Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes
For the Tenant: FFT MNSD
For the Landlord: FFL MNDCL-S MNDL-S MNRL-S

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the "Act").

The landlord's application for dispute resolution was made on April 3, 2019 (the "landlord's application"), and she applied for compensation under section 67 of the Act for (1) repairs to the rental unit, (2) unpaid rent, and (3) marketing, ads, and manual labor, and for recovery of the filing fee under section 72 of the Act.

The tenant's application for dispute resolution was made on December 31, 2018 (the "tenant's application"), and he applied for compensation under section 67 of the Act for the return of his security deposit, pursuant to section 38 of the Act. He also applied for recovery of the filing fee pursuant to section 72 of the Act.

The landlord's agent (her husband, and hereafter referred to as the "landlord), the tenant, and the tenant's agent attended the hearing before me on and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

I have reviewed all oral and documentary evidence submitted in accordance with the *Rules of Procedure* under the Act, but only relevant evidence pertaining to the issues of these applications are considered in this decision.

Issues

1. Whether the tenant is entitled to the return of his security deposit, and if so, whether the security deposit is to be doubled pursuant to section 38 of the Act.

2. Whether the landlord is entitled to compensation for repairs, unpaid rent, and other miscellaneous costs, pursuant to section 67 of the Act
3. Whether either party is entitled to recovery of the filing fee.

Background and Evidence

The tenant's agent (hereafter referred to as the "tenant," as the tenant himself provided almost no testimony throughout the hearing) testified that the tenancy started in 2017, but that it was renewed through a new written tenancy agreement on April 1, 2018. Monthly rent was $1,875.00 and the tenant had, in 2017, paid a security deposit of $900.00. A copy of the reviewed tenancy agreement was submitted into evidence; the security deposit amount was marked as "n/a" which reflected that the security deposit had been carried over and still held by the landlord.

The tenant was a co-tenant (he had 2 other roommates, who were also on the tenancy agreement) in the rental unit. Unfortunately, one of the roommates vacated and failed to pay his portion of the rent, and then another roommate left shortly thereafter. In other words, the tenant's roommates abandoned him, and the tenant was essentially left to rent the place by himself.

Through a series of back-and-forth texts in June 2018, the tenant made it clear that he was vacating the rental unit as he was unable to continue paying the rent. It was difficult for the tenant to come up with the rent (given the roommates' rather quick departure), but he was able to finally pay the rent for June on June 18, 2018. The landlord asked the tenant to vacate the rental unit by the end of June 2018.

Contrary to the argument that the tenant anticipated the landlord making, the tenant argued that he did not abandon the rental unit. And, while it was a one-year fixed term tenancy, both parties engaged in conversations whereby the tenant told the landlord that he was moving out, and the landlord acknowledged this.

On June 22, 2018, the tenant sent a text to the landlord advising him that the carpets had been cleaned, that he would be available at the landlord's convenience to conduct a walk-through inspection and providing the landlord with his forwarding address.

No move out inspection ever occurred, and no communication from the landlord ever occurred where the landlord attempted to conduct such an inspection.

I note that the tenant, and later the landlord, both confirmed that the landlord and one of the tenant's previous co-tenants had completed a Condition Inspection Report ("Report") on April 1, 2017, when the tenant first moved in. The Report, a copy of which was submitted into evidence, indicated that the rental unit was given a clean bill of health, with all parts of the rental unit marked as in good condition.

On June 30 and again on June 31, the landlord texted the tenant asking him to cancel or change his name on the BC Hydro account, as new tenants were about to move in on July 1, 2018 and needed to add their names to a new account associated with the rental unit's address.

Later, on July 24, 2018, the tenant again texted the landlord with his new forwarding address, to which he received no response. The tenant allegedly also forwarded his forwarding address to the landlord by registered mail; however, the tenant submitted no copies of this registered mail into evidence, despite his agent's explanation that it had been submitted.

During the landlord's testimony, he was unable to confirm (until the tenant's agent interrupted to assist him in jogging his memory) what the rent was at the start of the tenancy. He was also unable to remember what the amount of the security deposit was (despite making a claim against it).

Regarding the Condition Inspection Report, the landlord confirmed that one was completed in 2017 but that he did not complete one in 2018 "because [the rental unit] was abandoned."

The landlord testified that, despite the tenant telling him that he was vacating the rental unit at the end of June, there was no agreement to end the lease early. He started looking for new tenants in July and did not have new tenants move in until September 2018.

Regarding his claim for $10,458.10, it was for various repairs to the rental unit caused by the tenant and his roommates. The landlord submitted several photographs of the rental unit showing the purported damage, and he submitted what appeared to an invoice from a company that did the repair work.

As for the landlord's claim for the unpaid rent ($16,875.00), he submitted that this is the amount lost due to the tenant's breach of the tenancy agreement.

Regarding the "marketing, ads" portion of his claim, the landlord explained that this was "approximately" $200.00 to $250.00 for the cost of placing online advertisements to rent the rental unit. There were no copies of receipts for the landlord's marketing and ad claim submitted into evidence.

For the "manual labor" portion of his claim, this represented the time the landlord had to spend showing the rental unit to prospective tenants.

In rebuttal, the tenant argued that the photographs submitted by the landlord were not representative of the condition of the rental unit after he left. Several photographs submitted by the tenant in support of his position reveals a clean rental unit, and not the rental unit that the landlord's photographs seem to show.

The tenant's agent submitted that, contrary to the landlord's claim that he did not have new tenants until September 2018, the text messages regarding when the landlord wanted the tenant out, and, the follow-up text messages about the name change on the BC Hydro account for the new tenants, clearly shows that the landlord had new tenants on July 1, 2018.

The tenant disputed the cost claimed for the ads, arguing that most ads are in fact free, and regardless, the landlord had new tenants within a week of the tenant vacating the rental unit. And on the issue of the landlord having new tenants, the agent argued that he suffered no monetary loss and was therefore not entitled to his claim for unpaid rent.

As for the renovation invoice (the one for $10,458.10), the tenant argued that it is a falsified document. She pointed out that there is no GST number on the invoice, as would be the case with a legitimate company, no company contact information, and most importantly, there is no proof (from a Google search) that the company exists.

In his rebuttal and final submissions, the landlord stated that he "knows a person" and that person "lives in the same address" as that listed on the restoration company's invoice, and that this person runs a cash business. He reiterated that the photos he submitted show the extent of the damage and that this proof "speaks for itself."

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.

Tenant's Claim for Return of Security Deposit

The tenant claims that despite providing his forwarding to the landlord on multiple occasions and by multiple means the landlord refused to return his security deposit.

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

In this case, the tenant sent a text to the landlord on June 22, 2018 in which he provides his forwarding address. The landlord responded to the text on June 24, 2018, which I infer to be an acceptance and receipt of the June 22 text.

According to the tenant's application the tenancy ended on June 23, 2018, while the landlord's application indicates that the tenancy ended on June 30, 2018. As the tenant paid the full month of rent for June, I conclude that the tenancy ended on June 30, 2018. And while the tenant never provided formal written notice (such as a form) that he was vacating the property end ending the tenancy, the landlord did acknowledge that the tenant was ending the tenancy and moving out.

In other words, this is what is considered a mutual agreement to end tenancy. The landlord was not asking the tenant to pay rent for July 2018 or beyond. On the contrary, the landlord made it quite clear that he hoped and expected that the tenant would be gone by the end of June, as he was "queued up" with new tenants.

The landlord had the tenant's forwarding address on the date that the tenancy ended, but neither repaid the security deposit nor filed for dispute resolution within fifteen days. Indeed, he did not file for dispute resolution claiming against the security deposit until April 3, 2019, nine months after the tenancy ended. Further, there was no written agreement by which the tenant authorized the landlord to keep any or all of the security deposit.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for the return of his security deposit.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1) of the Act, 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.

Applying section 38(6) of the Act to my finding that the tenant is entitled to the return of his security deposit, I hereby grant the tenant compensation in the amount of $1,800.00 for the return (doubled) of his security deposit.

Landlord's Claim for Compensation

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. Further, 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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

In this case, the landlord claims that the tenant failed to comply with the Act by (1) ending the tenancy early and (2) causing damage to the rental unit.

Claim for Unpaid Rent

As noted above, while the communication between the landlord and the tenant establish what may be considered a mutual agreement to end tenancy, the landlord suffered no loss of rent as a result of the tenant vacating the rental unit when he did. In the alternative, even if the tenant had breached the Act by not providing enough notice to the landlord, the landlord had proven no loss of rent by the tenant's actions.

The landlord testified that he did not have new tenants move in until September 2018. I find this less than believable when considering his multiple texts to the tenant in late June and early July about the tenant's planned departure and about the BC Hydro account. Indeed, the landlord's text of July 9, 2018 refers to "current tenants." From this I infer that the landlord had tenants in the rental unit on or about that date, if not July 1, 2018 as submitted by the tenant. And, while the landlord indicated that he rented the rental unit at a lower rent of $1,750.00, he did not explain how this lowering of rent was a prudent step in mitigating any potential loss from the tenant ending the tenancy early.

I conclude that the landlord has failed to establish how he suffered any monetary loss, and as such I dismiss that aspect of his claim as it relates to "unpaid rent."

Claim for Costs Incurred to Find New Tenants

The landlord claims $750.00 for costs related to finding new tenants. A separate worksheet was submitted by the landlord which itemized the claim as follows: (1) $530.00 for multiple open house costs; (2) cost of filing claim of $100.00; (3) online ads (Craigslist/Facebook etc.) of $100.00; and (4) registered mail cost of $20.00

While a landlord may claim costs related to finding new tenants when a previous tenant ends a tenancy before it is supposed to end, such costs must be reasonable. In this case, the landlord provided no itemized list of the dates on which the open houses occurred and no accounting for either the time actually spent and the hourly rate by which he was purportedly absorbing such costs. A simply entry for $530.00 without anything further, such a supporting documentary evidence, is not sufficient for establishing such a claim.

Likewise, no supporting receipts or invoices were submitted to establish the cost of placing online ads. And, while the tenant argued that Facebook and Craigslist are free, there are some online advertisements which cost money. However, the landlord provided no documentary proof that the costs came to $100.00. But adding to the rather suspect claim of $100.00 is the landlord's testimony that the costs were between $200.00 and $250.00.

All of which suggests that the landlord may have either not spent any money on ads, or, that the landlord simply did not keep track of these costs as claimed. Finally, regarding the cost for the registered mail, this is considered a cost of litigation of which I do not have jurisdiction to award under the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for this aspect of their application. I dismiss this aspect of the landlord's claim.

Claim for Compensation for Repairs

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.

The landlord argued that the tenant caused damage to the rental unit that resulted in a $10,458.10 expenditure for repairs to the rental. He submitted photographs that purported to show the condition of the rental unit. The tenant disputed that they caused any damage and submitted photographs that purported to show a rental unit in clean condition, with professionally cleaned carpets.

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, I find that the landlord has failed to provide any evidence that might establish the true condition of the rental unit over and above his photographs, which are countered by the tenant's photographs.

Had the landlord completed a condition inspection report at the end of the tenancy—regardless of his mistaken belief that the tenant abandoned the rental unit, which I find he did not—then I might be able to consider the condition of the rental unit at the end of the tenancy. A condition inspection report is often the best and only documentary evidence by which a landlord can conclusively establish that a tenant caused damage to the rental unit.

And, even if the tenant had abandoned the rental unit, a landlord is still required to complete a condition inspection report under section 35(5)(b) of the Act, which states that the "landlord may

make the inspection and complete and sign the report without the tenant if (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or (b)the tenant has abandoned the rental unit."

In this case, the tenant reached out to the landlord to arrange for a condition inspection at the end of the tenancy. The landlord simply ignored the request, and never bothered to conduct any such inspection.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of establishing on a balance of probabilities that the tenant breached section 37(2) of the Act.

Having found that there was no breach proven, I need not consider the remaining aspects of the four-part criteria, above.

In summary, I dismiss all aspects of the landlord's application without leave to reapply.

As the tenant was successful in his application I award $100.00 for recovery of the filing fee pursuant to section 72(1) of the Act.

Conclusion

The landlord's application is dismissed without leave to reapply.

I grant the tenant a monetary order in the amount of $1,900.00, which must be served on the landlord. This 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: April 26, 2019

Residential Tenancy Branch