be up to the next Arbitrator to determine if he would be permitted to make any additional claims and that if any claims were already addressed in this hearing, they likely would not be readdressed in a future hearing. Alternately, he was advised that he could withdraw his Application and file a new Application for the entire amount, and as long as he served the Notice of Hearing and evidence package properly, he could have all his claims addressed at once. However, the Landlord elected to proceed with his claims on the $5,500.00 only.

The Landlord advised that he was seeking compensation in the amount of **$3,000.00** for the cost of strata fines incurred by the Tenants. He stated that the Tenants were running

a fitness business out of the rental unit, which was prohibited according to his tenancy agreement. He stated that the noise and related activity of their customers was disturbing the other residents of the building. He acknowledged that he never provided the Tenants with a Form K, advising them of the strata rules. He stated that upon being informed of these noise issues, he notified the Tenants of these infractions via telephone, but he was "not sure" if he texted them regarding this issue. In addition, he "thinks that he emailed them" about it. He referenced a strata infraction number, he advised that these complaints started from March 21, 2019 until the end of the tenancy, and he stated that he had been fined $500.00 per week. He submitted that the total fines were in excess of $7,000.00 and that as they were unpaid, they were put onto the title of his property as a lien. The Landlord provided no documentary evidence of any of the weekly infractions levied by the strata or any proof of any liens on his property.

The Tenants advised that they were not aware that running their business was an issue until they received a letter from the strata manager on May 2, 2019. They sent a text message to the Landlord immediately to discuss this and they stated that the Landlord called the strata manager a "loser." They referenced the texts they submitted, as documentary evidence, to support their position.

For his compensation claims for damages, the Landlord again referred to his nine-item list of damages. However, he was reminded that his Application contained a request for **$2,500.00** only, that any amounts exceeding that will not be considered, and that this list and his evidence would not be considered as it was not served in accordance with the *Act* and Rules of Procedure. He was still permitted to speak to this evidence though. Regarding these claims, he stated that the house was brand new but there was damage to one stair prior to the tenancy commencing. He stated that the Tenants left holes in the walls from mounting TVs, that there was damage from blinds being installed, and that the floors were damaged by gym equipment being moved around despite mats being laid down. He attempted to draw my attention to his evidence that he submitted, and he kept asking "can you not see it?" and he was again reminded that his evidence was excluded. It is important to note that the Landlord did not know what evidence he submitted for this hearing. As a courtesy, so the Landlord could be aware of what evidence he was attempting to rely on, and so that the Tenants would have a better understanding of what the Landlord was actually trying to claim for, his evidence was described item by item, mostly for the benefit of the Landlord. His evidence was described as follows:

1) A picture of a man exercising;
2) A picture of a small chip in flooring, approximately the size of a nickel;

3) A picture of gym equipment;
4) A screenshot of what appears to be a conversation from the Tenants' business to a client;
5) A picture of a wall with holes in it from a TV mount;
6) A picture of a portion of a letter issued from the strata with respect to a complaint;
7) A picture of a wall missing some paint, approximately four inches in diameter;
8) Another picture of a man exercising;
9) A picture of a scuff on a door jamb, approximately the size of a quarter;
10) A screenshot of a review of the Tenants' business;
11) A picture of what appears to be a scratch in the drywall, approximately three inches in length;
12) A picture of a crack in wooden flooring, approximately four inches in length;
13) A screenshot of the Tenants' business; and
14) A picture of multiple scuff marks on a wall, which appear to be from rubber weight plates rubbing against it.

Now that the Landlord was aware of what evidence he was attempting to rely on, he was informed that the burden of proof is on him to substantiate his claim. As such, it would be up to him to elaborate on these claims, to provide direct testimony to establish their legitimacy, and to justify the requested compensation for damage. As well, he was required to outline his claims for compensation more specifically so that the Tenants would be aware of what he was claiming for exactly.

The Landlord stated that there was an exterior light bezel that was broken, and it cost **$675.00** to repair. He advised that there was damaged to the walls from TV mounts and that blinds were installed. These cost **$315.00** to repair. He stated that there was damage to the polyaspartic flooring from the Tenants' business and this cost **$625.00** to repair. The Tenants damaged the drywall in the garage, at a cost of **$240.00** and that the required sanding, priming, and painting of these areas required another **$433.00**. Finally, the Tenants owed **$89.60**, **$173.17**, **$104.04**, **$78.00**, and **$30.00** in unpaid utility bills as well.

As the Landlord simply outlined his basic claims again, it was necessary to ask specific questions of the Landlord to obtain further information in order to understand his justification of these claims. As there was no invoice for the broken light, he was asked if this light was repaired. The Landlord scoffed, hesitated, and then stated that it was ordered; however, an invoice for this actual cost was never submitted. He stated that his estimate was the evidence he would rely on to support the cost of this repair. The Landlord was asked to elaborate on his other claims, and he would simply state that

“the cost is the cost” to repair these issues. It was during this time that a female voice was heard multiple times attempting to assist the Landlord. He was questioned whether there was another party in the room with him, participating in this legal proceeding, that was not introduced at the start of the hearing. He denied this and the female’s voice was no longer heard during the hearing. The Tenants were asked if they had said anything at that point and they confirmed that they did not.

Based on the Landlord’s demeanour, combative attitude, and general evasiveness throughout the hearing up to that point, I suspected that the Landlord was not being truthful, and he was cautioned that any party participating must be introduced, especially for the benefit of the other party. As well, he was also cautioned that recording of the hearing was prohibited and that if they were recording, they were ordered to stop immediately. They were advised that failure to comply with this Order may result in them being subject to Administrative Penalties.

The Landlord was again asked if he would like to provide any more detail with respect to his claims to provide any compelling justification for those amounts. His confrontational and hostile behaviour escalated, using unnecessary profanity to attempt to make his points and to express dissatisfaction with having to answer for how he validated the amounts of compensation he was seeking. He stated, “they damaged my fucking house and they should own up to it.” It was at this point that the Landlord was advised that his behaviour was inappropriate but tolerated up until this point; however, his escalated emotions, his belligerent attitude, and his use of profanity was not acceptable. He was advised that he would be muted from the conference call so that he could compose himself and he would be allowed to return at a later point where he would have another opportunity to more appropriately explain his claims for compensation.

The Landlord was muted and the Tenants were provided with an opportunity to provide their testimony with respect to the issues that the Landlord attempted to explain. They referenced the pictures they submitted, as documentary evidence, and they acknowledged using adhesive tape to hang items on the wall. They speculated that the heat or sun adversely affected this adhesive substance and they acknowledged that they were responsible for the damage to the walls. They stated that they did hang a mirror that left quarter inch holes in the wall and they were prepared to repair the damage; however, the Landlord did not respond to them about their requests to make the repairs. They stated that they asked the Landlord if they could hang a TV, that they did so with his permission, and that they then hung a second TV. They acknowledged being responsible for this damage as well. Finally, the Tenants were waiting to receive a copy of the utility bill as they require these invoices to expense the cost for their

business. However, the Landlord did not provide this invoice to them, and they stopped contacting the Landlord based on his behaviour and attitude towards them. They acknowledged that they did not pay the last month of utilities.

The Landlord was then permitted to rejoin the hearing and was asked for his response to any of the Tenants' submissions. He queried why I did not ask the Tenants specific questions in regard to his claims and I advised him that it is not my role to take his submissions, present them to the Tenants, and then interrogate them. It was again explained to him that the burden of proof was on him to substantiate the veracity of his claims.

The Landlord then took this opportunity to attempt to elaborate on his claims; however, he continued to do so in an antagonistic manner. He advised that the Tenants could not simply hire tradespeople to conduct the repairs without his consent and that the tenancy agreement outlined that the Tenants must return the rental unit to the original condition. He stated that it cost him $675.00 to repair the broken light; however, he could not provide details on this cost nor could he explain why the light had only been ordered recently if this tenancy had ended three months earlier. He made comments on the cost to repair the polyaspartic and asked if I knew how much it costs to fix this type of flooring. I advised him that I did not, and that it was up to him to provide evidence and testimony to support this claim. He stated that a layman would not be aware of these costs but as a professional, he can attest to it. However, as a professional, he was not able to specifically answer important questions that might help expound upon this cost such as: how many hours of labour were required, how much did the labour cost per hour, and what were the material costs for this repair.

Based on the Landlord's repetitive, non-specific testimony and his lack of supporting evidence, it was at this point that I determined that I had enough information to render a decision on these Applications. The Landlord took issue with this and stated that it was his belief that he was unfairly treated because he was not provided with an opportunity to make his claims. He was advised that he was afforded multiple opportunities to explain his claims and was prompted to elaborate on them many times. In addition, for his benefit, the evidence that he attempted to rely on that he did not even know the contents of was described to him item by item. Moreover, the hearing was scheduled for an hour, and even though he attended late, the hearing was extended to hour and forty-two minutes in duration, which was entirely for his benefit as he was afforded the majority of that time to attempt to present his case. However, he chose to use this time ineffectively and inappropriately.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As the undisputed evidence is that the Landlord neglected to complete a move-in or move-out inspection report, I find that the Landlord has extinguished his right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was served to the Landlord on June 29, 2019 and that the Landlord made his Application within the 15-day timeframe. However, as his right to claim against the deposit was extinguished, he was required to return the deposit in full within the 15 days and then make a subsequent Application against the Tenants for compensation for damages, if necessary and warranted. As the Landlord has not complied with the requirements of the *Act*, I grant the Tenants a monetary award in the amount of double the security deposit, or **$5,000.00**, pursuant to the *Act*.

In turning to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for damages, the first one I will address is the cost associated with the strata fines. While the consistent and undisputed evidence is that

the Tenants were operating a business out of the rental unit, I find that the Landlord referring to the strata manager as a “loser” is a direct reflection of the Landlord’s attitude and demeanour during the hearing. This causes me to doubt that if there was an issue raised by the strata, that the Landlord took this seriously or even took any effective steps to mitigate this issue. Furthermore, even if the Landlord did get strata fines levied against him, he has provided insufficient evidence to substantiate this claim. Copies of the strata notices, fines, or any documentation supporting his testimony that the strata placed a lien on his property would not be difficult to acquire and submit as evidence to support these claims. Consequently, I do not find that the Landlord has sufficiently established a claim for a monetary award, and I dismiss this portion of his claim in its entirety.

With respect to the Landlord’s other claims for damages to the rental unit, I find it important to note that without a move-in or move-out inspection report, it is difficult to prove the condition of the rental unit prior to the tenancy, despite the Landlord’s assertion that it was brand new. The purpose of the report is to document the state of the rental unit together and have a consensus on its condition. Without this, the Landlord would have to rely on a preponderance of evidence to establish that there was significant damage caused by the Tenants’ negligence.

During the hearing, I find that the Landlord could not provide specific testimony with respect to what was damaged. Furthermore, when pressed to explain the breakdown of these repairs, he was unable to provide any relevant information, despite being given multiple opportunities to do so. This causes me to doubt whether any repairs were even conducted. As an example, when the Landlord was asked whether the broken light was fixed, he appeared to be surprised to be asked this question and hesitated before unconvincingly answering that it was ordered. As this tenancy ended approximately three months prior to the hearing, if this light were damaged and the loss so great, it is not clear to me why it had allegedly been on order still instead of being repaired already. This was the typical manner with which the Landlord approached this hearing, and it appeared as if he expected a monetary award to be granted to him based on his broad, general description of the damages and his suggested costs to repair the deficiencies, without question or supporting evidence. I find that even if I were satisfied that he had served his evidence to the Tenants and could rely on these documents that he provided, much of his evidence is largely unrelated to the issue of damages. The pictures that do depict damages illustrate fairly insignificant and minor repairs to the rental unit. These are consistent with what the Tenants have conceded and testified to being responsible for. Ultimately, I am not satisfied that the Landlord has provided any compelling or persuasive evidence that would substantiate the losses that he has

claimed for. Without credible evidence to support these claims, a monetary award cannot simply be awarded by relying on his statement that “the cost is the cost.” As a result, I dismiss his claims for damages to the rental unit in their entirety.

However, as the Tenants have acknowledged to being responsible for damage to the drywall, and based on the limited evidence and testimony that was presented before me, I find that a monetary award in the amount of **$100.00** would sufficiently compensate for these repairs. Furthermore, as the Tenants acknowledged that they did not pay the last month of utility bills, I am satisfied that a monetary award in the amount of **$108.00** should be granted to the Landlord to satisfy these issues.

As the Tenants were successful in their Application, I find that they are entitled to recover the $100.00 filing fee paid for this Application.

As the Landlord was not successful in this Application, I find that he is not entitled to recover the filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Double the security deposit	$5,000.00
Drywall repairs	-$100.00
Outstanding utilities	-$108.00
Tenants’ filing fee	$100.00
TOTAL MONETARY AWARD	**$4,892.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$4,892.00** 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 *Residential Tenancy Act*.

Dated: November 12, 2019