



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDL-S, FFL / MNDL-S, FFL**

Introduction

This hearing dealt with two applications of the Landlord pursuant to the *Residential Tenancy Act* (the Act). At the outset of the hearing, the Landlord confirmed that the applications were duplicative. She testified that she thought one of them had been deleted (it had not been), which is why she applied for the same orders again.

The Landlord seeks:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of \$3,000 pursuant to section 67;
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord attended the hearing. Tenant SG (hereinafter, the Tenant) attended the hearing on behalf of the three Tenants

The Landlord testified that she served the Tenants with a notice of dispute resolution proceeding package and some of the documentary evidence which she provided to the Residential Tenancy Branch (the RTB). The Tenant disagreed, and testified but the only evidence she received was two pictures of a barbecue and a translation of some text messages exchanged between the parties.

The Landlord testified that she took photographs of the contents of the registered mail envelope before sealing it and sending it to the Tenant. This photograph was not among the documents submitted in advance of the hearing, but I gave the Landlord leave to upload it after the hearing. She did so, and the photographs show that in addition to the notice of dispute resolution proceeding package, the registered mail envelope contained a copy of the tenancy agreement as well as a letter from the Tenant to the Landlord requesting the return of the security deposit and listing the forwarding address.

The photographs do not show any pictures of a barbeque or any translations of the text message. However, from the fact the Tenant indicated she received these documents, I conclude that these photographs do not show all of the documents that the Landlord served the Tenants. In the circumstances, I find it appropriate to allow the photographs of the barbeque into evidence as well as the translated text messages in addition to the tenancy agreement and the Tenant's letter.

The Tenant testified that she served all of the documentary evidence provided to the RTB to the Landlord. The Landlord testified that she could not recall exactly what was provided to her but did not dispute that she received documentary evidence from the Tenant. During the hearing, she did not indicate that she did not receive any of the evidence that the Tenant referred to.

Issues to be Decided

Is the Landlord entitled to:

- 1) a monetary order for \$3,000;
- 2) recover the filing fee; and
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting August 15, 2020 and ending Feb 28, 2021. The parties then entered into a second fixed-term agreement starting March 1, 2021 and ending August 31, 2022. Monthly rent was \$2,100. The Tenant paid the Landlord a security deposit of \$1,050, which the Landlord returned to the Tenant on June 29, 2023.

The Tenant testified that she had made a previous claim against Landlord for the return of the security deposit, and withdrew it once the Landlord returned it to her. (At this hearing, the Tenant asked me to make an order for the return of the filing fee for that application. As that application was withdrawn, and there is no application of the Tenant before me for the return of the filing fee for that application, I am unable to make any order.)

The Tenants moved out on August 31, 2022.

The Landlord did not conduct a move in condition inspection at the start of the tenancy and did not conduct a move out condition inspection at the end of the tenancy. She testified that she was unaware that she had to do this.

The Landlord testified that the day after the Tenants moved in, they emailed her a list of deficiencies with the rental unit which included a claim that the balcony door did not lock properly. She argued that this e-mail should serve as proof of the condition of the rental unit at the start of the tenancy.

The Landlord testified that near the end of the tenancy the Tenant contacted her and told her that there was damage to the exterior patio caused by oil dripping from her barbeque. The Landlord testified that the damage was not insignificant. She reported this damage to the strata corporation of the building the rental unit is located in and they indicated that the entire exterior patio membrane would need to be replaced. They provided a quote of \$2,900 to do this work.

The Tenant denied reporting any damage to the exterior patio to the Landlord prior to the end of the tenancy. Furthermore, she denied ever seeing any damage on the exterior patio. She testified that on August 31, 2022, the Landlord gave her a note which said:

I, [the Landlord], took delivery of my apartment located at [redacted], and I will deliver to [the Tenant] the damage deposit within 10 days if everything is OK with the home. Also today she transferred to me the rent for the month of August via E transfer.

The Tenant argued that the Landlord known of damage to the exterior patio on August 31, this note would have made reference to it.

Analysis

RTB Rule of Procedure 6.6 states that the person making an application bears the burden of proof to establish it is more likely than not that their allegations are true.

In order to be eligible for monetary compensation, the Landlord must prove it is more likely than not that the Tenant caused the damage to the rental unit.

Based on the evidence presented at the hearing, I do not find that the Landlord proven her case. I do not accept the Landlord's argument that simply because an e-mail sent to her at the start of the tenancy did not reference damage to the exterior patio means that the exterior patio itself was undamaged when the Tenants moved in. The Tenants may not have noticed the damage, or if they did they did not deem important enough to report.

The purpose of a move in condition inspection report (which is required by the Act) is to create a document which both parties agree establishes the true condition of the rental unit at the start of the tenancy. Without such a document it is difficult to establish what damage occurred during the tenancy and what damage predated the tenancy.

For these reasons, I do not find that it is more likely than not that the Tenants caused the damage to the exterior patio. As such, I declined to order that they pay the Landlord any amount for its repair.

As the Landlord has already returned the security deposit, I cannot order that they retain any portion of it.

As the Landlord has not been successful in her application, I decline to order that the Tenant paid her the filing fee.

Conclusion

I dismiss the Landlord's application, in its 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: October 27, 2023

Residential Tenancy Branch