Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on July 13, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $669.21 for damage to the rental unit, pursuant to section 67;
- authorization to retain a portion of the tenants' security deposit of $500.00 and pet damage deposit of $500.00, totalling $1,000.00 (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 and the two tenants, tenant KB ("tenant") and "tenant TF" 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 began at 1:30 p.m. The tenants' "witness TM" called into this hearing to provide testimony from 2:20 p.m. to 2:26 p.m. only. This hearing ended at 2:27 p.m. This hearing lasted approximately 57 minutes total.

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.

The landlord confirmed that she owns the rental unit. She provided the rental unit address.

The tenant identified herself as the primary speaker for the tenants at this hearing. Tenant TF 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. They had an opportunity to ask questions. I informed both parties that I could not provide legal advice to them. 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 but declined to do so.

I repeatedly cautioned the tenants that if I granted the landlord's full application, the tenants would be required to pay the landlord $769.21, including the $100.00 filing fee. The tenants repeatedly affirmed that they were prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlord that if I dismissed her application without leave to reapply, she would receive $0, and she may have to pay the tenants double the value of their deposits of $1,000.00, totalling $2,000.00. The landlord repeatedly affirmed that she 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 both tenants were duly served with the landlord's application.

The landlord confirmed receipt of the tenants' evidence. She said that she received it on the day before this hearing. In accordance with section 88 of the *Act*, I find that the landlord was duly served with the tenants' evidence.

The landlord affirmed that she was prepared and wanted to proceed with this hearing, despite receiving the tenants' evidence late.

Issues to be Decided

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

Is the landlord entitled to retain a portion of the tenants' deposits?

Is the landlord 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 and witness TM 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 March 1, 2022 and ended on June 29, 2022. Monthly rent in the amount of $1,150.00 was payable on the first day of each month. A security deposit of $500.00 and a pet damage deposit of $500.00 were paid by the tenants and the landlord continues to retain both deposits in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlord on July 2, 2022, by way of text message. The tenants did not provide written permission for the landlord to retain any amount from their deposits.

The landlord applied for a monetary order for damages of $669.21, to retain a portion the tenants' deposits totalling $1,000.00, and to recover the $100.00 application filing fee.

The landlord testified regarding the following facts. Emotions were high during the move-out condition inspection. The tenant brought her mother, who was not elected as a representative. The tenant's mother argued about the siding and the screen door and said to cut it. The landlord did not include the general dirty condition of the rental unit in the move-out condition inspection report. She included the "objective damages" in the move-out condition inspection report. There was siding at the back of the house, which was melted. Tenant TF put his barbeque there and the lid was up against the siding. The landlord noticed it on April 17. The tenants' dog got excited, ran, and hit the screen door at the rental unit, so there was a rip in the screen. On move-out, the tenants put their dog feces in the garbage bin with no bag, so the landlord paid a cleaning fee for

the garbage can, since she had a bin cleaning service do it. The tenants removed a paint chunk in the wall, so the landlord had to fix it with her own labour. There was a gouge in the trim of the door at the den of the rental unit. The siding was not fixed but the estimated cost is $420.00. The screen door was not repaired by the tenants before they moved out, so the landlord provided a bill for $132.00. The bin cleaning was $32.10. The landlord estimated the other two items for the wall damage repair, which includes the paint and the gouge, and the door trim repair. Pictures, estimates, and repair receipts were provided by the landlord.

The tenant testified regarding the following facts. Regarding the melted siding, the tenants contacted a professional, who provided an email and phone number contact. The tenants sent pictures and emails, and the professional said that a typical barbeque would not affect a small area. The siding was not discussed before move-out. The tenants put the barbeque on the other side of the house. The barbeque would not cause a big bubbling in the area. Regarding the garbage bin clean, the landlord told the tenants to clean the dog feces, so they threw it in the garbage can because there was nowhere else to put it. Regarding the screen door, there was a small rip. The tenants provided a suggestion to fix the screen door and cut it, and they were willing to do it. The tenants found a $30.00 kit to do it for the landlord. The tenants do not want to pay for the whole screen and door. They agreed to fix the rip only, but the landlord refused. Regarding the wall repair, the tenants were told that they could hang up things on the wall. It was a 3-millimeter strip that they put on the wall, with no holes, that was ripped, and a bit of paint came off. The parties' tenancy agreement did not say that the tenants could not use a 3-millimeter strip to hang photographs or hang up stuff in the rental unit. Regarding the door trim repair, the tenants do not know what the landlord is referring to. The landlord provided yellow blurry photographs. The tenants cannot see the gouge, it was not discussed during the move-out walkthrough, and it was added to the move-out condition inspection report after by the landlord. The tenants did not see it at the time, and they do not have any photographs of it.

The tenant stated the following facts. The tenant left the move-out condition inspection halfway through because the landlord was "agitated." Tenant TF stayed with the tenant's mom, witness TM, at the move-out condition inspection. The landlord could not collect herself to do the move-out walkthrough. The tenant thought that the move-out condition inspection report was done but the landlord said that it was not done. The tenants sent photographs showing that the rental unit was cleaned when they left, even though the landlord did not claim anything for cleaning. The landlord kept both of the tenants' deposits, even though she was supposed to return it. The tenants sent their address information to the landlord, so she could mail their deposits to them. The

tenants agree to pay $32.10 for the garbage bin clean. The tenants agree to pay $30.00 for the replacement kit to fix the ripped screen door. The door trim repair was nothing, it was added after the walkthrough, and it was not shown or discussed. The wall repair is not in the tenancy agreement, and it is minimal damage that is wear and tear. The professionals said that the siding was not damaged from a barbeque and the tenants did not see it when they lived there.

The landlord stated the following facts in response. She was not fully detailed when she spoke before. The landlord's siding professional was in attendance at the rental unit and saw the damage, not like the emails sent by the tenants, whose professional did not come to the rental unit. The tenants' barbeque lid being up caused the melted siding. The landlord told the tenants by email in April to stop the barbeque and move it to a different area. The landlord only repaired the screen door, she did not replace it or replace the track or frame. The tenants told the landlord about the replacement kit for the screen door, but the landlord had to use her labour to fix it.

The tenant stated the following facts in response. The tenants moved out because of an eviction notice. The tenants provided siding photographs to the professional because they could not go back to the rental unit after they left.

Tenant TF stated the following fact in response. There was no mark from the barbeque lid on the wall or the siding at the rental unit.

The landlord's witness TM testified regarding the following facts in response to questions from the tenant. She is the mother of the tenant. She was present during the move-out condition inspection. The landlord said that there was melted siding and witness TM disagreed and looked. She built her own home and she had bubbled out siding at her place. That can happen if the siding is not cut properly or it is too tight to the edge. The landlord thought it was a barbeque issue, so she took photographs for the tenants to take to a professional. The landlord brought her own guy as a witness, and he was not intimidated by witness TM. He checked the screen door and it opened and closed on the track properly. Witness TM explained to the landlord that the replacement kit could be used to repair the screen door, but the landlord disagreed. It was a cheaper option. Witness TM is shocked to hear that she intimidated the landlord, since she was just trying to make suggestions for the tenants. She apologizes if the landlord felt that way about her.

The landlord's witness TM testified regarding the following facts in response to questions from the landlord. Witness TM is not an expert on siding. She recently built

her own house three years ago and had the same issue with siding because it was too tight.

Analysis

Burden of Proof

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

The landlord received an application package from the RTB, including instructions regarding the hearing process. She 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 the 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 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 this 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 her claims, since she chose to file this application on her 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 sufficiently present her 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 sufficiently review and explain her claims and the documents submitted with her application.

This hearing lasted 57 minutes, so the landlord had ample time and opportunity to present her application and respond to the tenants' evidence. I repeatedly asked the landlord if she had any other information to add and if she wanted to respond to the tenants' submissions.

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.***

Findings

I award the landlord $32.10, which is the full amount claimed to clean the garbage bin, and $30.00 of the $132.11 claimed to fix the screen door tear, since the tenants agreed to pay the above amounts during this hearing. I find that the above amounts are reasonable and sufficient for the above damages at the rental unit.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application for $607.11, 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. I find that the landlord failed to show sufficient damages, beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1.

The landlord failed to provide receipts to show if, when, or how she paid for the damages to the siding, walls, and door trim, as per Residential Tenancy Policy Guideline 16 above.

The landlord agreed that she did not complete the siding repair and she only provided an estimate for $420.00, not a receipt, for same. The landlord did not indicate if or when she would have the siding work done, during this hearing. The landlord's written estimate does not include the landlord's full name, the rental unit address, or the specific area where the damage is located at the rental unit.

The landlord agreed that she did not provide any estimates or receipts for the wall damage repair of $35.00 or the door trim repair of $50.00, since she said she completed this work on her own. She did not provide a sufficient breakdown of costs or how she arrived at the above amounts for her own labour. The landlord indicated "1 hour" for each of the above tasks in her monetary order worksheet, which she did not review in sufficient detail during this hearing. The landlord did not provide a receipt for the "materials" for the door trim repair, which she indicated in the monetary order worksheet. The landlord did not indicate how she arrived at the above "labour" rates, as she did not state whether she is a repair professional or expert in these areas.

The landlord had ample time of almost 9 months, from filing this application on July 13, 2022, to this hearing date of April 4, 2023, to provide the above evidence but failed to do so.

I find that the $30.00 amount that the tenants agreed to pay for the screen repair, is reasonable. I find that the $132.11 claimed by the landlord is excessive and

unreasonable, particularly given that the invoice provided by the landlord does not sufficiently detail the work and repairs completed.

I also note that the photographs provided by the landlord show very minor damages, that are difficult to see. I find that the damages to the door trim, wall, and siding, are not beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1.

I note that the tenants provided more detailed documentary evidence, regarding the photographs and damages, as compared to the landlord. The tenant also provided more detailed testimonial evidence at this hearing, regarding the above.

As the landlord was only partially successful in this application, based only on what the tenants agreed to pay during this hearing, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenants. This claim is dismissed without leave to reapply.

Tenants' Deposits

The landlord applied to retain a portion of the tenants' deposits in this application. The landlord continues to hold the tenants' deposits, totalling $1,000.00.

Although the tenants did not apply for the return of their deposits, I am required to consider it since the landlord filed this application to retain the deposits, as per Residential Tenancy Policy Guideline 17. I informed both parties of same during this hearing.

Section 38 of the *Act* requires the landlord to either return the tenants' 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 tenants' 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 tenants' 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 tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on June 29, 2022. The landlord did not have written permission from the tenants to retain any amount from their deposits. The tenants provided a

written forwarding address to the landlord on July 2, 2022, by way of text message, which was received by the landlord. The landlord included this address for the tenants in this application. The landlord agreed that text message was a primary method of communication between both parties. Although text message is not a permitted method of service, as per section 88 of the *Act*, I find that the landlord was sufficiently served with the tenants' forwarding address, as per section 71(2)(c) of the *Act*.

The landlord filed this application on July 13, 2022, which is within 15 days of the end of tenancy date of June 29, 2022, and the written forwarding address date of July 2, 2022. Therefore, I find that the tenants are not entitled to double the value of their deposits.

Although pet damage deposits can only be used for pet damage, the landlord applied for pet damages to the screen door and cleaning of the bin, in this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain $62.10 total, from the tenants' deposits totalling $1,000.00, in full satisfaction of the monetary claim. The tenants agreed to pay the above amount during this hearing.

Over the period of this tenancy, interest is payable on the tenants' deposits. No interest is payable for the years 2021 and 2022. Interest of 1.95% is payable for the year 2023. Interest is payable from January 1, 2023 to April 4, 2023, since the date of this hearing was April 4, 2023. This results in $5.03 interest on $1,000.00 based on the RTB online deposit interest calculator. Interest is paid on the full amount of the original deposits of $1,000.00, before any deductions are made, including for the $62.10, as per Residential Tenancy Policy Guideline 17.

Although the date of this decision is April 21, 2023, this is not within either party's control, as it is only within my control when this decision is issued to both parties. Although the RTB hearing date of April 4, 2023 is not within the control of either party, the landlord continues to retain the tenants' deposits in full and did not return any amount to the tenants, pending this hearing, which was scheduled after the landlord filed this application.

In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to the return of their deposits of $1,000.00, plus interest of $5.03, totalling $1,005.03, minus the deduction of $62.10. I issue a monetary order for the balance of $942.93 to the tenants against the landlord.

Conclusion

I order the landlord to retain $62.10 from the tenants' deposits of $1,000.00, in full satisfaction of the monetary claim.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $942.93 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 21, 2023

Residential Tenancy Branch