Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear two applications regarding the above-noted tenancy.

The tenant's application submitted on June 30, 2022 is for:

- a monetary order for compensation for damage and loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

The tenant's application submitted on August 29, 2022 is for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38;
- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant AC (the tenant) and landlord GC (the landlord) attended the hearing. The tenant was assisted by agent LS. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00."

Preliminary Issue – service of the application submitted on June 30, 2022

The tenant affirmed that she believes she attached the notice of hearing dated July 14, 2022 to the landlord's door around July 14, 2022. Later the tenant stated twice that she does not remember how she served the July 14, 2022 notice of hearing, and then that she registered mail it.

The landlord testified that he did not receive the July 14, 2022 notice of hearing and that he is not aware of the tenant's application.

After approximately five minutes the tenant provided two tracking numbers, the first one for a package mailed on May 03, 2022 and the second one for a package mailed on July 16, 2022.

Section 89(1) of the Act states:

> An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
> (a)by leaving a copy with the person;
> (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Rule of Procedure 3.5 states:

> 3.5 Proof of service required at the dispute resolution hearing
> At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

> The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the

> Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

I find the tenant's testimony extremally vague, as the tenant changed her testimony three times. Based on the tenant's vague testimony, I find the tenant failed to prove, on a balance of probabilities, that the landlord was served the notice of hearing. I find the tenant did not serve the notice of hearing in accordance with section 89(1) of the Act.

Rule of Procedure 3.1 states:

> 3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package
> The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:
> a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
> b) the Respondent Instructions for Dispute Resolution;
> c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
> d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

As the tenant did not serve the notice of hearing in accordance with section 89(1) of the Act, I dismiss the application with leave to reapply.

Leave to reapply is not an extension of timeline to apply.

The tenant is not authorized to recover the filing fee, as the tenant was not successful.

Preliminary Issue – service of the application submitted on August 29, 2022

Both parties confirmed receipt of the notice of hearing dated September 13, 2022 and the evidence and that they had enough time to review them.

Based on the testimonies, I find that each party was served with the respective materials for the application submitted on August 29, 2022 in accordance with section 89(1) of the Act.

Issues to be Decided

Is the tenant entitled to:

- an order for the landlord to return the deposit?
- a monetary order for losses?
- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on October 01, 2019 and ended on August 01, 2022. Monthly rent when the tenancy ended was $1,624.00, due on the first day of the month. The landlord collected and currently holds in trust a deposit of $800.00. The tenancy agreement was submitted into evidence.

The tenant served a letter on June 30, 2022 with her forwarding address. The landlord confirmed receipt of this letter on June 30, 2022. The landlord said the tenant does not live at the address provided.

Both parties confirmed their current addresses for service. The addresses are recorded on the cover page of this decision.

The tenant submitted a copy of the June 30, 2022 letter into evidence. It states: "Please send my security deposit to [redacted for privacy]."

The tenant did not authorize the landlord to retain the deposit and the landlord did not submit an application asking for an authorization to retain the deposit.

The tenant is claiming compensation in the amount of $200.00 because the rental unit did not have curtains. The tenant affirmed that she asked the landlord three times to provide curtains. The tenant did not submit an application for dispute resolution seeking an order for the landlord to provide curtains during the tenancy because she was afraid the landlord would terminate her tenancy.

The move-in condition inspection report (the report) indicates the entry, living room, den, dining area, and two bedrooms did not have curtains.

The landlord stated the rental unit had curtains and the tenant asked the landlord to replace them because she did not like them. The landlord offered several replacement curtains which were rejected by the tenant.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

RTB Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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:
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> - 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Deposit

Pursuant to section 38 of the Act, the landlord must pay a monetary award equivalent to double the value of the security deposit if the landlord does not submit an application for an authorization to retain the deposit:

> (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a)the date the tenancy ends, and
> (b**)the date the landlord receives the tenant's forwarding address in writing**, the landlord must do one of the following:
> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.
> […]
> (6)If a landlord does not comply with subsection (1), the landlord
> (a)may not make a claim against the security deposit or any pet damage deposit, and
> (b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
>
> (emphasis added)

I accept the uncontested testimony that the tenant served a letter with a mailing address, the landlord received it on June 30, 2022 and did not submit an application seeking an authorization to retain the deposit. The landlord retained the deposit.

The Act does not require the forwarding address to be the tenant's new address. The tenant may provide any mailing address as the forwarding address.

RTB Policy Guideline 17 is clear that the arbitrator will double the value of the security deposit when the landlord has not complied with the 15 day deadline. It states:

> B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.
> […]

> 11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.
> […]
> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> -if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
> -if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

As the landlord received the forwarding address, retained the deposit and did not submit an application for dispute resolution, in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to double the deposit.

According to the deposit interest calculator (available at http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html), the interest accrued on the deposit is $3.46.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to a monetary award of $1,603.46 (double the deposit of $800.00 plus the interest accrued).

Window coverings

The tenant claims that she suffered losses because the rental unit did not have window coverings.

RTB Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

> B. REASONABLE EFFORTS TO MINIMIZE LOSSES
> **A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided. In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss**. For

> example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
> • remove and dry the possessions as soon as possible;
> **• promptly report the damage and leak to the landlord and request repairs to avoid further damage;**
> **• file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.**
> Compensation will not be awarded for damage or loss that could have been reasonably avoided.
> Partial mitigation
> Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.
>
> (emphasis added)

As the tenant was aware the rental unit did not have windows coverings when the tenancy started and the tenant did not submit an application for dispute resolution asking for an order for the landlord to provide windows coverings, I find the tenant failed to mitigate her damages. Landlords cannot terminate a tenancy when tenants submit an application for dispute resolution.

I dismiss the tenant's claim, as the tenant failed to mitigate her losses.

Filing fee and summary

Per section 72(1) of the Act, the tenant is entitled to recover the $100.00 filing fee.

In summary, the tenant is entitled to $1,703.46.

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenant a monetary order in the amount of $1,703.46. This order must be served on the landlord by the tenant. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court (Small Claims) to be 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: March 22, 2023

Residential Tenancy Branch