Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenants' application, filed on July 26, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $31,000.00 for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit of $2,000.00, totalling $4,000.00, pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the landlord's agent, the two tenants, tenant CC ("tenant") and "tenant DB," 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 64 minutes from 1:30 p.m. to 2:34 p.m.

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

The landlord stated that she owns the rental unit. She provided the rental unit address. She confirmed that her agent, who she said is her sister, had permission to represent her at this hearing. She identified her agent as the primary speaker for the landlord.

The tenant identified herself as the primary speaker for both tenants at this hearing. Tenant DB 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.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They 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 wanted me to make a decision, and they did not want to settle this application. Both parties were given an opportunity to settle this application during this hearing, but declined to do so.

I cautioned the tenants that if I dismissed their application without leave to reapply, they would receive $0. Both tenants affirmed that they were prepared for the above consequences if that was my decision.

I cautioned the landlord and her agent that if I granted the tenants' entire application, the landlord could be required to pay the tenants up to $31,100.00 total, including the $100.00 filing fee. The landlord affirmed that she was prepared for the above consequences if that was my decision.

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

Preliminary Issue – Previous RTB Hearings and *Res Judicata*

Both parties agreed that the tenants paid a security deposit of $2,00.00 total, to the landlord. Both parties agreed that they attended a previous RTB hearing regarding this tenancy on November 13, 2020, before a different Arbitrator, after which a decision, dated November 27, 2020, was issued and the landlord was awarded $15,000.00 total, which includes $14,900.00 for unpaid rent and $100.00 for the application filing fee, including retention of the tenants' security deposit of $2,000.00, to offset this award, for the landlord's application. The file number for that hearing appears on the cover page

of this decision. Both parties agreed that the above monetary order is still being enforced by the landlord against the tenants.

I reviewed the previous RTB decision and monetary order and confirmed that the above information is correct. Accordingly, the tenants' security deposit of $2,000.00 has already been dealt with in a previous RTB hearing, decision, and order. Therefore, I cannot make a decision about the tenants' application to obtain a return of double the amount of their security deposit of $2,000.00, totalling $4,000.00, at this hearing or in this decision, as it is *res judicata*, since it has already been decided. I informed both parties of my decision during this hearing. Both parties affirmed their understanding of same. The tenants were upset that I could not decide this claim and argued that they were unhappy with the previous RTB decision.

Both parties agreed that they attended a previous RTB hearing regarding this tenancy on June 11, 2020, before a different Arbitrator, where a decision, dated July 8 2020, was issued regarding the tenants' 2 applications. Both parties agreed that the tenants' first application for $10,800.00 for covid-19 pandemic relief as a result of diminished employment income, was dismissed without leave to reapply. Both parties agreed that the tenants' second application was dismissed with leave to reapply, "*for repairs to the rental unit, a request for the landlord to provide services and/or facilities, authorization for a past and future rent reduction as a result of the landlord allegedly not completing repairs or providing services and/or facilities and authorization to suspend or set conditions on the landlord's right to enter*." The decision also states that the tenants' second application is dismissed "*until such time that the landlord has had the opportunity to address any bona fide repair requests made by the tenant*." The 2 file numbers for that hearing appear on the cover page of this decision.

I reviewed the previous RTB decision and confirmed that the above information is correct. The tenants affirmed that they were not seeking a monetary order for diminished employment income from the covid-19 pandemic, in this current application. Accordingly, the tenants' monetary claim for $31,000.00 has not been dealt with in the previous RTB hearing or decision. Therefore, I can decide the tenants' monetary application for $31,000.00, at this hearing and in this decision, as it is not *res judicata*. I note that the tenants did not apply for a rent reduction in this application, they applied for monetary compensation for damage or loss. I informed both parties of my decision during this hearing. Both parties affirmed their understanding of same.

Issues to be Decided

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

Are the tenants 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 tenants' claims and my findings are set out below.

The landlord's agent and the tenant agreed to the following facts. This tenancy began on June 1, 2018. Both parties signed a written tenancy agreement. Monthly rent in the amount of $4,100.00 was payable on the first day of each month.

The landlord's agent stated that this tenancy ended on July 31, 2020. The tenant said that this tenancy ended on July 27, 2020.

The tenant testified regarding the following facts. These issues began pre-tenancy, on May 25, 2018, before the tenants moved in on June 1, 2018. There are previous emails in the list of discrepancies. The move-in condition inspection report was not signed. The landlord's brother provided an email with lists on page 20. There were problems inside the rental unit with rotting, moisture, and insects. On page 44, the furnace was installed improperly. There were issues with safety on page 48. There was no landlord compliance with the district laws or the bylaws. The landlord's father would enter the rental unit without knocking and open the door when the tenant was home with her kids. There were emails back and forth. The rental unit was no longer a liveable standard for the tenants. The home inspection shows there were issues with the surrounding home and the issues were not raised until the home inspection on May 12, 2020, as per the previous decision. These living circumstances occurred over two years. It is the landlord's obligation to provide a safe and healthy home for the tenants and their family. The landlord claimed that there was a forest fire risk, so the fireplace could not be used. There was harassment of the tenants by the landlord. The tenants have four kids, and one requires tremendous care. The tenants could not relax or enjoy their home. The tenants were disappointed that these issues went on for so long. There was no email regarding the landlord's issues with money and their grandmother's death and funeral.

Tenant DB testified regarding the following facts. On pages 11 and 12, there are topics regarding the main issues with the landlord. There were extensive emails and items 13 to 16 were the issues. The landlord spent time and energy providing documents for this hearing, instead of not harassing the tenants and maintaining the rental unit.

The landlord's agent testified regarding the following facts in response. Page 1 and 2 of the tenants' application is a re-file of their complaint seeking monetary compensation. The tenants complained about a previous RTB decision from July 8, 2020, stating it was a 5-minute hearing that did not last long enough. It has been over 2 years since the tenants' applications were dismissed and there was no judicial review of that decision. This is a duplicate repeated application by the tenants and should be dismissed. The tenants alleged that there was a loss of quiet enjoyment and a failure to provide services. The landlord outlined the issues in detail with evidence and every matter was addressed. The appliances were replaced on request by the tenants. The landlord gave their only spare key to the tenants, mid-tenancy, because they had no time to make a copy and the tenants refused. The landlord had no key during the tenancy so they could not enter or give notice as per the *Act*. The landlord did not harass the tenants and there was no loss of quiet enjoyment. The landlord responded to all the tenants' emails. Tenant DB requested a renewal of 2 years at the end of the fixed-term tenancy. The tenants paid no rent for the last 4 months of their tenancy. The tenants owe $14,900.00 in rent plus the $100.00 application filing fee. The landlord was awarded $15,000.00 in the previous RTB decision from November 2020. The tenants claimed that there was no due process in the previous RTB decision. A previous RTB decision from July 2020 says that the tenants have leave to reapply regarding the repairs which the landlord's evidence addresses.

The landlord's agent stated the following facts in response. The landlord entered the rental unit at the move-out inspection, despite multiple requests for inspections and repairs. There was an eviction ban. The tenants' entire application is time-barred and there was no judicial review. The tenants filed this application in April 2022. The tenants said that the landlord would never find tenants as good as them and they wanted to stay. All previous hearings were dismissed, and the only outstanding monetary order is the remainder of the rent that is not being paid by the tenants and is being pursued by the landlord in Provincial Court. The tenants asked for $31,000.00 in compensation but they only provided 1 receipt to support their entire monetary order worksheet. Number 2 in their monetary order worksheet is page 2 of the evidence, which is a "chopped" receipt. This receipt is at page 69 of the landlord's own evidence. The landlord provided a full copy of the same receipt from a retail store where the

landlord purchased a new dishwasher. This is not for the tenant's painting cost, as claimed in their monetary order worksheet. The tenants have no evidence to substantiate their monetary claims, and this is their attempt to get a monetary order.

The landlord testified regarding the following facts in response. The tenants stopped paying rent on April 1, 2020, which was 3 years ago. They owe $15,000.00, which includes $14,900.00 for the rent and $100.00 for the filing fee. The tenants were using repair items as "bargaining chips for a rent reduction." The tenants did not want the items to be fixed. The landlord needed to inspect the rental unit issues to fix them. The tenant sent invoices to the landlord, claiming that they fixed items, and asking for the landlord to reimburse them. The tenants are in the "system," they are "professional renters," they have "scammed" other landlords, and "they know the system well to their advantage." The landlord knows this is a long legal process, but she wants the tenants to pay for the consequences. The tenants' intent was to obtain a rent reduction. They wanted their rent reduced from $4,100.00 to $3,200.00, which is a 22% rent reduction. The landlord's grandmother needed money for the care home, and this was the only rental income for her to pay for that. The tenants ended the tenancy in June 2020 and moved in July 2020. On July 31, 2020, the landlord entered the rental unit to do the move-out condition inspection report, she gave notice, and nothing else was mentioned at that time. The landlord provided a copy of the move-out condition inspection report at pages 33 to 36.

The tenant stated the following facts in response. The tenants' original application was 300 pages. The other Arbitrator, who issued the RTB decision in July 2020, said that the tenants' evidence was a "court document" and he was unhappy with the amount of evidence that was provided. That RTB hearing was 5 minutes and was adjourned but no hearing date was provided for the adjourned hearing and then a decision was made. The landlord used a "shop vac" to clean for rodents. The tenants could not pay their rent during the global covid-19 pandemic and there was an immediate threat of eviction. They tried to deal with the money issue with the landlord, but the landlord refused, and the tenants were "panicked." The tenants paid rent on time throughout the whole tenancy, and it was never an issue until the covid-19 pandemic. There is a Court payment order in place for the $15,000.00 from the previous November 2020 RTB decision, and it is being honoured by the tenants to pay off the landlord's rent. Repairs were completed by the landlord, so it is untrue that the landlord did not enter the rental unit, otherwise how else would the landlord complete the repairs. The landlord has "slandered" the tenants' "character." The tenants are entitled to a working stove, fireplace, and bathtub. The tenants are not relitigating the previous hearing issues from the previous RTB decision from July 8, 2020, regarding the monetary order for the

$10,800.00, due to the covid-19 diminished employment income issue. The tenants are not relitigating the repair issues, as this tenancy is over. The tenants' monetary application for compensation is because no repairs were done by the landlord.

Analysis

I find that I have jurisdiction to decide this application because the tenants filed this application on July 26, 2022, and this tenancy ended on July 27, 2020, according to the tenants, and on July 31, 2020, according to the landlord. Regardless of whether the tenancy ended on either of the above two dates, I find that the tenants' application was filed within the 2-year time limit, as per section 60 of the *Act*.

Burden of Proof

The tenants, as the applicants, have the burden of proof, on a balance of probabilities, to present and prove their application, claims, and evidence, in order to obtain a monetary order. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the tenants to provide sufficient evidence of their claims.

The tenants received an application package from the RTB and provided copies of these documents to the landlord, as required. The tenants were provided with a "Notice of Dispute Resolution Proceeding," dated August 15, 2022 ("NODRP") from the RTB, which 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 tenants were provided with a detailed application package from the RTB, including the NODRP, 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 tenants to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenants, as the applicants, to provide sufficient evidence of their claims, since they chose to file this application on their own accord.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* 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 tenants did not sufficiently present and prove their application, claims, 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 of Procedure.*

Although the tenants submitted a voluminous number of documents and evidence with their application, I find that they failed to sufficiently review and explain them in detail, during this hearing.

This hearing lasted approximately 64 minutes, which is more than the 60-minute maximum hearing time. The tenants had ample time to present their claims,

submissions, and evidence at this hearing. I repeatedly asked them if they had any other information to present and to respond to the landlord's evidence.

The tenants filed this application on August 15, 2022, and this hearing occurred over 8 months later on April 25, 2022, so the tenants had ample time to prepare for this hearing and to submit sufficient evidence.

Legislation

Section 28 of the *Act* deals with the right to quiet enjoyment (my emphasis added):

> *28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> ***(a) reasonable privacy;***
>
> ***(b) freedom from unreasonable disturbance;***
>
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
>
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Residential Tenancy Policy Guideline 6 "Entitlement to Quiet Enjoyment" states the following, in part (my emphasis added):

> *A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means* ***substantial interference*** *with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the* ***landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps*** *to correct these.*
>
> ***Temporary discomfort or inconvenience does not constitute a basis*** *for a breach of the entitlement to quiet enjoyment.* ***Frequent and ongoing interference or unreasonable disturbances may form a basis*** *for a claim of a breach of the entitlement to quiet enjoyment.*

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

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 claim. To prove a loss, the tenants 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 landlord 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 tenants 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 tenant's monetary application for $31,000.00 without leave to reapply.

I note that the tenants waited 2 years, almost to the date, to file this application, to obtain monetary compensation from the landlord. They said that they were aware they had 2 years, and they were dealing with the covid-19 pandemic and a child with special needs, so they did not file earlier.

The tenants alleged that the landlord's father entered the rental unit without notice or permission, that they suffered a loss of quiet enjoyment and harassment, that the landlord did not complete repairs, and that they did not have full use of all of the appliances in the rental unit.

I find that the above complaints were a temporary inconvenience and not an unreasonable disturbance, as noted in Policy Guideline 6, above. I find that the tenants failed to provide sufficient evidence of a loss of quiet enjoyment. The tenants did not provide specific dates when all of the violations occurred, when they notified the landlord, what actions they took, or other such information. They did not sufficiently review or explain their evidence in detail, during this hearing. While they referred to different documents and page numbers, they simply stated that the above issues began in May 2020, before they moved into the rental unit in June 2020. However, the tenants still decided to move into the rental unit and continued to occupy it for over two years from June 1, 2018 to July 27, 2020, despite the above complaints.

I find that the tenants failed to provide sufficient and timely notice of a breach of quiet enjoyment to the landlord so that she could attempt to correct the issues in a reasonable and timely manner. The tenants indicated that the issues began before they moved into the rental unit, but they did not indicate that they filed any previous RTB applications or attended any previous RTB hearings regarding the loss of quiet enjoyment issue, only to deal with repairs, services, facilities, and diminished covid-19 employment income.

I find that the landlord made reasonable efforts to deal with repairs at the rental unit during the tenants' tenancy. The tenant testified that the landlord completed repairs at the rental unit and had to enter the rental unit in order to do so.

I find that the above incidents were a temporary discomfort or inconvenience, which does not constitute a basis for a breach of the entitlement to quiet enjoyment. I find that these events were not frequent and ongoing interferences or unreasonable disturbances, which could form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I note that the RTB does not have jurisdiction to deal with criminal offences, such as harassment, pursuant to the Criminal Code of Canada. Only the police and the Courts deal with these matters.

I find that the tenants did not provide sufficient testimonial or documentary evidence to substantiate their significant monetary claim for $31,000.00 and they failed to satisfy the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

During this hearing, the tenants did not indicate how they arrived at the above monetary amount, they did not provide a monetary breakdown, they did not sufficiently review or explain their evidence, and they did not provide sufficient evidence regarding their claims.

The tenants provided a monetary order worksheet with their application, but they did not sufficiently review or explain this document, during this hearing. The landlord's agent mentioned this document, disputed the 1 receipt provided by the tenants, and said that the tenants did not provide any other receipts or documents to substantiate their monetary claim. The landlord provided a full copy of the one receipt for $505.22, which was partially included in the tenants' evidence, and claimed it was for the purchase of the landlord's dishwasher, not painting, as claimed by the tenants on their monetary order worksheet as #2. The tenants did not dispute or respond to same during this hearing, even though they were provided an opportunity to reply and did reply for other items.

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

Conclusion

The tenants' application to obtain a return of double the amount of their security deposit of $2,000.00, totalling $4,000.00, is *res judicata*, as it has already been decided in a previous RTB decision, dated November 27, 2020.

The remainder of the tenants' 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: May 16, 2023

Residential Tenancy Branch