Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

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 and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords (male and female) and the 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 89 minutes. The landlords spoke for approximately 48 minutes, the tenant spoke for approximately 19 minutes, and the remaining 22 minutes was spent discussing the hearing process, service of documents, and the tenant's adjournment request.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlords confirmed receipt of the tenant's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application and both landlords were duly served with the tenant's evidence package.

Preliminary Issue – Tenant's Adjournment Request

At the outset of the hearing, the tenant requested an adjournment. She said that she wanted to wait until after the parties' Supreme Court of B.C. ("SCBC") trial which would probably be sometime between August and October 2019. She maintained that the parties would determine the trial date at their next SCBC appearance on May 25, 2019. She said that the SCBC issues were related to this Residential Tenancy Branch ("RTB") hearing because the female landlord provided an affidavit about the condition of the rental unit, in the tenant's custody dispute with the tenant's former husband. She explained that the female landlord would be cross-examined by the tenant's lawyer on these issues. She stated that the SCBC, rather than the RTB, could deal with the tenancy issues with her lawyer present.

The landlords opposed the tenant's adjournment request. They said that the affidavit was provided for a custody dispute which was unrelated to this RTB hearing on damages related to the tenancy. The landlords filed this application on January 26, 2019 and were ready to proceed with this hearing, stating that waiting longer would only cause a delay for not reason.

During the hearing, I advised both parties that I was not granting an adjournment of the landlords' application. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

The tenant submitted evidence in response to the landlords' application, and had a fair opportunity to present her own submissions. I find that a further delay in the hearing date would prejudice the landlords, who were ready to proceed. This hearing occurred almost four months after the landlords initially filed their application.
I also find that the landlords' application and the female landlord's affidavit relates to a custody and family dispute, not RTB tenancy-related matters, and that there is no

substantial link requiring this matter to be heard by the SCBC, as per section 58(2)(c) of the *Act*.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenant's deposits?

Are the landlords entitled to recover the filing fee for this 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 the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 15, 2015. Monthly rent in the amount of $1,700.00 was payable on the first day of each month. A security deposit of $850.00 and a pet damage deposit of $500.00 were paid by the tenant and the landlords continue to retain both deposits. Written tenancy agreements were signed by both parties. The tenant initially resided in the rental unit with her former husband and then signed a new tenancy agreement to reside in the rental unit without her former husband.

Both parties agreed to the following facts. Move-in and move-out condition inspection reports were completed for this tenancy but the move-out condition inspection report was completed by the landlords only, without the tenant present. No Residential Tenancy Branch ("RTB") form called the "Notice of Final Opportunity to Schedule a Condition Inspection" was provided to the tenant by the landlords. No forwarding address was provided by the tenant to the landlords. The landlords did not have any written permission to keep any part of the tenant's deposits. The landlords filed this application to keep the security deposit on January 26, 2019.

The tenant stated that she vacated the rental unit on December 31, 2018. The landlords claimed that they did not know when the tenant moved out, as she still had

items left in the rental unit as of December 31, 2018, and she did not tell them when she left.

The landlords seek a monetary order of $11,563.23 plus the $100.00 application filing fee. The landlords provided estimates and invoices, photographs, and the move-in and move-out condition inspection reports to support their claims. The tenant also provided photographs, a written response and other written evidence to support her submissions.

The landlords seek $522.90 for junk removal, $535.00 for cleaning the rental unit, $757.12 for replacing the ceiling fan and light, $310.58 for refrigerator parts, $16.51 for replacing the hallway light cover, $148.17 for paint supplies for one room, $12.32 for replacing the kitchen pot light, $195.16 for replacing the blinds, and $1,095.21 for filling the entire oil tank as per the tenancy agreement.

The landlords further seek $884.00 for a half month rental loss for January 2019, $273.50 for replacing locks, $189.99 for replacing dishwasher parts, $224.70 for replacing screens, $895.44 for half the value of replacing the shed, $2,866.50 for the male landlords' company to repair damages at the rental unit, $46.60 for dump fees, $1,896.53 for replacing the damaged salon floor due to chemicals and marks, and $693.00 for installing the blinds and screens.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove 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 tenant 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.

I award the landlords $941.69. The tenant agreed to pay the above total amount during the hearing. The tenant agreed to pay $522.90 for junk removal, $148.17 for the paint supplies, $12.32 for the pot light in the kitchen, and $46.60 for the dump fees. These were the full amounts sought by the landlords in their application. The tenant agreed to

pay $211.70 of the $310.58 originally sought by the landlords for the refrigerator parts and the female landlord agreed to accept this amount in settlement of this claim and abandoned the remainder.

I award the landlords $16.51 for the light cover in the hallway. The tenant disputed this cost. The landlords provided a receipt for the replacement of this cover, which they said was cracked by the tenant during the tenancy. The tenant claimed that it was reasonable wear and tear but the landlords had to replace it and I find it was due to the tenant's actions.

I award the landlords $273.50 to replace the locks at the rental unit. The tenant disputed this cost. The landlords said that they only got one key back, not a full set, and they had to replace the locks for safety reasons. The tenant agreed that she only returned one key, as she did not have the others. The landlords are required to change the locks for safety reasons as new tenants have moved in, including their son and another person. The landlords provided a receipt for the above cost.

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

I dismiss the landlords' claims for $757.12 for replacing the ceiling fan and light, $1,095.21 to fill the oil tank, $224.70 to replace the screens, $895.44 to replace half the value of the shed, $1,896.53 to replace the salon floor, and $693.00 to install the blinds and screens. The tenant disputed these claims, stating that there were no receipts provided and the work was not done. I find that the landlords did not complete the above work, they only provided estimates and invoices rather than receipts for work done, the landlords may not complete this repair in the future, and they had new tenants including their son and another person, move in to the unit after the alleged damage was caused.

I dismiss the landlords' claims for $535.00 for a private cleaning of the rental unit, $189.99 for dishwasher parts, and $2,866.50 for repairs done at the rental unit by the male landlord's company. The tenant disputed these claims, stating that there were no receipts. The landlords agreed that they redacted the name and contact information of the private cleaner. Therefore, the tenant could not verify that cleaning was done at the cost indicated. The tenant also stated that the male landlord's own company did not provide proof of payment or who did the work. I find that the landlords only provided estimates and invoices rather than receipts for work done, despite the fact that they had ample time to do so from the filing of their application on January 26, 2019 and this

hearing date of May 14, 2019, a period of almost four months. Further, the landlords had access to receipts with the male landlord's own company and did not provide this proof for the hearing.

I dismiss the landlords' claim for a loss of rent of $884.00 for half of January 2019. The landlords claimed that they spent two weeks cleaning and getting the place ready and no one except their son would have moved in to the rental unit, given the terrible condition it was in when the tenant moved out. The tenant disputed this claim, stating that the landlords' son moved in on January 1, 2019, as per a note they provided to the tenant previously, and they collected rent from him, as they stated during the hearing that they were charging $1,500.00 rent for him and a roommate. The landlords claimed that their son moved in on January 15, not January 1, 2019. I find that the landlords were unable to show that their son moved in on January 15 rather than January 1, and it is their burden to prove their loss of rent. They did not provide a written tenancy agreement, rent receipts, or other documentary information to support when their son and his roommate moved in to the rental unit.

As the landlords were not fully successful in this application, I find that they are not entitled to recover the $100.00 filing fee from the tenant.

I find that the landlords continue to hold the tenant's security and pet damage deposits totaling $1,350.00. I find that the tenant is not entitled to double the value of her deposits because she did not provide her forwarding address in writing to the landlords after the tenancy ended, and therefore, the doubling provision has not been triggered.

Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain $1,231.70 from the tenant's deposits and return the remainder of $118.30 to the tenant within 15 days of receipt of this decision. The tenant is provided with a monetary order in the amount of $118.30 against the landlords.

Conclusion

I order the landlords to retain $1,231.70 from the tenant's deposits in full satisfaction of the monetary order.

The remainder of the landlords' application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of $118.30 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.

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: May 14, 2019

Residential Tenancy Branch