Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The landlord filed an application for dispute resolution on June 15, 2018, pursuant to section 59 of the *Residential Tenancy Act* (the "Act") and seeks a monetary order for compensation for damage caused by the tenant to the rental unit, and a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened on September 24, 2018, and the landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord attempted to serve the tenant with the Notice of Dispute Resolution Proceeding package ("package") by way of registered mail on June 19, 2018. The package was returned undeliverable. During an earlier arbitration hearing, the landlord was able to obtain the tenant's new address. Eventually, the landlord met the tenant in-person at approximately 7:00 p.m. on Friday, June 29, 2018, and served her with the package. I find that the tenant was served pursuant to section 89(1)(a) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues

1. Is the landlord entitled to a monetary order for compensation for damage caused by the tenant to the rental unit?

2. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy started on August 1, 2017 and ended on September 24, 2017. Monthly rent was $875.00, due on the first of the month. The tenant paid a security deposit of $400.00. A copy of the written tenancy agreement was submitted into evidence.

A move-in inspection condition report was completed at the start of the tenancy, and a move-out inspection condition report was completed on September 24, 2017. The tenant provided her forwarding address to the landlord on that date, on page 3 of the condition report.

The landlord testified, and submitted into evidence various documents, including the condition reports, photographs, an invoice, and various receipts, in support of her submission that the tenant incorrectly installed a shower head and hose—without the landlord's permission—which resulted in extensive water damage, mold, and soggy drywall. In conjunction with a general contractor, the landlord made extensive repairs to the bathroom to repair the damage.

Submitted into evidence was a two-page list of labour and supplies expended in the repairs. Labour costs (priced at $25.00 per hour) totalled $756.00. Shop supplies totalled $30.00, a missing door sweep of $16.23, paint for living room of basement of $54.89, wax seal for the toilet at $2.79, and masking tape for painting was priced at $8.96, all of which totals $112.87. In addition, the landlord submitted a claim for $150.00 for restoration work that was completed by a restoration company; a copy of the company's invoice was submitted into evidence.

In addition to the above-noted claims, the landlord submitted a claim for $78.39 for a "new door knob and dead bolt for basement door." The landlord explained that she had issues of theft and that is why she changed the deadbolt and made this claim. Finally, the landlord submitted a claim for $40.00 in utilities on her Monetary Order Worksheet, though the amount was listed at $35.00 in the two-page list submitted.

The landlord applied for dispute resolution on June 15, 2018 and testified that she did not return the security deposit, and that she has "already used it [the security deposit] up" in making the repairs.

Analysis

The landlord seeks a monetary order for compensation for damage caused by the tenant to the rental unit. The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming compensation must provide evidence establishing that they are entitled to compensation.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In deciding whether compensation is due, I must determine the following:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulation, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage acted reasonably in minimizing the loss or damage?

The landlord provided a copy of an inspection condition report, photographs, and oral testimony, in support of her argument that the tenant caused damage to the rental unit.

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Taking into consideration all of the evidence and unchallenged testimony of the landlord presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the tenant failed to comply with the Act. Further, but for the tenant's non-compliance with the Act, the damage to the rental unit would not have occurred.

Next, I must determine whether the landlord has proven the amount or value of that damage or loss. Based on the written submission of itemized amounts for labour and supplies, I find that the landlord has proven labour costs in the amount of $756.00, and

that supplies totaled $112.87. Finally, I find that the landlord has proven additional costs of $150.00 for the restoration work, for a total of $1,018.87.

The landlord did not explain her claim for $40.00 (or $35.00) for a utility cost, and as such I dismiss this aspect of her claim without leave to reapply. Likewise, I am not persuaded with her explanation as to why she sought to recover $78.39 from the tenant for a new door knob and deadbolt. A former tenant is not responsible for the replacement cost of a new door knob and deadbolt. Similarly, I dismiss that aspect of her claim without leave to reapply.

Finally, having determined the amount of the value or loss, I must now determine whether the party who suffered the loss or damage acted reasonably in minimizing the loss or damage. I find that the landlord did, and in doing much of the repair work herself, saved additional and unnecessary costs. The claim in regard to hiring a contractor to install the shower door is reasonable.

Given the above, I find that the landlord is entitled to a monetary award in the amount of $1,018.87. However, I must now turn to the issue of the security deposit, against which the landlord has applied, which will affect the awarded amount.

Section 38 (1) of the Act states the following (emphasis added):

> Except as provided in subsection (3) of (4) (a), **within 15 days** after the later of
>
> > (a) the date the tenancy ends,
> >
> > (b) the date the landlord receives the tenant's forwarding address in writing,
>
> **the landlord must do one of the following**:
>
> > (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> >
> > (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) states that where a landlord fails to comply with section 38 (1), the landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Policy Guideline 17 – Security Deposit and Set off, further explains, at page 2 the following:

> The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

Further, the policy states that the "arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return."

In this case, the landlord testified and acknowledged that she has already spent the security deposit. The landlord further testified that she received the tenant's forwarding address on September 24, 2017. Residential Tenancy Branch file information confirms that the landlord did not make an application for dispute resolution claiming against the security until June 15, 2018, a full 265 days from the date that the landlord received the tenant's forwarding address in writing.

As such, applying the law to the facts, I find that the landlord failed to comply with section 38(1) of the Act, and must therefore pay the tenant double the amount of the security deposit, in the amount of $800.00, subject to the below-noted set-off from the monetary award.

The above-noted monetary award of $1,018.87 is reduced by $800.00, resulting in a revised award balance of $218.87.

As the landlord did not comply with the fundamental provisions of the Act in respect of the tenant's security deposit, I decline to grant a monetary award for recovery of the filing fee.

Conclusion

I grant the landlord a monetary order in the amount of $218.87. This order must be served on the tenant and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 24, 2018

Residential Tenancy Branch