Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlords' application, filed on June 1, 2022, and amended on August 4, 2022 and October 28, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $800.00 for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to retain a portion of the tenant's security deposit of $937.50 in full satisfaction of the monetary order, pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The two landlords, "landlord MM" and landlord DL ("landlord"), and the tenant attended this 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 41 minutes, from 1:30 p.m. to 2:11 p.m.

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

Both landlords confirmed that they co-own the rental unit, as they are now married. The landlord provided the rental unit address. Both landlords identified the landlord as the primary speaker for the landlords 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.

At the outset of 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. They had an opportunity to ask questions, which I answered. 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 but declined to do so.

I repeatedly cautioned the landlords that if I dismissed their application without leave to reapply, they would receive $0, and they could be required to pay the tenant double the value of her security deposit. The landlords repeatedly affirmed that they were prepared for the above consequences if that was my decision.

I repeatedly cautioned the tenant that if I granted the landlords' full application, the tenant would be required to pay the landlords $900.00, including the $100.00 filing fee. The tenant repeatedly affirmed that she was prepared for the above consequences if that was my decision.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. The landlord confirmed receipt of the tenant's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlords' application and both landlords were duly served with the tenant's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to correct the spelling of the tenant's first name. The landlord and the tenant consented to this amendment during this hearing. I find no prejudice to either party in making this amendment.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase their monetary claim from $400.00 to $800.00. The landlords initially applied for $400.00 and then amended their application on August 4, 2022, to increase it to $600.00, and then amended their application again on October 28, 2022, to increase it to $800.00. The landlords provided amendment forms to confirm same. The tenant

confirmed that she was aware of the landlords' monetary claim of $800.00 and she provided evidence for this hearing and testimony regarding same at this hearing. I find no prejudice to either party in making this amendment.

Issues to be Decided

Are the landlords entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the landlords entitled to retain a portion of the tenant's security deposit?

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.

The landlord and the tenant agreed to the following facts. This tenancy began on October 1, 2020 and ended on May 30, 2022. Monthly rent in the amount of $1,875.00 was payable on the first day of each month. A security deposit of $937.50 was paid by the tenant to the landlords. The landlords retained $400.00 and returned $537.50 from the tenant's security deposit to the tenant on June 15, 2022, by way of e-transfer. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlords on June 8, 2022, by way of an email, and the landlords accepted email as a service method from the tenant. The tenant did not provide written permission for the landlords to retain any amount from the tenant's security deposit.

The landlord confirmed that the landlords seek a monetary order of $800.00, to retain a portion of the tenant's security deposit of $937.50, and to recover the $100.00 application filing fee.

The landlord testified regarding the following facts. The landlords provided a monetary order worksheet of $800.00. There was $200.00 for each strata fine, for a total of four fines. Two fines were for smoking and the last two were during the move-out because

the tenant was painting her vehicle in the parkade and storing a propane cylinder in the building. The landlords also want to recover the $100.00 application filing fee. The landlords submitted evidence with their application.

Landlord MM testified regarding the following facts. There were signs of smoking in the rental unit. The landlord did not charge the tenant for damages, as noted in the move-out condition inspection report. The landlords painted the rental unit at no charge to the tenant.

The tenant testified regarding the following facts. She disputes the landlords' entire application. Neither the tenant, nor any of her visitors, smoked at the rental unit. The landlords were on the strata board and the landlords' friends were the "complainers" who lived above. The tenant stored an empty propane tank for one day in the building because the rental unit was a 500 square foot apartment and the tenant was packing up and moving things around. The tenant was not painting her car in the parkade, she was cleaning the compressed air filter in the front area where the air gets into the car. The tenant is unsure because it is a new car. The landlords wanted to "tack on" more charges because the tenant was leaving the rental unit.

The landlord testified regarding the following facts in response to the tenant. The tenant was hostile at move-out and the landlords tried to make the process "seamless." It seems that the tenant was smoking in the bathroom after two fines were issued at the beginning of her tenancy for smoking. The landlords had to repaint the bathroom. The landlords are not part of strata, and they were not trying to "tack on" additional charges for the tenant. There was one additional fine that was waived by strata because the landlords asked for it to be done.

Landlord MM stated the following facts in response to my questions. The landlords did not provide any proof of paying the strata fines, as evidence for this hearing. The landlords have a statement of account and bank statements to prove payment.

The landlord stated the following facts in response to my questions. The landlords did not think it was "prudent" or relevant to provide evidence of paying the strata fines, for this hearing. The landlords can submit evidence after this hearing, since the landlord was looking at the statements of account and proofs of payment in front of him, during this hearing. The landlord does not know what evidence was provided with the landlords' application because he does not have it printed out in front of him. during this hearing. The landlords submitted a statement of account showing that a balance of $400.00 total was due, for two strata fines of $200.00 each.

The tenant stated the following facts in response to the landlords. She removed the propane tank as soon as she received the "notice of infraction."

Analysis

Burden of Proof

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

I informed the landlords of the following information during this hearing. 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 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 (my emphasis added, and was referenced by me during this hearing):

> ***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 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 after this hearing.

I informed the landlords of the following information during 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 this 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 landlords did not sufficiently present their 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 landlords failed to sufficiently review and explain their claims and the documents submitted with their application.

This hearing lasted 41 minutes, so the landlords had ample time and multiple opportunities to present their application and respond to the tenant's evidence. I repeatedly asked the landlords if they had any other information to add and if they wanted to respond to the tenant's submissions, during this hearing.

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 their claims. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities (my emphasis added):

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenant 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 and for the reasons stated below, I dismiss the landlords' application for $800.00 for strata fines, without leave to reapply. I find that the landlords failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

I find that the landlords failed to provide sufficient documentary and testimonial evidence to prove if, what, when, why, how, or to whom the landlords paid for the above strata fines, as per Residential Tenancy Policy Guideline 16 above. The tenant disputed the landlords' claims for the above strata fines.

The landlords only indicated two of the strata fines of $200.00 each, totalling $400.00, with no further description, in the parties' move-out condition inspection report, which was submitted by the landlords as evidence for this hearing. The landlords did not explain this report in sufficient detail during this hearing. The remaining two strata fines of $200.00 each, totalling $400.00, were added to the landlords' application by amendment on August 4, 2022, despite the two strata letters, both being dated July 11, 2022. These additional fines were added after the tenancy ended on May 30, 2022, which did not allow the tenant the opportunity to respond to or dispute these fines with strata.

I also note that there is no specific description for the costs in the statement of account, dated January 13, 2022, provided by the landlords. It only indicates two "bylaw fines" with a date of December 16, 2021, but does not indicate what the fines are for. I also note that the landlords did not pursue the payment of these two fines until June 1, 2022, after this tenancy ended on May 30, 2022, despite the fines being imposed in December 2021, "at the beginning of the tenancy" as per the landlord's testimony, and as per the statement of account and the two strata letters with the same date of December 16, 2021. The landlords did not indicate the reasons for any delay.

The landlords agreed that they had bank statements, statements of account, and proofs of payment, in front of them during this hearing, but they were not submitted as evidence with the landlords' application. The landlords did not even know what evidence was submitted with their application, since they did not have the documents in front of them during this hearing, and they asked me to check the online RTB dispute access site, during this hearing.

I informed the landlords of the following information during this hearing. The landlords provided a statement of account, with a balance due for $400.00, for two strata fines of $200.00 each. The landlords provided four strata letters, indicating that landlord MM was being issued fines of $200.00 each, for a total of $800.00, for the rental unit. The strata letters indicate that the landlords are required to pay the strata fines by cheques or pre-authorized payments, requiring the landlords' authorizations by email. No cancelled cheques, emails allowing pre-authorized payments, receipts, bank statements, or other documentary evidence was provided by the landlords to confirm if the above amounts were paid, why it was paid, what was paid, when it was paid, how it was paid, or to whom it was paid. Despite me informing the landlords of same during this hearing, and the landlords saying they had proofs of payment in front of them, they did not provide testimonial evidence of the above details of payment, during this hearing.

The landlords asked if they could submit proofs of payment after this hearing. The landlord said that he did not think it was relevant to submit these documents prior to this hearing. He stated that whether the landlords paid the fines or not, was irrelevant, because the fines were levied against them, so the landlords were entitled to the money. He claimed that the fines would have been paid by the landlords. I repeatedly informed the landlords that this evidence was relevant to prove that the landlords paid the strata fines, and the details of same, as noted above. I repeatedly notified the landlords that I could not just assume that the landlords paid these strata fines in full to strata.

During this hearing, I informed the landlords that they had ample time of almost 9 months, from filing this application on June 1, 2022, to this hearing date of February 28, 2023, to provide the above evidence but failed to do so.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the $100.00 filing fee from the tenant. This claim is also dismissed without leave to reapply.

Security Deposit

The landlords applied to retain a portion of the tenant's security deposit in this application. The landlords continue to hold $400.00 from the tenant's security deposit of $937.50 total.

Although the tenant did not apply for the return of her security deposit, I am required to consider it, since the landlords filed this application to retain the security deposit, as per Residential Tenancy Policy Guideline 17. I informed both parties of same during this hearing.

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the security deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The following facts are undisputed by both parties. This tenancy ended on May 30, 2022. The tenant provided a written forwarding address to the landlords on June 8, 2022, by email, which the landlords received and accepted service from the tenant by email. The landlords did not have written permission from the tenant to keep any amount from the tenant's security deposit. The landlords retained $400.00 and returned $537.50 to the tenant on June 15, 2022, which the tenant accepted by e-transfer.

The landlords filed this application on June 1, 2022, which is within 15 days of the end of tenancy date of May 30, 2022, and the forwarding address date of June 8, 2022. Therefore, I find that the tenant is not entitled to the return of double the value of her security deposit. I am required to consider the doubling provision, pursuant to section 38 of the *Act* and Residential Tenancy Guideline 17, even though the tenant did not apply for same, since she did not waive her right to it. I informed both parties of same during this hearing.

Over the period of this tenancy, interest is payable on the tenant's security deposit. No interest is payable for the years from 2020 to 2022. Interest of 1.95% is payable for the

year 2023. Interest is payable from January 1 to February 28, 2023, since the date of this hearing and decision is February 28, 2023.

This results in $2.96 interest on $937.50 for 16.16% of the year based on the RTB online deposit interest calculator. Interest is paid on the full amount of the original security deposit of $937.50, before any deductions are made, as per Residential Tenancy Policy Guideline 17.

In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to the return of her security deposit of $937.50, plus interest of $2.96, totalling $940.46, minus the deduction of $537.50, that was already returned to the tenant. I issue a monetary order for the balance of $402.96 to the tenant against the landlords.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of $402.96 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: February 28, 2023

Residential Tenancy Branch