Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAPE LIVING CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with the landlord's application, filed on March 7, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $761.25 for damage to the rental unit, pursuant to section 67; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The landlord's agent and the two "tenants," tenant CJ ("tenant") and "tenant PJ," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 34 minutes from 1:30 p.m. to 2:04 p.m.

All hearing participants confirmed their names and spelling. The landlord's agent and the tenant both provided their email addresses for me to send copies of this decision to both parties after the hearing.

The landlord stated that he had permission to represent the landlord company ("landlord") named in this application. He confirmed that the landlord owns the rental unit, and he provided the rental unit address.

The tenant identified herself as the primary speaker for both tenants at this hearing. Tenant PJ agreed to same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. Neither party made any adjournment or accommodation requests.

Both parties were given multiple opportunities at the beginning and end of this hearing, to settle this application but declined to do so. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision.

The landlord's agent affirmed that the landlord was prepared to accept the consequences of my decision if the landlord was unsuccessful in this application and received $0. The two tenants affirmed that they were prepared to accept the consequences of my decision if they were unsuccessful in this application and they were required to pay the landlord $861.25, including the $100.00 filing fee.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both tenants were duly served with the landlord's application.

The tenant stated that the tenants served their evidence package to the landlord on October 6, 2022, by way of registered mail. The tenants provided a Canada Post receipt and the tenant confirmed the tracking number verbally during this hearing. The tenant claimed that someone signed for the evidence package on October 13, 2022. The landlord's agent stated that he did not receive the tenant's evidence, even though the tenants sent it to the correct mailing address, as confirmed by both parties during this hearing.

In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' evidence package on October 11, 2022, five days after its registered mailing. I informed the landlord's agent that I would consider the tenants' evidence at this hearing and in my decision. I notified him that it was served to the landlord's correct mailing address, using permitted registered mail, in a timely manner,

at least 7 days prior to this hearing on November 1, 2022, in accordance with Rule 3.15 of the RTB *Rules*. The landlord's agent confirmed his understanding of same.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to remove the name of "tenant KD" as a tenant-respondent party. The landlord's agent requested this amendment, stating that the landlord did not want to pursue a claim against tenant KD and would not do so in the future. He said that tenant KD provided notice on June 1, 2021, to move out by June 30, 2021, well before the two tenants' tenancy ended on November 30, 2021. I find no prejudice to either party in making this amendment.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent and the tenant agreed to the following facts. This tenancy began on September 9, 2020 and ended on November 30, 2021. Monthly rent in the amount of $3,220.00 was payable on the first day of each month. A security deposit of $1,610.00 was paid by the tenants and the landlord returned it to the tenants. A written tenancy agreement was signed by both parties.

The landlord's agent confirmed that the landlord is seeking a monetary order of $761.25 for painting, plus the $100.00 filing fee paid for this application.

The landlord testified regarding the following facts. The landlord's building manager initially charged the tenants $425.00 for painting the rental unit. The landlord was actually charged $761.25 for painting. The entryway and the living room walls had to be painted because of holes in the walls and the landlord provided photographs of same. The landlord had to mud and paint the entire rental unit. The landlord was willing to compromise earlier and accept $425.00 from the tenants for painting, but they refused to pay it. The landlord provided photographs, which are clear regarding the damage. Every area had to be painted and the cost per area is indicated on the invoice provided

by the landlord. The move-out report shows the damages. The landlord did not provide a proof of payment, as it was an oversight, and the landlord has not been asked to provide any receipts at previous RTB hearings by other Arbitrators. The landlord usually makes a net payment 30 days after the invoice, so the painting invoice would have been paid by January 31, 2022. The invoice is dated December 27, 2021 because the painting company issues invoices at the end of the month. The painting was done on November 29 or 30, 2021. The painting was actually done on November 29, 2021, for eight hours that day. The information regarding the painting was in front of the landlord's agent during this hearing, however the landlord did not provide a copy of same for this hearing.

The tenant testified regarding the following facts. The tenants dispute the landlord's entire application. The tenants did not cause any damages. The tenants' cleaner was not done cleaning at the rental unit until 7:00 p.m. on November 29, 2021. Therefore, no painting could have been done on November 29 for eight hours, unless the landlord's painter completed an overnight shift. The landlord provided closeups of the wall photographs and the tenants do not know what it is showing and what areas of the unit are in the photographs. The tenants provided multiple videos of the walkthrough. They hired the landlord's cleaner, that was recommended by the landlord's building manager. The final cleaning was not done before the inspection because the landlord trusted the cleaner, since they knew the cleaner. There were no damages beyond normal wear and tear after 14 months of living at the rental unit. The paint in the building and the common areas is the same as in the rental unit which is a "flat white," so if you wipe the walls or wash them you can see marks. The tenants provided videos of the common area walls at the building. One of the marks is from furniture. The tenants called the RTB and were told that if they filled the holes and prepared it for painting and sanded it, then the landlord had to do the painting. Tenant PJ works in construction, and he filled in and sanded all the holes at the rental unit. There were no holes that needed to be filled by the landlord, prior to painting.

The landlord stated the following facts in response. Painting was required, as per the tenant's testimony. The landlord is entitled to charge for all painting except for sun damage, as per the "BC government guide." The rental unit was painted before the tenants moved in and the landlord assumes it was one or two days before they moved into the unit.

Analysis

Burden of Proof

At the outset of this hearing, I informed the landlord's agent about the following information. The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to prove its application and monetary claims. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of its claims, in order to obtain a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing this application. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

> *The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*
>
> - *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
> - *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*
> - *The hearing will continue even if one participant or a representative does not attend.*
> - *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. I informed both parties that I had 30 days to issue a written decision to them, after this hearing.

The landlord received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide

evidence to support its application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of its claims, since it chose to file this application on its own accord.

Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claims. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

> *C. COMPENSATION*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. ***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.*

…

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. ***A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

I find that the landlord's agent did not properly present the landlord's application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules.*

During this hearing, the landlord's agent failed to properly go through the landlord's claims and the documents submitted as evidence. This hearing lasted 34 minutes, so the landlord's agent had ample opportunity to present the landlord's application and evidence and respond to the tenants' evidence. I repeatedly asked the landlord's agent if he had any other information to add and if he wanted to respond to the tenants' evidence.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application of $761.25 without leave to reapply. I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The landlord failed to provide any receipts to show if, when, to whom, and how it paid for any painting costs in this application. The landlord did not provide any proofs of payment, including cancelled cheques, credit card statements, bank statements, or other such evidence of payment. The landlord provided an invoice for painting, with a balance due of $761.25. The landlord claimed that any payment would have been made within 30 days by January 31, 2022.

The landlord's agent agreed at this hearing that the landlord did not provide any receipts as proof of payment for painting. He said that he has never been asked for it before from other Arbitrators at other RTB hearings, so he did not think it was required. However, Residential Tenancy Policy Guideline 16, as highlighted above, clearly states that receipts should be submitted as evidence of damages, claimed as compensation by the applicant landlord.

The landlord did not provide sufficient documentary or testimonial evidence to indicate when any work was done, how long it took, how many people completed it, or what their pay rate was per hour or per worker. The landlord provided an invoice with the work tasks completed and the amount per task only.

The tenant disputed the date when the painting was completed, of November 29, 2021. The landlord's agent initially indicated it was completed on November 29 or 30, 2021. He then stated it was done on November 29, for 8 hours. The tenant stated that it could not have been done on November 29, because the tenants' cleaner finished cleaning at the rental unit at 7:00 p.m. on November 29, and the painter would not have gone in after 7:00 p.m. and worked overnight for 8 hours. The landlord's agent did not respond to the above statement from the tenant, despite being offered an opportunity for same. The landlord did not provide sufficient documentary evidence regarding the date the painting was completed, as the date of the invoice is December 27, 2021, which is almost one month after the tenants vacated the rental unit on November 30, 2021. The landlord said that the company usually issues invoices at the end of the month, so December 27 was not the date the painting was completed.

The landlord's agent offered to provide evidence after this hearing. I informed him that I would not allow the landlord to provide any evidence after this hearing, as the tenants would not have a chance to respond, and the landlord had ample time of almost eight months, from filing its application on March 7, 2022, to this hearing date of November 1, 2022, to provide the above evidence but failed to do so.

I find that the landlord failed to provide sufficient documentary or testimonial evidence that the tenants caused excessive holes in the walls or damages beyond reasonable wear and tear, requiring the tenants to repaint the entire rental unit, as per Residential Tenancy Policy Guideline 1.

I also find that the landlord failed to provide sufficient evidence of the age of the interior paint at the rental unit. The landlord's agent testified that he assumed the rental unit was painted 1 or 2 days before the tenants moved into the unit. However, the landlord failed to provide sufficient documentary evidence of same. Residential Tenancy Policy Guideline 40 states that the useful life of interior paint is 4 years. Therefore, if the paint inside the rental unit was more than 4 years old, the landlord would be required to repaint, in any event.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the $100.00 filing fee from the tenants.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

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 03, 2022

Residential Tenancy Branch