Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSD, MNDCT, FFT

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38;
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the tenants' security deposit plus interest, pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for their application, pursuant to section 72.

The "female landlord" did not attend this hearing. The male "landlord" and the two tenants, male tenant ("tenant") and "female tenant," attended the 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 64 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with section 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord stated that he did not receive the tenant's tabs 21 to 28 of their written evidence package until three days before this hearing. This evidence was also uploaded to the RTB website by the tenants, three days before this hearing. The landlord said that he did not have a chance to review all of these documents because they were voluminous, his father was sick and dying, and he did not have a chance to respond to the evidence. The tenant confirmed that he did not think the above tabs were evidence, since they were copies of previous RTB decisions, a Supreme Court of British Columbia decision, his written statement, and copies of the *Act* and the *Regulation*. He claimed that since they were not evidence, they were not subject to the evidence deadlines.

I notified the tenants that since the previous RTB decisions, the SCBC decision and the tenant's written statement were documents that the tenants intended to rely upon at the hearing and they are not general known information, they were considered evidence and subject to the RTB *Rules of Procedure* deadlines, which require documents to be served at least 14 days prior to the hearing for the applicants (Rule 3.14) and 7 days prior to the hearing for the respondents (Rule 3.15). I notified the tenants that since the landlord did not receive the evidence according to the above deadlines, he did not have a chance to review or respond to them, and the tenants had ample time from the filing of their application on December 11, 2018, to this hearing date of April 1, 2019 to submit the evidence. I informed them that I could not consider their late evidence tabs 21 to 28, at the hearing or in my decision. However, I notified them that the *Act* and *Regulation* would still apply to this hearing and those documents were not evidence, just reproductions of the legislation.

Issues to be Decided

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

Are the landlords entitled to retain the tenants' security deposit?

Are the tenants entitled to the return of double the amount of their security deposits plus interest?

Are the tenants 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 documentary evidence and the testimony of both parties, 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 December 1, 2013 and ended on November 24, 2018. Monthly rent in the amount of $3,000.00 was payable on the first day of each month. A security deposit of $1,300.00 was paid by the tenants and the landlords continue to retain this deposit in full. A written tenancy agreement was signed by both parties. The landlords did not have any written permission to keep any amount from the tenants' security deposit. The landlords filed their application to retain the security deposit on December 9, 2018.

The landlord claimed that he was not present during this tenancy, as he lives out of country, but that his property manager handled everything, including the move-in and move-out condition inspections and reports. The landlord stated that move-in and move-out condition inspection reports were completed for this tenancy by his property manager, but he did not receive a written copy of the move-in report because the property manager could not find it. The landlord also stated that a move-out report was done listing only the damages, not the full report provided by the RTB on their website. He provided a statement from his property manager listing all of the damages at the end of the tenancy, claiming that it was not necessary for the property manager to testify at this hearing.

The tenant said that no move-in or move-out condition inspection reports were completed for this tenancy. The tenants claimed that they provided a written forwarding address by email to the landlord on November 21, 2018, pursuant to a substituted service order for email made in a previous RTB application, which attached a copy of their new tenancy agreement. They said that even though they did not refer to their forwarding address in the email or their application, a "reasonable person" would "assume" that the new address contained in their new tenancy agreement with a new landlord was their forwarding address to send their security deposit.

The landlord said that he received the tenants' forwarding address by way of text message on December 6, 2018, and by way of email on December 9, 2018 (he said that the email was dated for December 8, 2018, but he received it the next day because

of the time change in the country that he lives in). The tenants agreed with the above information but said they gave it earlier on November 21, 2018.

The landlords seek a monetary order of $14,056.00 plus the $100.00 application filing fee.

The landlords seek $1,600.00 to repaint the rooms in the rental unit, $400.00 for two broken window blinds, and $200.00 for a broken window handle. The landlord said that all of the above work was done by a contractor, the contractor provided a letter indicating same, and the tenants caused this damage so they were responsible to pay for it. The landlord stated that he was seeking $1,500.00 for a broken fireplace tile and $500.00 for damage to the golden bars of the fireplace, but this work had not been done yet so he only had estimates for these costs.

The landlord claimed for $2,700.00 for the fireplace in the living room, $4,200.00 for the chandelier, and $1,450.00 for the five light fixtures, all of which he said were painted black by the tenants, without his permission or knowledge. The landlord provided estimates for these costs, claiming that the work had not been done yet. He indicated that he only had an estimate of $2,007.90 for the living fireplace being painted black because he forgot to supply the estimate including the installation and taxes which he said was an extra $700.00. He said that he plans to complete the remaining repairs in the summer of 2019, when he returns from out of country. He stated that he re-rented the unit to new tenants, as of December 15, 2018.

The tenants dispute the landlords' entire application. The tenant stated that the paint was old when the tenants lived at the rental unit and that any paint issues were reasonable wear and tear from their five-year tenancy. He said that the two window blinds were broken from the beginning of their tenancy, the tenants did not tell the landlord because it was not a concern to them, and they left the blinds open during the tenancy.

The tenant explained that the tenants did not know that the window handle was broken, this was not mentioned during the move-out condition inspection and it was general wear and tear if it was broken during the tenancy. He claimed that the fireplace tile was broken during the tenancy and it was not discussed during the move-out condition inspection. He stated that he could not see the damage to the golden bars of the fireplace in the landlords' photographs, the tenants did not cause the damage, they

believed it was like that when they moved in, and it was not discussed at the move-out condition inspection.

The female tenant stated that she painted the fireplace, chandelier, and fix light fixtures black and that when the landlord came to the rental unit on August 30, 2018, with another person, he said that it looked good. The tenant claimed that the landlord never claimed for this damage at the previous RTB hearing between the parties on September 25, 2018, which was almost one month after the landlord inspected these items.

Analysis

Landlord's Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants 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 landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' entire application for $14,056.00, without leave to reapply.

I dismiss the landlords' application for $1,500.00 for the broken fireplace tile, $500.00 for the damage to the golden bars of the fireplace, $2,700.00 to replace the fireplace painted black, $4,200.00 to replace the chandelier painted black, and $1,450.00 for the five light fixtures that were painted black. The landlords did not provide receipts for these amounts. The landlords only provided estimates, did not incur these costs, and may not incur these costs in the future. There are new tenants living in the rental unit with all of these issues. Further, the landlords live out of country and said they may come back to fix the items in the summer of 2019, many months after the tenancy has ended.

I dismiss the landlords' application for $1,600.00 to repaint the rooms, $400.00 for the broken blinds, and $200.00 for the broken window handle. The landlords did not provide receipts for these amounts, only a letter (not an invoice) indicating that the work was done with the amounts due, and no receipts indicating what was paid, how it was paid or when it was paid.

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

Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remain unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on a balance of probabilities. The tenancy ended on November 24, 2018. The tenants provided a written forwarding address to the landlords by email. I find that this email was delivered on December 8, 2018, when the tenants specifically indicated their forwarding address in the content of the email. I find that they did not email it on November 21, 2018, as there is no reference to the forwarding address in the content of their email and the landlords cannot just assume that the tenants can accept service at a new rental unit simply because the tenants provided a copy of their new tenancy agreement. Although email is not a valid written service method under section 88 of the *Act*, I find that the landlords were sufficiently served with it, as per section 71(2)(c) of the *Act* and the tenants' substituted service order from the previous RTB hearing, and the landlord agreed that he received it.

The tenants did not give the landlords written permission to retain any amount from their security deposit. The landlords did not return the deposit to the tenants. The landlords made an application on December 9, 2018, within 15 days of the end of tenancy on November 24, 2018, to claim against the deposit. However, the landlords' right to claim

against the deposit for damages, which is all they claimed for in their application, was extinguished for failure to complete a move-in condition inspection report. The landlord claimed that one was done but he did not provide a copy of the move-in condition inspection report and the tenants disputed that one was done. Therefore, as per section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of $1,300.00, totalling $2,600.00. No interest is payable on the tenants' security deposit during this tenancy.

As the tenants were successful in their application, I find that they are entitled to recover the $100.00 filing fee from the landlords.

Conclusion

I issue a monetary order in the tenants' favour in the amount of $2,700.00 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' entire application is 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: April 04, 2019

Residential Tenancy Branch