Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on March 3, 2020, wherein the Landlords sought monetary compensation from the Tenants, authority to retain their security deposit and recovery of the filing fee.

The hearing of the Landlords' Application was scheduled for 1:30 p.m. on July 10, 2020. Only the Landlord's Property Manager, S.J., and Managing Broker, W.L., called into the hearing. The hearing was adjourned to August 25, 2020 and again, only S.J. and W.L. called into the hearing.

As the Tenants failed to call into the hearing I considered service of the Landlord's hearing package. S.J. testified that the Tenants were served with notice of both hearings by registered mail. In support of this testimony the Landlord provided in evidence copies of the registered mail receipts and tracking numbers sent to the Tenants.

The registered mail evidence relating to the July 10, 2020 hearing did not indicate the recipient. The evidence relating to the August 25, 2020 hearing indicated the package was sent to the Tenant, A.C. only.

Residential Tenancy Branch Policy Guideline 12—Service Provisions provides that, except in the case of an application for an order of possession:

> "[a]ll parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately.

In the case before me, the Landlord sought monetary compensation from the Tenants, as such, the Landlord was required to serve *both* Tenants individually. I find, based on the evidence before me that only A.C. was served with notice of the hearing and the Landlord's Application; as such, this Decision, and resulting order, apply to A.C. only. Despite this, the Tenants are reminded that they are both jointly and severally liable for the tenancy.

Preliminary Matter—Naming of Landlord

On the Application for Dispute Resolution, the owners, the Property Manager and the Managing Broker were noted as the Landlords.

A copy of the residential tenancy agreement was provided in evidence before me. This agreement named a property management company as the Landlord. There is no mention of the owners' names, nor are any employees of the property management company named.

Residential Tenancy Branch Policy Guideline 43—Naming Parties provides in part as follows:

> The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* require Applications for Dispute Resolution to include the full particulars of the dispute that is subject to the dispute resolution proceedings.
>
> Parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named.
>
> If any party is not correctly named, the director's delegate ("the director") may dismiss the matter with or without leave to reapply. Any orders issued through the dispute resolution process against an incorrectly named party may not be enforceable.
> …
>
> In order to enforce Residential Tenancy Branch orders, the applicant must use the correct name of a respondent who operates as a business.
>
> If the party is a limited liability company or a registered corporation, then the full legal name of the company should be used on the application, and include the designations such as Incorporated, Inc., Limited, Ltd., Corporation or Corp. (and/or the French language equivalents).

By Interim Decision dated July 10, 2020 I adjourned the matter to permit an Amendment of the Application to correctly name the Landlord as well as for the Landlord to clearly set out the amounts owing for unpaid rent. I confirm that on July 13, 2020 the Landlord

filed an amendment which removed the owners and agents of the Landlord and accurately named the property management company as the Landlord. The Landlord also filed an updated Monetary Orders Worksheet which clearly set out the amounts claimed by the Landlord in this Application.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?

2. Should the Landlord recover the filing fee?

3. Should the Landlord be authorized to retain the Tenants' security deposit?

Background and Evidence

This tenancy began May 1, 2019. Rent was $1,750.00 and the Tenants paid a security deposit of $875.00.

S.J. testified that on October 23, 2019 the police entered the rental unit with pursuant to a warrant. As the Tenants refused entry the door was damaged when the police entered. Documentary evidence relating to this event was provided by the Landlord and confirmed that the warrant related to a break and enter allegedly committed by the Tenant, A.P. The cost to repair the door damage was $3,461.06 including a temporary/emergency door repair in the amount of $777.26.

S.J. stated that the Tenants moved out of the rental property on July 21, 2020.

S.J. stated that the Tenants failed to pay rent for March, April, May, June and July 2020 such that the sum of $8,750 was owing for rent. The Tenants applied for and received the rental supplement through BC Housing in the amount of $600.00 such that the total owing as of the date of the hearing before me on August 25, 2020 was $8,150.00.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:**

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
>
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.
>
> (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's evidence that the Tenants failed to repair the damage caused when the police entered the rental unit executing a search warrant. I find this damage directly related to the actions of the Tenant, A.P., as the warrant provided in evidence confirms the search related to a break and enter allegedly committee by A.P.

I am satisfied the Landlord incurred the amounts claimed to repair the door, both temporarily and permanently, and I find the total amount of **$3,461.06** to be recoverable from the Tenants.

I accept the Landlord's evidence that the Tenants failed to pay rent as required by the tenancy agreement. Although the Landlord initially only claimed compensation for March 2020, I find the Tenants knew, or ought to have known the Landlord would seek compensation for April, May, June and July 2020 as the Tenants failed to pay rent for those subsequent months. The Landlord's representatives confirmed they received $600.00 as a rental supplement such that the total amount owing is $8,150.00. I therefore award the Landlord **$8,150.00** representing the net amounts owing for rent.

As the Landlord has been substantially successful, I award them recovery of the **$100.00** filing fee.

Conclusion

The Landlord is entitled to monetary compensation from the Tenants in the amount of **$11,711.06** calculated as follows:

Cost to repair door on rental unit	$3,461.06
Unpaid rent for March, April, May, June and July 2020 $1,750.00 x 5 = $8,750.00 - $600.00 rental supplement received by Landlord	$8,150.00
Filing fee	$100.00
TOTAL AWARDED	**$11,711.06**

Pursuant to sections 38 and 72 of the *Act,* I authorize the Landlord to retain the Tenants' $875.00 security deposit towards the $11,711.06 awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **$10,836.06**. This Order is against the Tenant A.C. only as they are the only tenant who was properly served with the Landlord's application. The Order must be served on A.C. and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: August 26, 2020

Residential Tenancy Branch