Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with the landlords' application, filed on August 17, 2022, pursuant to the *Residential Tenancy Act* ("*Act*"), for:

- a monetary order of $3,307.50 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.

"Landlord ZN" did not attend this hearing, which lasted approximately 33 minutes from 1:30 p.m. to 2:03 p.m. Landlord MA ("landlord") and the two tenants, "tenant RD" and tenant VS ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to them after the hearing.

The landlord confirmed that he owns the rental unit, and he provided the rental unit address. He confirmed that he had permission to represent landlord ZN at this hearing (collectively "landlords").

The tenant identified himself as the primary speaker for the tenants at this hearing.

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.

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

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. Both parties were given multiple opportunities to settle at the beginning and end of this hearing and declined to do so.

I cautioned the landlord that if I dismissed the landlords' application without leave to reapply, the landlords would receive $0. The landlord affirmed that the landlords were prepared for the above consequences if that was my decision.

I cautioned the tenants that if I granted the landlords' application, the tenants would be required to pay the landlords $3,407.50 total, including the $100.00 filing fee for this application. The tenants affirmed that they were prepared for the above consequences if that was my decision.

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

The landlord confirmed receipt of the tenants' evidence. He said that he received the evidence late. He did not object to me considering the tenants' evidence at the hearing or in my decision, nor did he indicate how the landlords would suffer prejudice if I considered the tenants' evidence. In accordance with section 88 of the *Act*, I find that both landlords were duly served with the tenants' evidence. I considered the tenants' evidence at this hearing and in my decision because the landlord did not object to it and did not show prejudice to the landlords for same.

The landlord stated that he did not have a copy of the landlords' application for dispute resolution in front of him, but he had a copy of all other documents for this hearing. He said that he had open heart surgery 7 weeks prior to this hearing, and he was in the hospital for 2 months during that time. He did not provide any medical evidence with the landlords' application to confirm this information. He confirmed that he wanted to proceed with this hearing, even though he did not have his application and even if the landlords were unsuccessful in this application.

I proceeded with this hearing based on the landlord's request and informed him that the landlords had ample time prior to this hearing, to prepare for same, as the landlords filed this application on August 17, 2022, and this hearing occurred on January 23, 2023, over 5 months later.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to recover the filing fee paid for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on April 15, 2021. Monthly rent in the amount of $1,800.00 was payable on the first day of each month. Both parties signed a written tenancy agreement. No move-in or move-out condition inspection reports were completed for this tenancy. The landlords were ordered to pay the tenants double the value of their security and pet damage deposits and the $100.00 filing fee, totalling $2,900.00, pursuant to a decision, dated April 7, 2022, made by an Adjudicator at a previous RTB ex-parte hearing, based on a direct request application filed by the tenants. The landlords filed a review of that decision, and it was dismissed without leave to reapply, pursuant to a decision, dated May 2, 2022, made by an Arbitrator, at a previous RTB ex-parte hearing. Copies of the above decisions were provided for this hearing. The file number for the previous hearings is noted on the cover page of this decision.

The landlord stated that the landlords seek a monetary order of $3,307.50 plus the $100.00 application filing fee.

The landlord testified regarding the following facts. He paid $2,900.00 to the tenants, as per the previous RTB decision. He repainted the whole house before the tenants moved in. He fixed everything that the tenants required. He took a quick look at the rental unit. The new tenants moved in and sent pictures of the damages to the landlord. He did not pay the tenants' deposits back because there were damages and he thought

the tenants would know that he would be keeping the deposits for those damages. He provided an estimate and pictures of the rental unit. The estimate for $3,307.50 is dated June 16, 2022, after the tenants moved out on January 30, 2022. He was waiting for the decision on the deposits from the RTB, so that is why the estimate was done later. There were no repairs done by the landlords, pursuant to their estimate, except for work to the toilet and lights in the bathroom. The new tenants moved in with these damages. The landlords will do the work when the rental unit is vacant. The lease finishes February 1, 2023 or January 31, 2023 and then it becomes a month-to-month agreement for the new tenants. The landlords do not have any proof of payment or receipts for the work that was done in the bathroom.

The tenant testified regarding the following facts. The tenants dispute the landlords' application for damages. The landlord did a visual inspection for 30 minutes. There were no move-in or move-out reports for this tenancy. The landlords submitted receipts for painting, dryer, and lock repairs done before the tenants moved in. The landlords' estimate is not itemized. The company name is wrong. The tenants think that the landlord created this estimate on his own. The name of the company does not match the receipts. There is no GST number on the estimate. The work was not done. The estimate was done five months later. There is no closet, mirror, or blind repairs in the application by the landlords. Nothing was repaired by the landlords. The landlord completed an inspection and did not say anything about dog urine, which smells strongly. There were no receipts for the carpet damage. On February 1, 2022, new tenants moved into the rental unit. There were no damages sought by the landlord because he said that "everything seems fine" in the WhatsApp message he sent to the tenants.

The landlord stating the following facts in response. He sent a WhatsApp message to the tenants saying "everything seems ok" because the tenant's wife, tenant RD, wanted a response from him. He gave pictures the next day. The inspection was done at 7:00 p.m. on January 30, 2022, so it was dark at that time. The landlord had good intentions and paid double the deposits back to the tenants. The evidence is clear that there were 4 adults and 2 dogs in the 2-bedroom rental unit, which is too many people. On February 1, 2022, new tenants moved into the rental unit for a one-year fixed term tenancy and then a month-to-month agreement. They currently pay $1,990.00 per month in rent. The new tenants did not say that they would move out or that they did not want to live at the rental unit because of the damages. The landlord did not find the need to do any inspection reports because he fixed everything for the tenants.

Analysis

Burden of Proof

During this hearing, I informed the landlord about the following information. The landlords, as the applicants, have the burden of proof, on a balance of probabilities, to prove their application and monetary claims. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the landlords to provide evidence of their claims, in order to obtain a monetary order. The landlord affirmed his understanding of same.

The landlords received an application package from the RTB, including instructions regarding the hearing process. The landlords received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing their 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 (my emphasis added):

> ***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 both parties after this hearing.

The landlords received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the landlords to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlords to provide sufficient evidence of their claims, since they chose to file this application on their 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…*

I find that the landlord did not properly present the landlords' 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 failed to properly review and explain the landlords' claims and the documents submitted as evidence. The landlord referenced providing documents but did not review them in sufficient detail, by pointing me to specific page numbers, provisions, or other detailed information.

This hearing lasted 33 minutes, so the landlord had ample opportunity to present the landlords' application and respond to the tenants' evidence. I repeatedly asked the landlord if he had any other information to present and if he wanted to respond to the tenants' evidence.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claims. To prove a loss, the landlords 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 landlords 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.

Findings

On a balance of probabilities, I dismiss the landlords' application for $3,307.50, without leave to reapply. I find that the landlords failed the above four-part test, pursuant to section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The landlords did not provide an invoice or receipt for the $3,307.50 claimed for damages, as required by Residential Tenancy Policy Guideline 16, above. The landlords only provided an estimate for work to be done. The estimate is dated June 16, 2022, over 4.5 months after the tenants vacated the rental unit on January 30, 2022. The estimate is not signed by anyone. The estimate does not itemize the amounts charged per task, as challenged by the tenants during this hearing, which the landlord failed to respond to during this hearing. The tenants alleged that the estimate includes different names that are spelled incorrectly, but the landlord failed to respond to same during this hearing.

The repairs for damages were not completed by the landlords and new tenants moved into the rental unit on February 1, 2022, 2 days after the tenants moved out on January 30, 2022. These new tenants may have caused additional damages, which may have affected the landlords' estimate completed in June 2022.

There is no way to determine if the landlords will actually perform this repair work in the future, with new tenants residing there, if the landlords are awarded the monetary amount for this claim. I asked the landlord about same and he said he could complete the repairs after the new tenants move out but he did not know when that would be, since their tenancy would revert to a month-to-month agreement after the one year fixed term ends on February 1, 2023.

The new tenants have not moved out or stated that they want to, due to the damages. The landlords are obtaining a higher rent now of $1,990.00 per month from the new tenants, which is a profit of $190.00 per month, compared to the rent paid by the tenants of $1,800.00 during their tenancy, despite the damages that have not been fixed by the landlords.

The landlords did not complete move-in or move-out condition inspection reports for this tenancy, as required by sections 24 and 36 of the *Act*. Therefore, I cannot determine

which damages, if any, were caused by the tenants during their tenancy and which damages, if any, were pre-existing the tenants' tenancy.

I also note that the landlord sent a WhatsApp message to the tenants, after completing a visual inspection of the rental unit after the tenants moved out and told them "I have walked throgh and everything seems working fine" [sic]. The landlord confirmed same during this hearing. He said that he had to answer tenant RD because she wanted a response. However, the landlord was not coerced to do anything and sent the message on his own accord. Therefore, I find that the tenants are not responsible for the damages claimed by the landlords, since none were identified by the landlord after he completed a visual move-out inspection of the rental unit and sent a message to the tenants after.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the $100.00 filing fee from the tenants.

Conclusion

The landlords' 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: January 25, 2023

Residential Tenancy Branch