Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding DON DEVELOPMENT CONSTRUCTION COMPANY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on July 15, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $2,950.00 for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, totalling $900.00 (collectively "deposits"), pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The landlord's two agents, "landlord DG" and "landlord SM," and the 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. This hearing lasted approximately 40 minutes from 1:30 p.m. to 2:10 p.m.

All hearing participants confirmed their names and spelling. Landlord SM and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The tenant intended to call "witness RM," who he said is his new landlord, to testify at this hearing. Witness RM was excluded from the outset of this hearing at 1:32 p.m. and did not return to testify. At the end of this hearing, I informed the tenant that I did not find it necessary to hear from his witness, and the tenant did not dispute same.

Landlord DG confirmed the legal name of the landlord company named in this application ("landlord"). She said that she is the caretaker for the landlord. She stated

that the landlord owns the rental unit. She provided the rental unit address. She said that she had permission to represent the landlord at this hearing.

Landlord SM confirmed that she is the daughter of landlord DG. She said that she had permission to represent the landlord. Landlord DG identified landlord SM as the primary speaker for the landlord 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 during this hearing, and declined to do so.

I repeatedly cautioned the landlord's agents that if I dismissed the landlord's application, the landlord would receive $0 and the landlord could be required to pay the tenant double the value of his deposits, totalling $900.00. The landlord's agents repeatedly affirmed that the landlord was prepared for the above consequences if that was my decision.

I repeatedly cautioned the tenant that if I granted the landlord's application, the tenant could be required to pay the landlord $3,050.00, including the filing fee for this application, the tenant would receive $0, and the landlord would retain both of the tenant's deposits, totalling $900.00. The tenant repeatedly affirmed that he was prepared for the above consequences if that was my decision.

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 the tenant was duly served with the landlord's application.

Landlord SM confirmed receipt of the tenant's evidence. In accordance with section 88 of the *Act*, I find that the landlord was duly served with the tenant's evidence.

Issues to be Decided

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

Is the landlord entitled to retain the tenant's deposits?

Is the landlord entitled to recover the filing fee 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 landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2014 and ended on June 6, 2022. Monthly rent in the amount of $975.00 was payable on the first day of each month. A security deposit of $450.00 and a pet damage deposit of $450.00 were paid by the tenant and the landlord continues to retain both deposits in full, totalling $900.00. A written tenancy agreement was signed by the tenant and the former landlord manager. A move-in condition inspection report was completed by the tenant and the former landlord manager. A move-out condition inspection report was not completed by the landlord for this tenancy. The landlord did not provide the tenant with a final opportunity to schedule a move-out condition inspection using the approved RTB form. The landlord did not have written permission from the tenant to keep any amount from his deposits. The landlord's application to retain the tenant's deposits was filed on July 15, 2022. A written forwarding address was received by the landlord from the tenant on June 30, 2022, by way of text message.

The landlord filed this application for a monetary order of $2,950.00, to retain the tenant's deposits of $900.00, and to recover the $100.00 application filing fee.

Landlord SM testified regarding the following facts. The tenants moved out in June 2022 and left stuff on their balcony. The landlord waited 2 weeks to enter the rental unit. The tenants left the keys on the counter. At the end of June there was a no contact order because the tenant was walking around with a sledgehammer. Cleaning was not done and there was animal feces from a rabbit. The oven was cleaned for 3

hours. The landlord provided photographs. It took 2 weeks to fix the suite for the next person. There was mold on the windowsills, and it was carved out and re-fixed by the landlord. The landlord had to paint everything because the tenant painted every room with a different colour. The landlord was packing bags of garbage. Nothing was cleaned. The renovation made the rental unit almost liveable for someone else. The landlord looked at the tenant's photographs provided for this hearing, and a lot of them are the landlord's own photographs "zoomed in." The tenant left stuff behind. The landlord's request for a monetary order was to make the rental unit liveable. There was a broken glass door and a black carpet, but the landlord accepted these costs on its own.

The tenant testified regarding the following facts. These are all "lies." The tenant moved into the rental unit, and it was already damaged. There were tile floors and linoleum damages and squares in the flooring that were mismatched. The rental unit was already painted different colours. In the bathroom, the paint was flaky because it was bad paint. The mold on the windowsills was already there. Landlord DG's husband told the tenant beforehand that he would be renovating because it was an old building. The previous management was fired because they neglected the care of the building. This is a "personal witch hunt." The tenant provided photographs. The linoleum flooring was not installed correctly in the kitchen. The stove and oven are 30 years old. The previous tenants used to drink and wear high heels and "piss" off the balcony at the rental unit. The oven was burned before by the previous tenants. The landlord could not get rid of the black mold and would not replace the windows, so it was always moldy. The roof was never replaced. New windows were put on the lower suite not the upper one. The tenant cleaned the bedrooms, bathrooms, tubs, and made sure the rental unit was empty. The tenant did not vacuum the carpet. The tenant did a visual inspection with landlord DG's husband. The police said not to "trespass" and there was a "do not contact order."

Landlord SM stated the following facts in response. The tenant had a "no contact order." The tenant could not clean the rental unit if he was not allowed to come back into it.

Analysis

Legislation, Rules, and Burden of Proof

At the outset of this hearing, I repeatedly informed the landlord's agents that, as the applicant, the landlord had the burden of proof, on a balance of probabilities, to present

and prove this application and evidence. The landlord's agents affirmed their understanding of same.

The landlord was provided with an application package from the RTB, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), when the landlord filed this application.

The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2:

> *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. During this hearing, I informed both parties that I had 30 days after this hearing to issue a written decision. Both parties affirmed their understanding of same.

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 their 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.

The following RTB *Rules* state, 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's agents did not properly present the landlord's application and evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules.*

This hearing lasted 40 minutes, so the landlord's agents had ample time and opportunity to present the landlord's application and respond to the tenant's testimony. I repeatedly asked the landlord's agents if they had any other information or evidence to present, 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 applicant to establish the claim. 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 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 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.***

Findings

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application of $2,950.00 and to retain the tenant's deposits totalling $900.00, without leave to reapply.

The landlord's agents did not explain the landlord's rent or damages claims in sufficient detail during this hearing. The landlord's agents did not review or explain the landlord's documents in sufficient detail during this hearing. The landlord's agents did not provide any specific amounts for the rent or damages, during this hearing.

I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16. I find that the landlord failed to prove damages beyond reasonable wear and tear, caused by the tenant, as required by

Residential Tenancy Policy Guideline 1. The landlord's agents indicated that there were damages but did not provide sufficient testimony or evidence regarding same, including the costs of same, if or when any costs were paid, or other such specific information.

The landlord did not indicate the age of the different items or damages at the rental unit, so I could determine their useful life, as per Residential Tenancy Policy Guideline 40. The landlord did not review or explain the move-in condition inspection report during this hearing. The landlord did not complete a move-out condition inspection report for this tenancy. Therefore, I cannot determine if any damages or losses were caused by the tenant during his tenancy, whether these damages were pre-existing when he moved into the rental unit, and what damages, if any, were present when he moved out.

The landlord did not provide or reference any quotations, estimates, invoices, or receipts, to show if or when the landlord had any damages or losses repaired, when the work was completed, who completed it, how many people completed it, what the rate per hour or per worker was, what tasks were completed, how long it took to complete, when the work was paid for, how it was paid, or who paid it. The landlord's agents did not provide any testimony about the above information during this hearing.

The landlord provided a document with tasks and hours for work apparently completed at the rental unit, but did not review this document during this hearing. The document indicates that work was done for different units and provides "renovation" costs for the rental unit at $2,045.26. The tenant is not responsible for renovating a rental unit. The tenant is only responsible for damages or loss caused by his actions or negligence. The landlord did not provide written confirmation that any of the above work was paid for by the landlord, including a receipt or proof of payment.

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

Tenants' Deposits

The landlord continues to hold the tenant's security deposit of $450.00 and pet damage deposit of $450.00, totalling $900.00.

During this hearing, I informed both parties that I was required to make a decision as to whether the tenant is entitled to the return of double the amount of his deposits, as per Residential Tenancy Policy Guideline 17, since the landlord applied to retain the tenant's deposits, in this application. Both parties affirmed their understanding of same.

The tenant did not specifically waive his right to the return of double the value of their deposits, as per Residential Tenancy Policy Guideline 17, so I am required to consider it in this decision.

Section 38 of the *Act* requires the landlord to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, 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 landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits 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 landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

A pet damage deposit can only be used for damage caused by a pet to the residential property. Section 38(7) of the *Act* states that unless a tenant agrees otherwise, a landlord is only entitled to use a pet damage deposit for pet damage. The landlord applied for pet damages in this application, but also for unpaid rent, not just damages.

This tenancy ended on June 6, 2022. The landlord did not have written permission to retain any amount from the tenant's deposits. The tenant provided a forwarding address by text message, which is not permitted by section 88 of the *Act*. However, the landlord confirmed receipt of tenant's written forwarding address, provided a copy of the text message, and included this address in the tenant's contact information for this application. Therefore, I find that the landlord was sufficiently served with the tenant's forwarding address, as per section 71(2)(c) of the *Act*.

The landlord did not complete a move-out condition inspection report or provide the tenant with the approved RTB form to schedule one. Therefore, the landlord's right to claim against the deposits for damages, is extinguished. However, the landlord also applied for unpaid rent, not just damages, in this application.

The landlord did not return the tenant's deposits. The landlord filed this application to retain the tenant's deposits on July 15, 2022, which is within 15 days after the later forwarding address was received by the landlord on June 30, 2022. Therefore, I find that the tenant is not entitled to double the amount of his deposits.

Interest is payable on the tenant's deposits, totalling $900.00, during the period of this tenancy. No interest is payable for the years 2021 or 2022. Interest of 1.95% is payable for the year 2023. Interest is payable from January 1, 2023 to April 13, 2023, since the date of this hearing is April 13, 2023. Although this decision was issued on April 17, 2023, this is not within the control of both parties. This results in $4.95 interest on $900.00 for 28.21% of the year based on the RTB online deposit interest calculator.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive the original amount of his security and pet damage deposits, totalling $900.00, plus $4.95 in interest. The tenant is provided with a monetary order for $904.95.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of $904.95 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: April 17, 2023

Residential Tenancy Branch