Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL (Landlord)
MNSDB-DR, FFT (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed the application April 15, 2020 (the "Landlord's Application"). The Landlord sought compensation for damage to the rental unit, compensation for monetary loss or other money owed, to keep the security and pet damage deposits and reimbursement for the filing fee.

The Tenants filed the application April 16, 2020 (the "Tenants' Application"). The Tenants sought return of the security and pet damage deposits as well as reimbursement for the filing fee.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Tenants confirmed receipt of the hearing package for the Landlord's Application as well as the Landlord's evidence. The Landlord testified that he served his evidence on the Tenants but only the evidence uploaded to the RTB site on or before August 05, 2020.

The Landlord was required to serve all evidence on the Tenants pursuant to rule 3.14 and/or rule 3.15 of the Rules of Procedure (the "Rules"). I excluded the evidence

uploaded to the RTB website after August 05, 2020 pursuant to rule 3.17 of the Rules as I found it would be unfair to consider evidence not served on the Tenants.

The Landlord testified that he did not receive a hearing package for the Tenants' Application and received some evidence. However, the Tenants testified that they did not serve the hearing package or evidence on the Landlord.

The Tenants were required to serve the hearing package on the Landlord pursuant to section 59(3) of the *Residential Tenancy Act* (the "*Act*") as well as rule 3.1 of the Rules. Given the hearing package for the Tenants' Application was not served on the Landlord, the Tenants' Application is dismissed with leave to re-apply. However, the issue of the security and pet damage deposits will be dealt with on the Landlord's Application. Further, the Tenants are not entitled to reimbursement for the filing fee and this request is dismissed without leave to re-apply.

The Tenants were required to serve their evidence on the Landlord pursuant to rule 3.14 and/or rule 3.15 of the Rules. I excluded the Tenants' evidence pursuant to rule 3.17 of the Rules as I found it would be unfair to consider evidence not served on the Landlord.

Given the above, the only admissible evidence before me is the following:

- A photo labelled stove top damage. This does not show damage.
- A photo labelled kitchen granite counter chip.
- 15 text messages. I note that the text messages are cut off such that I cannot read the majority of them. I told the Landlord this at the hearing.

The Landlord did not submit a Monetary Order Worksheet or outline of amounts sought. The Landlord provided the following outline of amounts sought at the hearing:

- $840.00 for drywall damage;
- $300.00 for damage to a blind;
- $200.00 for a chipped counter; and
- $11.00 for a fire inspection fee.

The Tenants confirmed they were prepared to address these issues and amounts and therefore I proceeded despite the absence of a Monetary Order Worksheet or equivalent outline.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence outlined above and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?

2. Is the Landlord entitled to compensation for monetary loss or other money owed?

3. Is the Landlord entitled to keep the security and/or pet damage deposits?

4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

As stated, the Landlord sought the following compensation:

Item	Description	Amount
1	Drywall damage	$840.00
2	Damage to blind	$300.00
3	Chipped counter	$200.00
4	Fire inspection fee	$11.00
5	Filing fee	$100.00
	TOTAL	**$1,451.00**

The Tenants submitted a copy of the tenancy agreement. I reviewed this with the parties who agreed it is accurate. Given this, I have admitted the written tenancy agreement despite the lack of service. The tenancy started August 15, 2018 and was for a fixed term ending August 15, 2019. The tenancy then became a month-to-month tenancy. Rent was $1,800.00 per month due on the first day of each month. The Tenants paid a $900.00 security deposit and $900.00 pet damage deposit.

The Tenants testified that the tenancy ended March 01, 2020. The Landlord testified that the Tenants vacated the rental unit March 01, 2020.

The Tenants testified that they provided their forwarding address to the Landlord in a letter sent by mail March 24, 2020. The Landlord acknowledged receiving this but did not know when he received it.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The Landlord testified that the Tenants agreed to pay the Landlord $200.00 for blinds, but he did not accept this offer. The Tenants testified that they said they would pay $200.00 in total for damage via text message, but the Landlord did not accept this.

The Landlord testified as follows. There was no move-in inspection done or Condition Inspection Report ("CIR") completed at move-in. This was not a situation where the Tenants were offered two opportunities to do a move-in inspection but did not participate. The Tenants agreed with these points.

The Landlord testified as follows. He did an inspection with the Tenants at move-out, but no CIR was completed. The Tenants testified that the parties walked around the rental unit, but nothing was put in writing.

I outlined the four-part test set out in Policy Guideline 16 for the parties before hearing from them on the compensation sought.

1 Drywall damage $840.00

The Landlord testified as follows. He is seeking this amount because the rental unit was brand new and had no damages. He has provided two estimates.

The above was the extent of the Landlord's testimony at first. I told the Landlord this was not sufficient and reminded the Landlord that the estimates were excluded because he did not serve them on the Tenants.

The Landlord then testified as follows. The issue is the amount of damage. The Tenants wanted to provide $200.00 for damages but that was not sufficient. There was drywall damage. The Tenants tried to repair the damage but did not do it correctly. This is shown in the photos.

Tenant T.M. testified as follows. There was not $840.00 worth of damage. All photos are from the new tenants after they moved in.

In reply, the Landlord testified that he took the photos submitted right after the Tenants left. The Landlord acknowledged the Tenants were not present when he took the photos.

2 Damage to blind $300.00

The Landlord testified as follows. The Tenants admitted to the blind damage. The Tenants offered $200.00 but this was not sufficient.

Tenant T.M. said the Tenants have no response to this. Tenant T.M. then stated that she does not think this was a proper amount of damage at all.

3 Chipped counter $200.00

The Landlord testified as follows. The chip in the counter was caused by the Tenants. The rental unit was new with no damage. He received an estimate for $200.00.

Tenant T.M. testified as follows. When the Tenants moved in, she pointed out the chip to the Landlord. The chip was not caused by the Tenants.

4 Fire inspection fee $11.00

The Landlord testified as follows. He was fined for the fire inspector not being able to access the rental unit. This is not a strata fine, it is a fine that has to be paid if access to the unit is not granted. Strata charged the fee. He did a Form K with the Tenants. He did not notify the Tenants that the fire inspector was coming but notice of this was posted in the elevator. He does not know what happened, but he was charged.

Tenant T.M. testified that a fire inspection was completed as scheduled. She denied that the Tenants did not allow access to the rental unit. She agreed a Form K was signed at the outset of the tenancy.

Evidence

At the end of the hearing, the Landlord submitted that the only issue is the amount of compensation. The Landlord asserted that the Tenants admitted to the above damage in text messages. I asked the Landlord to point to where in the admissible text messages the Tenants admitted to causing the above damage. The Landlord started listing off text messages that did not include any admission by the Tenants of causing

damage. I stopped the Landlord as it was clear the Landlord could not point to a specific text message where the Tenants admitted to causing the specific damage outlined above.

I have reviewed the admissible evidence. As stated, the text messages submitted have been cut off such that I can only see half or three quarters of the message. There is one text message where one of the Tenants mentions verbally agreeing on some damages; however, the text message does not state what damages these were. There is a text from one of the Tenants stating, "Hey any updates on the assessment for damage?" I cannot read the Landlord's response although it mentions blind repair and walls. There are no other admissible text messages before me where the Tenants admit to anything regarding damage.

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When 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.

When parties do not come to an agreement about what damages existed at the end of a tenancy, who was responsible for those damages and what amounts will be paid for those damages, and the matter comes to the RTB, the landlord applying for compensation must prove they are entitled to the compensation sought. This means proving the four-part test outlined in Policy Guideline 16 and outlined for the parties at the hearing. It is open to tenants to agree to facts or issues at the hearing; however, when tenants do not do so, the landlord must prove each aspect of the four-part test in order to get compensation.

Security and Pet Damage Deposits

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security and pet damage deposit at the end of a tenancy.

The parties agreed this was not a situation where the Tenants were offered two opportunities to do a move-in inspection but did not participate. Therefore, the Tenants did not extinguish their rights in relation to the security or pet damage deposit pursuant to section 24 of the *Act*.

The parties agreed they did a move-out inspection and therefore the Tenants did not extinguish their rights in relation to the security or pet damage deposit pursuant to section 36 of the *Act*.

I do not find it necessary to decide whether the Landlord extinguished his rights in relation to the security or pet damage deposit pursuant to sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage and the Landlord has claimed for a fire inspection fee.

I am satisfied based on the testimony of both parties that the Tenants vacated the rental unit March 01, 2020. Therefore, the tenancy ended March 01, 2020 for the purposes of section 38(1) of the *Act*. I also note section 44(1)(d) of the *Act* in this regard.

I am satisfied based on the testimony of the Tenants that they mailed their forwarding address to the Landlord March 24, 2020. The Landlord did not dispute this. I find the Landlord was served with the forwarding address in accordance with section 88(c) of the *Act*. The Landlord did not know when he received the forwarding address. Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the forwarding address March 29, 2020.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security and pet damage deposits or file a claim against them within 15 days of the later of the end of the tenancy or receiving the Tenants' forwarding address. Therefore, the Landlord had until April 13, 2020 to repay the deposits or file a claim against them. However, the RTB was closed April 13, 2020 and therefore the Landlord had until April 14, 2020 to file a claim against the deposits pursuant to the definition of "days" in the Rules.

The Landlord submitted the Landlord's Application April 13, 2020 but did not pay the filing fee until April 15, 2020. Rule 2.6 of the Rules states:

> The Application for Dispute Resolution has been made when it has been submitted **and either the fee has been paid or when all documents for a fee waiver have been submitted** to the Residential Tenancy Branch directly or through a Service

> BC Office. **The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.**
>
> If payment is not completed or if all documents for a fee waiver are not submitted within three days as required, the application will be considered abandoned. To pursue the claims, the applicant must submit a new application—this does not provide an extension of time for any statutory timelines.
>
> (emphasis added)

Given the Landlord did not pay the filing fee until April 15, 2020, the Landlord's Application was not filed until April 15, 2020. Therefore, the Landlord did not repay the security and pet damage deposits or file a claim against them by April 14, 2020 as required. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

I note that none of the exceptions to section 38(1) of the *Act* as outlined in sections 38(2) to (4) of the *Act* apply in this matter. I note that I am not satisfied the Tenants agreed in writing to the Landlord keeping some or all of the security or pet damage deposits. I find the discussion between the parties was a negotiation and that the Landlord did not accept the Tenants' offer of $200.00. This is not the equivalent of a written agreement as referred to in section 38(4) of the *Act*.

Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security or pet damage deposits and must return double the deposits to the Tenants. The Landlord therefore owes the Tenants $3,600.00. There is no interest owed on the deposits as the amount of interest owed has been 0% since 2009.

The Landlord can still claim for compensation and I consider that now.

Compensation

Section 7 of *Act* (the "*Act*") states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.

> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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.

1 Drywall damage $840.00

The Landlord sought $840.00 for drywall damage. The Tenants disputed this amount. Even accepting the Tenants damaged the drywall, I have no compelling evidence of the extent of the damage before me such as photos or video showing the damage. The only admissible photos before me relate to the stove and counter. Even assuming the damage was beyond reasonable wear and tear, and thus a breach of the *Act*, I have no compelling evidence before me of the cost associated to repairing this damage as there are no admissible invoices, receipts or quotes before me. In the circumstances, the Landlord has failed to prove the amount or value of the damage or loss. Therefore, the Landlord has failed to prove he is entitled to $840.00 for drywall damage.

2 Damage to blind $300.00

The Landlord is seeking $300.00 for damage to a blind. The Tenants disputed the amount sought. I make the same comments as above. Assuming the Tenants damaged the blind, and assuming this damage was beyond reasonable wear and tear, the Landlord has failed to prove the amount or value of the damage or loss as there are no admissible receipts, invoices or quotes before me. Further, there are no admissible photos or videos of the damage such that I can be satisfied of the extent of the damage and possible amount or value of the damage or loss. Nor did the Landlord explain what

the damage was or what had to be done to repair it. In the circumstances, the Landlord has failed to prove he is entitled to the compensation sought.

3 Chipped counter $200.00

The Landlord testified that the Tenants chipped the counter in the rental unit. The Tenants testified they did not chip the counter and the chip was there when they moved in. The Landlord testified that the rental unit was new when the Tenants moved in. However, there is no documentary evidence before me to support this. There are no admissible photos or videos before me showing the state of the rental unit at move-in. The Landlord did not do a move-in inspection or complete a CIR at move-in as required by the *Act* and therefore I do not have a record of the condition of the rental unit at move-in. Whether the rental unit was new or not, I am not satisfied the counter could not have been chipped prior to the Tenants moving in. The counter could have been chipped when it was installed, by builders or tradespeople after it was installed or by the Landlord prior to the Tenants moving in. In the absence of further evidence showing the state of the rental unit at move-in, I am not satisfied the Tenants chipped the counter. Therefore, I am not satisfied the Tenants breached the *Act*. The Landlord has failed to prove he is entitled to compensation for this issue.

4 Fire inspection fee $11.00

The Landlord testified that he was fined because the Tenants did not allow access to the rental unit for the fire inspection. The Tenants denied this occurred and testified that the fire inspection was done as scheduled. None of the admissible documentary evidence before me addresses this issue. Given the conflicting positions, and absence of further evidence to support the Landlord's position, I am not satisfied the Tenants failed to provide access to the rental unit as required and am not satisfied the Tenants breached the *Act* or their tenancy agreement. The Landlord has failed to prove he is entitled to compensation for this issue.

5 Filing fee $100.00

Given the Landlord has not been successful on any issue in the Landlord's Application, I decline to award the Landlord reimbursement for the $100.00 filing fee.

Summary

The Landlord has failed to prove he is entitled to any of the compensation sought. I acknowledge that the parties discussed damage at the end of the tenancy as this is shown in the text messages. However, the text messages do not show what specific damages were agreed upon as being the Tenants' responsibility and do not show any agreement between the parties about an amount for specific damages.

I understand from the testimony of both parties that the parties discussed the Tenants paying the Landlord $200.00 for damages and the Landlord did not accept this. Therefore, I do not find that an agreement was reached between the parties about the Tenants paying the Landlord $200.00. Nor am I satisfied the Tenants agreed in writing to the Landlord keeping $200.00 of the security or pet damage deposits. Again, I understand this to be a negotiation that was not successful. Not an enforceable agreement. Therefore, I have not awarded the Landlord $200.00. I further note that it was not made clear to me what this $200.00 would have covered or been based on and the Tenants did not agree at the hearing that the Landlord could keep $200.00 of the deposits.

As stated above, where parties do not come to an agreement about damages and an amount to be paid, and come before the RTB, it is the landlord who is claiming compensation for the damages that must prove to the arbitrator that they are entitled to the amounts sought, unless the Tenants agree to the damages or amounts sought at the hearing. Here, the Landlord failed to prove he is entitled to the compensation sought based on the four-part test set out in Policy Guideline 16 and therefore is not awarded the amounts sought.

Given the above, the Landlord must pay the Tenants $3,600.00. The Tenants are issued a Monetary Order for this amount.

Conclusion

The Landlord must pay the Tenants $3,600.00. The Tenants are issued a Monetary Order for this amount. This Order must be served on the Landlord as soon as possible. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: August 28, 2020

Residential Tenancy Branch