



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1073733 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNDCL, FFL; MNDCT, FFT

Introduction

This hearing dealt with the landlords' application, filed on June 13, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$5,000.00 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 their application, pursuant to section 72.

This hearing also dealt with the tenant's application, filed on May 25, 2023, pursuant to the *Act* for:

- a monetary order of \$11,700.00 for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for her application, pursuant to section 72.

The landlords' agent, the tenant, and the tenant's advocate 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 50 minutes from 1:30 p.m. to 2:20 p.m.

The landlords' agent unexpectedly disconnected from this hearing from 1:40 p.m. to 1:42 p.m.

All hearing participants confirmed their names and spelling. The landlords' agent and the tenant provided their email addresses, for me to send copies of this decision to both parties after this hearing.

The landlords' agent stated that the landlord company named in this application owns the rental unit. He said that he is employed by the landlord company. He stated that the individual landlord named in this application is involved with the landlord company. He confirmed that he had permission to represent both landlords (collectively "landlords") at this hearing. He provided the rental unit address.

The tenant identified herself as the primary speaker during this hearing. She said that her advocate had permission to speak on her behalf 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 that they would not record this hearing.

Preliminary Issue – Hearing and Settlement Options

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. 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 both applications. Both parties were offered multiple opportunities to settle at the beginning and end of this hearing, discussed settlement during this hearing, and declined to settle.

I cautioned the tenant and her advocate that if I dismissed the tenant's application, the tenant could receive \$0. I cautioned them that if I granted the landlords' application, the tenant could be required to pay the landlords. The tenant affirmed that she was prepared to accept the above consequences if that was my decision.

I cautioned the landlords' agent that if I dismissed the landlords' application, the landlords could receive \$0. I cautioned him that if I granted the tenant's application, the landlords could be required to pay the tenant. He affirmed that the landlords were prepared to accept the above consequences if that was my decision.

Preliminary Issues – Service of Documents and Amendment

Both parties confirmed receipt of the other party's application for dispute resolution and notice of hearing. In accordance with section 89 of the *Act*, I find that both parties were duly served with the other party's application and notice of hearing.

The tenant stated that she did not receive any evidence from the landlords. The landlords' agent stated that the landlords' evidence was served to the tenant on June 13, 2023, and later claimed it was June 26, 2023, by way of email. He stated that the landlords did not provide a copy of the sent email, as proof of service. I informed him that I could not consider the landlords' evidence at this hearing or in my decision because the landlords did not provide sufficient proof of service, by way of the sent email, and the tenant did not receive the landlords' evidence. He affirmed his understanding of same. The landlords' evidence consists of photographs only, but no invoices, receipts, estimates, or quotations.

The landlords' agent stated that the landlords did not receive any evidence from the tenant. The tenant stated that her evidence was served to the landlords on May 30, 2023 and later claimed it was June 13, 2023, by way of registered mail. She provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. She initially indicated that the mail was sent to her address, then her advocate corrected her, and she claimed it was served to a different address. The tenant agreed that her mail receipt did not indicate the landlords' address and she got the landlords' address from a different form. She agreed that she did not provide a Canada Post tracking report, nor did she check same.

When I looked up the Canada Post tracking report on the Canada Post website online, with the tracking number provided by the tenant, I informed her that it stated that the mail said: "Item re-routed due to processing error..." and "Item being returned to sender. Incomplete address" and "Item on hold at a secure facility..." The tenant claimed that she was unaware of the above address error. She asked if she could re-serve her evidence to the landlords. I informed her that she could not because she had ample time to serve her evidence prior to this hearing, as she filed her application on May 25, 2023, and this hearing occurred on September 22, 2023, almost 4 months later. Further, the landlords would not have notice or an opportunity to respond after this hearing.

I informed the tenant and her advocate that I could not consider the tenant's evidence at this hearing or in my decision because the tenant did not provide sufficient proof of

service. I notified them that the tenant did not provide a Canada Post receipt with the landlords' address, she did not provide a Canada Post tracking report, and the Canada Post tracking report online states that there was an addressing error, so it was returned to sender. I informed them that the landlords did not receive the tenant's evidence. They affirmed their understanding of same. The tenant's evidence consists of photographs only, but no invoices, receipts, estimates, or quotations.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the individual landlord's first name. The landlords' agent consented to this amendment during this hearing. Neither the tenant, nor her advocate, objected to same, during this hearing. I find no prejudice to either party in making this amendment.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to 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 both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 7, 2022 and ended on June 6, 2023. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. Move-in and move-out condition inspection reports were not completed for this tenancy.

Landlords' Application

The landlords' agent testified regarding the following facts. There was a previous RTB hearing and decision regarding outstanding rent, and the landlords were already awarded \$2,750.00 against the tenant, but the landlords will pursue this separately and not at this hearing. The landlords received a 2 day order from Court for a bailiff, enforceable at 9:00 a.m. on June 6. The tenant was removed from the rental unit, by

Court Order. The tenant did not pay for the eviction or the monetary order. The landlords are willing to forego damages against the tenant because no move-in report was completed for this tenancy. The landlords want payment for the Court bailiff of \$5,000.00. The tenant did not provide an address, so the landlords' information was sent to the tenant by email.

The tenant testified regarding the following facts in reply. She disputes the landlords' application. She was not at the rental unit at the time of the removal by the bailiff. She disputes the bailiff cost. How was she able to live in the environment with her family. She did not have her mailbox key to get the landlords' notice.

The landlords' agent stated the following in response. The landlords served the order to the tenant in person, not by mail, so the tenant did not require her mailbox key.

Tenant's Application

The tenant testified regarding the following facts. The rental unit was "unliveable" and "unsanitary." There were "dead mice and feces." There were mice running around the kitchen and the bedrooms. There was mold. Her 16-year-old son was living with her. She could not cook or leave anything out. Everything had to be put in glass jars in the fridge. Her clothing was ruined. She had to sweep the feces behind the bed. She killed 21 mice with traps on her own, as the place was "infested." Her son had to go to school, even though there were mice. She did not have a laundry key and could not do laundry after 5:00 p.m. The landlords let it come to this point and it has been stressful, upsetting, and disappointing.

The landlords' agent testified regarding the following facts in reply. The landlords dispute the tenant's application. The tenant is not owed anything. The information provided by the tenant was not correct.

The landlords' agent testified regarding the following facts in response to the tenant's questions. There was a previous RTB expedited hearing for the tenant's application. The tenant reached a settlement with the landlords at the hearing, that an exterminator would treat the rental unit. The exterminator attended at the rental unit within 4 hours of the hearing.

The tenant testified regarding the following facts in reply. She disputes that the exterminator came within 4 hours of the previous RTB hearing. She agrees that the

exterminator came within 24 hours of the previous RTB hearing. However, there were still mice in the rental unit after the exterminator came.

Analysis

Burden of Proof

Both parties, as the applicants, have the burden of proof, on a balance of probabilities, to prove their applications and monetary claims. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines requires both parties to provide evidence of their claims, in order to obtain monetary orders.

Both parties received application packages from the RTB, including instructions regarding the hearing process, when they filed their applications. Both parties received four-page documents entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, when they filed their applications and received the other party’s application. The NODRP documents contain the phone number and access code to call into this hearing.

The NODRP documents state 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 NODRP documents indicate 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. Both parties affirmed their understanding of same.

Both parties received detailed application packages from the RTB, including the NODRP documents, with information about the hearing process, notices to provide evidence to support their applications, and links to the RTB website. It is up to both parties to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to both parties, as the applicants, to provide sufficient evidence of their claims, since they chose to file their applications on their 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...

Pursuant to section 67 of the *Act*, when parties make claims for damage or loss, the burden of proof lies with the applicants to establish their claims. To prove a loss, the applicants 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 respondents 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 applicants 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.***

Landlords' Application

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application for \$5,000.00 without leave to reapply.

I find that the landlords' agent did not sufficiently explain or present the landlords' 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*.

This hearing lasted 50 minutes so the landlords' agent had ample time and multiple opportunities to present the landlords' application and evidence and respond to the tenant's claims. During this hearing, I repeatedly asked the landlords' agent if he had any other evidence to present and provided him with multiple opportunities for same.

The landlords' agent did not explain the landlord's application in sufficient detail, during this hearing. He did not provide sufficient specific amounts for the costs being sought by the landlords, during this hearing. I find that the landlords failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The landlords did not provide documentary evidence to support their application. The landlords had ample time to provide their evidence prior to this hearing, as they filed their application on June 13, 2023, and this hearing occurred on September 22, 2023, over 3 months later.

I find that the landlords failed to prove damages beyond reasonable wear and tear, caused by the tenant, as required by Residential Tenancy Policy Guideline 1. The landlords' agent indicated that there were damages but stated that the landlords were not pursuing same against the tenant.

The landlords' agent did not indicate what damages were incurred, how the tenant was responsible, whether any damages were repaired or replaced by the landlords, the costs of same and if or when they were paid, or other such specific information.

The landlords did not complete any move-in or move-out condition inspection reports for this tenancy. Therefore, I cannot determine if any damages or losses were caused by the tenant during her tenancy or whether these damages were pre-existing when she moved into the rental unit.

The landlords' agent did not review, explain, or provide any quotations, estimates, invoices, or receipts, to show if or when the landlords had any damages 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 landlords' agent did not provide any testimony about the above information during this hearing.

The landlords' agent did not review, explain, or provide any quotations, estimates, invoices, or receipts, to show if or when the landlords paid for any bailiff costs, when the bailiffs attended at the rental unit, how many bailiffs attended, what the rate per hour or per bailiff 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 landlords' agent did not provide any testimony about the above information during this hearing.

The landlords' agent indicated that the bailiff costs were \$5,800.00. When I asked whether the landlords amended their application to increase their monetary claim from \$5,000.00 to \$5,800.00, he said that they did not. He did not ask to amend it at this hearing. He said that the landlords were only pursuing bailiff costs of \$5,000.00 against the tenant. However, the landlords' application indicates that the bailiff costs were only \$4,400.00, not \$5,000.00, and damages were \$600.00. The landlords' agent stated that the landlords were not pursuing their claim for damages against the tenant, but did not indicate the amount of same. Further, the landlords did not provide any estimates, quotations, receipts, or invoices for the \$5,000.00 being claimed, whether for bailiff costs, damages, or otherwise.

As the landlords were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

Tenant's Application

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$11,700.00 without leave to reapply.

I find that neither the tenant, nor her advocate, sufficiently explained or presented the tenants' 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*.

This hearing lasted 50 minutes so the tenant and her advocate had ample time and multiple opportunities to present the tenant's application and evidence and respond to the landlords' claims. During this hearing, I repeatedly asked the tenant and her advocate if they had any other evidence to present and provided them with multiple opportunities for same.

Neither the tenant, nor her advocate, explained the tenant's application in sufficient detail, during this hearing. They did not provide any specific amounts for the costs

being sought by the tenant, during this hearing. I find that the tenant failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The tenant did not provide documentary evidence to support her application. She had ample time to provide her evidence prior to this hearing, as she filed her application on May 25, 2023, and this hearing occurred on September 22, 2023, almost 4 months later.

Neither the tenant, nor her advocate, indicated what costs the tenant incurred, how the landlords were responsible, the costs of same, and if or when they were paid, or other such specific information.

Neither the tenant, nor her advocate, reviewed, explained, or provided any quotations, estimates, invoices, or receipts, to show if or when the tenant paid for any costs, how it was paid, or who paid it. Neither the tenant, nor her advocate, provided any testimony about the above information during this hearing.

Neither the tenant, nor her advocate, provided the amount of \$11,700.00 during this hearing, until I specifically asked the tenant about same. They did not provide a breakdown for the above amount during this hearing. The tenant did not provide any estimates, quotations, receipts, or invoices for the \$11,700.00 being claimed.

As the tenant was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

Both parties' applications are dismissed in their entirety, 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: September 22, 2023

Residential Tenancy Branch