Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: MNDL-S, FFL
Tenants: MNDCT, MNSDB-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's application for dispute resolution was made on November 10, 2022. The Landlord applied for the following relief pursuant to the Act:

- a monetary order for damage to the unit, site or property;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

Section 59 of the Act confirms that an application for dispute resolution must include full particulars of the dispute. Rule of Procedure 2.5 states that an applicant must include, to the extent possible, a detailed calculation of the monetary claim being made. Although the Landlord provided extensive photographic and other evidence, including receipts, the claim was not particularized in accordance with the above provisions. Therefore, I dismiss the Landlord's claim with leave to reapply.

The Tenants' application for dispute resolution was made on February 27, 2023. The Tenants applied for the following relief pursuant to the Act:

- an order granting compensation for monetary loss or other money owed;
- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing. All in attendance provided affirmed testimony.

The Tenants testified that the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on March 19, 2023. The Tenants also testified they served a 52-page evidence package on the Landlord by registered mail on August 1, 2023. The Landlord acknowledged receipt of these documents.

The Landlord did not raise any issue with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the Act, I find the Tenants' documents were sufficiently served for the purposes of the Act.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order for monetary loss or other money owed?
2. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on December 1, 2021, although the Tenants advised they moved into the rental unit on or about November 15, 2021. The parties agreed the tenancy ended on November 1, 2022. During the tenancy, rent of $2,000.00 per month was due on the first day of each month. The Tenants paid a security deposit of $1,000.00 and a pet damage deposit of $1,000.00, which the Landlord holds.

The Tenant's claim is set out on an amended Monetary Order Worksheet dated August 1, 2023. The Tenants claim $4,000.00 for the return of double their security and pet damage deposits.

During the hearing, the Tenants were advised that a landlord has 15 days after the end of the tenancy or receipt of a forwarding address in writing, whichever is later, to make a claim against the deposit(s) or return the deposit(s) to the tenant. In this case, the Landlord submitted his claim on time on November 10, 2022, 9 days after the end of the tenancy.

The Tenants claim $2,000.00 for the return of one month's rent under section 51(1) of the Act, and $24,000.00 as compensation under section 51(2) of the Act.

During the hearing, the Tenants were advised that a tenant's entitlement to the return of one month's rent or for 12 month's compensation under the above provisions requires a landlord to have issued a Two Month Notice to End Tenancy for Landlord's Use of Property. In this case, the parties agreed the Tenants ended the tenancy in writing and that the Landlord did not issue a Two Month Notice to End Tenancy for Landlord's Use of Property. Therefore, these aspects of the Tenants' claim are dismissed without leave to reapply.

The Tenants claim $623.00 for the cost of items thrown away by the Landlord. The Tenants testified they met with the Landlord on November 2, 2022. In the early hours of November 3, 2022, they emailed the Landlord to advise that they forgot a number of personal items at the rental unit. Specifically, the Tenants testified they forgot their daughter's medication, a cast-iron frying pan, and food items including spices and prime rib. The Landlord responded later the same morning and advised that anything left behind was "removed and binned" the previous evening. The Tenants testified that the value of the items was determined by looking online.

In reply, the Landlord denied throwing away medication and denied that prime rib as among the food items. The Landlord testified that nothing of any significant value remained in the rental unit at the end of the tenancy.

The Tenants claim $1,050.00 for loss of quiet enjoyment. This claim was based primarily on issues with the baseboard heaters. The Tenants asserted that they did not have heat for about a month. The Tenants testified that on or about September 25, 2022, the baseboard heaters damaged the curtains, which were hemmed to the height of the baseboard heaters. The Tenants also testified the baseboard heaters did not automatically shut off when blocked in this way and were disconnected by the Tenants. The Tenants also testified that some of their daughter's belongings were damaged and referred to photographs depicting minor damage to a cushion chair and to the curtain. The Tenants stated their daughter is now "terrified" to sleep in her bedroom.

The Tenants also testified the Landlord coerced them by asking them to sign a Mutual Agreement to End Tenancy and then applying for dispute resolution when they declined to do so.

In reply, the Landlord testified that he was trying to arrange a walk-through condition inspection as of September 23, 2022. However, he attended the rental unit on September 27, 2022 and discovered extensive damage caused by the Tenants, including the damaged baseboard heaters. The Landlord testified the Tenants did not mention the damage before this date.

The Tenants claim $3,000.00 for aggravated and punitive damages. During the hearing, the Tenants were advised that I did not have jurisdiction to consider a claim for punitive damages. In any event, citing Policy Guideline #16, the Tenants testified that the claim is based on the absence of heat for more than a month. They testified again that their daughter is “terrified” to sleep in her bedroom. The Tenants also decried the Landlord’s inaction in getting a professional to address the problem with the baseboard heaters. WI testified he has a bad back that was impacted by the lack of heat. Again, the Tenants referred to coercion by the Landlord for proposing settlement of the dispute and making and application for dispute resolution when they declined the Landlord’s terms.

In reply, Landlord testified that he did not learn about the issue with the baseboard heaters unit until September 27, 2022. The Landlord also testified that the lack of heat was a problem created by the Tenants when they disconnected the baseboard heaters. The Landlord testified the settlement proposal was issued in good faith.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. hat the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenants' claim for the return of double the security and pet damage deposits, I note that the Landlord applied to retain them on time, in accordance with section 38(1) of the Act. As a result, I find the Tenants are not entitled to double the amount of the deposits. However, as noted above, the Landlord's application for dispute resolution is dismissed with leave to reapply. Therefore, I find it appropriate in the circumstances to order the Landlord to return the security and pet damage deposits to the Tenants. I find the Tenants are entitled to a monetary award of $2,000.00. The Landlord remains at liberty to make an application for dispute resolution relating to damage to the rental unit in accordance with the Act.

As noted above, the Tenants' claims for the return of one month's rent under section 51(1) of the Act, and for compensation under section 51(2) of the Act, are dismissed without leave to reapply.

With respect to the Tenants' claim for $623.00 for the cost of items thrown away, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there is insufficient evidence to satisfy me, on a balance of probabilities, that the items were in the rental unit at the end of the tenancy or of their value. The Tenants merely advised that this aspect of the claim was based on the prices of similar items at their preferred grocery store. This aspect of the Tenants' Application is dismissed without leave to reapply.

With respect to the Tenants' claim for $1,050.00 for loss of quiet enjoyment, section 28 of the Act protects a tenant's right to quiet enjoyment including rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, and use of common areas for reasonable and lawful purposes, free from significant interference. Policy Guideline #6 confirms there must be a "substantial interference with the ordinary and lawful enjoyment of the premises", and not merely a "temporary discomfort or inconvenience".

In this case, I find there is insufficient evidence to grant the relief sought. I find that the lack of heat was caused by the Tenants' own actions when they disconnected the baseboard heaters. Further, I find that any disturbance or concern caused by the baseboard heaters was neither significant nor substantial, as evidenced by the minor damage depicted in the photographs referred to by the Tenants. This aspect of the Tenants' claim is dismissed without leave to reapply.

With respect to the Tenants' claim for $3,000.00 for aggravated damages, Policy Guideline #16 states:

> "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

In this case, I find the Tenants could be fully compensated – in appropriate circumstances – for the lack of heat, the minor damage, and their daughter's concerns, by an award for damage or loss. I also note that Policy Guideline #16 confirms that aggravated damages are "rarely awarded". For these reasons, I find the Tenants' request for aggravated damages is dismissed without leave to reapply.

As the Tenants have had some success, I also find they are entitled to recover the $100.00 filing fee paid to make the Tenants' application.

Conclusion

The Landlord's claim is dismissed with leave to reapply.

The Tenants are granted a monetary order for $2,100.00 for the return of the security and pet damage deposits, and in recovery of the filing fee. The order may be filed in and enforced in the Provincial Court of British Columbia (Small Claims).

The Tenants' claims for compensation under sections 51(1) and 51(2) of the Act, for loss of quiet enjoyment, for costs thrown away, and for punitive and aggravated damages, are 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: August 23, 2023

Residential Tenancy Branch