



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This decision is in respect of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on June 26, 2018. The landlords seek the following remedies under sections 67 and 72 of the Act:

1. compensation for damage caused by the tenant to the rental unit;
2. compensation for unpaid rent; and,
3. compensation for recovery of the filing fee.

A dispute resolution hearing was convened, and a landlord and the tenant attended, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of the service of documents or notices under the Act.

While I have reviewed all oral and documentary evidence submitted by the parties that met the requirements of the *Rules of Procedure*, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Are the landlords entitled to compensation for damage caused by the tenant to the rental unit?
2. Are the landlords entitled to compensation for unpaid rent?
3. Are the landlords entitled to compensation for recovery of the filing fee?

Background and Evidence

The landlord testified (and confirmed after the tenant clarified) that the tenancy commenced on August 1, 2010 and ended on February 28, 2018. Monthly rent at the end of the tenancy was \$1,550.00, and the tenant paid a security deposit of \$700.00. There was no pet damage

deposit.

On February 1, 2018, at 6:00 A.M., the tenant sent an email to the landlord's property manager, providing notice that the tenant was ending the tenancy at the end of February 2018. The landlord submits that the tenant's notice was not in compliance with the Act and as such claims for the loss of rent for March 2018.

In addition, the landlord claims for various, miscellaneous damages to the rental unit. The tenant caused "considerable damage" according to the landlord. The tenant initially asked a general contractor to carry out some of the repairs before he vacated the rental unit, and the contractor carried out about \$700 worth of repairs. However, the tenant then told the general contractor to stop the work. Further, the landlord claims for cleaning and carpet cleaning of the rental unit, neither of which were done.

The landlord testified that there was a Condition Inspection Report (the "Report") completed both at the start of, and at the end of, the tenancy. Unfortunately, the Report was not available and inaccessible as it was in storage in Vancouver whilst the landlords were currently residing in Dubai.

In his testimony, the tenant conceded that he did not know the rules about giving a landlord proper notice in ending a tenancy and admitted that had he sent the landlord (or her agent, the property manager) a notice to end tenancy six hours earlier that he would have been in compliance with the Act.

Regarding the landlords' claims for painting, the tenant testified that he previously spent approximately \$400.00 to repaint the walls in the rental unit, and "in 8 years, not once were the walls re-painted." And, that any deterioration to those walls would have been from normal wear and tear.

In terms of the carpet cleaning, the tenant explained that he had the carpets steam cleaned in December 2017, and not in February 2018, when he vacated the unit. He further explained that he had not anticipated moving out in February and assumed that having them done less than two months prior would suffice.

He confirmed that he asked the general contractor to stop working, having been presented with an invoice from the contractor for \$700.00, but then deciding to stop the work after being asked by the landlord to pay rent for March 2018. He made this decision based on the entire situation "leaving a bad taste" in his mouth.

The tenant disputed the various miscellaneous charges, such as replacing screen doors and removing shelving (which was in the rental unit when he moved in). He argued that the landlord's claim is "outlandish" and that after paying the landlord rent for eight years he is "now getting nickled and dimed."

Finally, the parties provided brief testimony regarding the tenant having dogs in the rental unit that caused damage, and, the lack of a pet security deposit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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 apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, 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 that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

Landlords' Claim for Unpaid Rent

Section 45(1) of the Act states that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the tenant did not provide notice to end the tenancy until the first of the month of the same month in which he was ending the tenancy. As such, the tenant did not comply with section 45(1) of the Act. But for the tenant's non-compliance with the Act, the landlords would not have suffered a loss of rent for March 2018. The parties confirmed that monthly rent was \$1,550.00.

Finally, did the landlords do whatever was reasonable to minimize the loss of rent? No evidence was provided by the landlords to establish whether, or to what extent, minimizing steps may have been taken. However, the tenant likewise did not raise any argument as to whether, or to what extent, the landlords failed to minimize their losses. As such, I find that this final factor is moot, and as such find that the landlords suffered a loss of rent for March 2018 in the amount of \$1,550.00.

Given the above, I grant the landlords a monetary award in the amount of \$1,550.00 for the loss of rent for March 2018.

Landlords' Claim for Damage to the Rental Unit

Subsection 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. In this case, the only claim made by the landlords to which the tenant admitted responsibility was not cleaning the carpets, though no documentary evidence establishing the cost of that cleaning was submitted or presented.

The landlords claim compensation in the amount of \$6,194.56 for various repairs and painting. The tenant disputes what he described as an “outlandish claim.”

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, the landlord submitted several photographs of the rental unit at the end of the tenancy. However, given that the tenant disputes the entire amount being claimed for the alleged damage to the rental unit, the burden is on the landlords to establish that the rental unit was in a different (that is, undamaged) state at the start of the tenancy. There was no such evidence submitted establishing this. While there was an email submitted in which the tenant indicated he would be responsible for specific repairs to the rental unit, there is no further explanation or breakdown of the cost of those repairs.

I further note that section 21—“Evidentiary weight of a condition inspection report”—of the *Residential Tenancy Regulation* states that in a dispute resolution proceeding, “a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.” Without a copy of the report submitted into evidence for me to consider, the landlords have not provided any evidence of the state of repair or condition of the rental unit at the date of inspection at the start of the tenancy.

Given the above, and carefully considering the oral and documentary evidence of the parties, I find that the landlords have failed to provide any evidence that the tenant caused the damage as claimed. As such, I dismiss this aspect of the landlords' application without leave to reapply.

I grant the landlords a monetary award in the amount of \$100.00 for recovery of the filing fee.

Conclusion

I grant the landlords a monetary award of \$1,650.00. I order that the landlords may retain the tenant's security deposit of \$700.00 in partial satisfaction of this award.

I grant a monetary order in the amount of \$950.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 30, 2018

Residential Tenancy Branch