



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlord's application, filed on September 12, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$5,000.00 for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord and the tenant attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 35 minutes from 1:30 p.m. to 2:05 p.m.

Both parties confirmed their names and spelling. Both parties 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.

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, both parties 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, which I answered. I informed them 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 an opportunity to settle this application during this hearing but declined to do so.

I repeatedly cautioned the tenant that if I granted the landlord's full application, the tenant could be required to pay the landlord \$5,100.00, including the \$100.00 filing fee. The tenant repeatedly affirmed that she was 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 could receive \$0. 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. The landlord confirmed receipt of the tenant's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to reduce her monetary claim from \$6,360.00 to \$5,000.00. The landlord confirmed that she reduced her monetary claim, prior to this hearing. The tenant did not object to same. I find no prejudice to either party in making this amendment.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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 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 June 1, 2018 and ended on August 31, 2021. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. No written tenancy agreement was signed by both parties. The landlord signed a written tenancy agreement with the tenant's ex-husband, who moved out of the rental unit in May 2020, and the tenant took over the rent and the tenancy with the landlord. No move-in or move-out condition inspection reports were completed for this tenancy.

The landlord testified regarding the following facts. She moved out of town. She met the tenants online and they took residence at the rental unit in June 2018. The tenant broke up with her ex-husband and he left the rental unit. He called the landlord and said that he was laid off and he could not pay the full rent. The landlord said that she would accept \$850.00 in rent for one month. She told him that it would revert back to the \$1,100.00 per month in rent after. By the first of the next month, the rent was short and \$1,100.00 was owed. The tenant refused to pay the rent as per the tenancy agreement. She said that she would only pay \$850.00. The landlord told the tenant that she needed the money. The tenant agreed to pay \$900.00, but she still paid \$850.00 to the landlord. The landlord accepted the lower rent because she thought the tenant would pay later. It was the covid-19 pandemic, the landlord left the tenant alone, the rent was late, and she could not evict the tenant.

The landlord stated the following facts. The landlord went through financial struggles. After covid, the landlord gave a 10 day notice for unpaid rent to the tenant but the tenant did not leave for another 1 to 2 months. The landlord finally got the rent of \$1,100.00 for the last month of tenancy in August. The landlord checked on the condition of the home and was dismayed. She had to vacuum. She wiped and cleaned behind all the appliances. There was dog urine up and down the hallway carpet. The tenant's kids wrote all over the furniture. There was gum on the hardwood floor of her daughter's bedroom. Usually, the landlord paints between tenancies, but this was the first paint. She steam-cleaned the carpet. There were marks on the linoleum. There were fridge door dents. Her daughter's cell phone photographs were not provided in evidence. The landlord was "ripped off rent" for years.

The tenant testified regarding the following facts. She agrees that her ex-husband left in May 2020. She sent a text to the landlord that she provided as evidence. She told the landlord that she was taking over the rent. The landlord provided her e-mail

address for the tenant to send e-transfers for rent. The rent at the time was \$850.00 to February 2020. The landlord requested a rent increase and the tenant said that she could not pay it. The tenant works for minimum wage and her child support is not enough. The landlord requested \$950.00, and the tenant agreed. The tenant always paid rent by e-transfers. The e-transfers and rent increase texts were provided as evidence by the tenant.

The tenant stated the following facts. She provided photographs of the house. There was no garbage on the floor, and she cleaned the carpet. The hole in the door was there before she moved into the rental unit. The landlord said that she would clean the place, but it was not done when the tenant moved in. The tenant cleaned before moving in. The landlord deducted it from the first month's rent. If she knew the outcome, the tenant never would have lived there. The landlord did not do the walk-through on move-out. She told the tenant to give the key to her ex-husband. Another lady moved in and out and then the landlord's friend moved in after. The tenant thinks the damage was done after the new tenants moved in, but the landlord is trying to put the damages on the tenant with no evidence. The gum on the floor was there before and after the tenant moved in and out. She disputes the landlord's entire application and does not feel that the landlord is entitled to any money.

Analysis

Burden of Proof

I informed both parties 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. Both parties affirmed their understanding of same.

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," dated September 26, 2022 ("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 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 35 minutes, so the landlord had ample time and opportunity to present her application and respond to the tenant's evidence. I repeatedly asked the landlord if she had any other information to add and if she wanted to respond to the tenant's submissions. The landlord declined to respond to or dispute any of the tenant's testimony, although I provided her with an opportunity to do so.

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 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 for \$5,000.00, 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.

The landlord did not complete move-in or move-out condition inspection reports for this tenancy, as required by sections 24 and 36 of the *Act*. Therefore, I cannot determine the condition of the rental unit and what damages, if any, were present when the tenant moved into the rental unit, and what damages if any, were present when the tenant moved out of the rental unit. I cannot determine if any damages were caused by the tenant, beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1.

The landlord did not sufficiently review or explain the documents she submitted, including any photographs, receipts, invoices, or estimates, during this hearing.

The landlord did not review the monetary order worksheet she submitted, during this hearing.

The landlord claimed \$3,260.00 described as “shortage on rent” and “21 files uploaded of bank statements” on the monetary order worksheet. She did not provide a rent breakdown, the months of unpaid rent, the amount per month, or other such information, during this hearing.

The landlord claimed \$115.55 described as “repairs” and “4 files uploaded of receipts” on the monetary order worksheet. She did not provide a repairs breakdown, the amount per repair, the areas of repair, or other such information, during this hearing.

The landlord claimed \$1,200.00 described as “rent lost for one month due to cleaning/painting/repairs” and “she left end of Aug/2021 we spent September getting it clean & painted, repaired” on the monetary order worksheet. She did not provide details regarding same, during this hearing. She did not sufficiently review or explain any new tenancy agreement or other such documents, to indicate if or when she re-rented the rental unit to new tenants, the amount of rent per month, the length of tenancy, the terms of tenancy, or other such information, during this hearing. She also agreed that the rent was \$1,100.00 during this tenancy, not \$1,200.00.

The landlord claimed \$425.25 described as “our time spent cleaning and painting & ...” and “it took us 7 days to clean it all and then I painted” on the monetary order worksheet. She did not provide a breakdown, the amount for cleaning or painting, the areas cleaned or painted, or other such information, during this hearing. She provided an online internet search “screenshot” for move-out cleaning of \$500.00 but it was not an estimate, quote, invoice, or receipt for same for this rental unit or this landlord.

The landlord failed to sufficiently review, explain, and provide receipts to show if, when, or how she paid for any damages or cleaning, as per Residential Tenancy Policy Guideline 16 above.

The landlord had ample time of almost 9 months, from filing this application on September 12, 2022, to this hearing date of June 5, 2023, to provide the above evidence but failed to do so.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant. This claim is also dismissed without leave to reapply.

Conclusion

The landlord's entire 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: June 16, 2023

Residential Tenancy Branch