Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S MNRL-S

Introduction

In this dispute, the landlord sought compensation against his former tenant pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act").

The landlord applied for dispute resolution on August 28, 2019 and a dispute resolution hearing was held at 1:30 PM on January 20, 2020. The landlord attended the hearing and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord testified that he served the Notice of Dispute Resolution package (the "Package") on the tenant by way of Canada Post Registered Mail on August 28, 2019. A registered mail tracking number was provided to me by the landlord. Given the testimony and evidence of the landlord I find that the tenant was served with the Package. In addition, I note that Residential Tenancy Branch (the "RTB") audit file notes indicate that the tenant (or someone purporting to be the tenant) called the RTB on August 29, 2019 and was informed of cross-application process or procedures.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Is the landlord entitled to compensation, pursuant to section 67 of the Act?

2. Is the landlord entitled to recovery of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy started on March 1, 2019 and ended on August 2, 2019. A copy of the written tenancy agreement was submitted into evidence and the landlord confirmed that monthly rent was $1,700.00, due on the first of the month. The tenant paid a security deposit of $850.00 and pet damage deposit (for a dog named “Molly”) of $850.00; these amounts are currently held in trust by the landlord pursuant to the Act and pending the outcome of his application.

The tenant was eventually evicted for reasons unrelated to the present application but did not move out until early August 2019. However, she did not pay rent for August 2019 and prevented the landlord from showing the rental unit by (a) having 4 pit bulls on site or in the rental unit and (b) not being available to let the landlord into the rental unit.

A Condition Inspection Report and a Monetary Order Worksheet were submitted into evidence. The tenant was present at both the move-in and move-out inspections but did not sign the Report at the end of the tenancy. The Report reflects damages and repairs that the landlord testified to, and as claimed in his application, which were as follows:

1.	Unpaid rent from August 2019	$1,700.00
2.	Unpaid BC Hydro bill	124.53
3.	Cost of fixing laminate floor	50.40
4.	Cost of closet hardware and lights	29.59
5.	Cost of floor cleaner	22.38
6.	Cost of handrail bracket	9.13
7.	Cost of odor removal	20.82

I note that the landlord also sought compensation for a $100.00 filing fee that was previously awarded to him in his last dispute resolution; however, I explained that he would need to seek collection of this unpaid amount through small claims court. The landlord is, however, seeking recovery of the $100.00 filing fee for the present application. The total claimed, excluding the previous dispute filing fee, is $2,056.85.

In support of his claim and testimony the landlord submitted copies of receipts for all of the above-noted items 2 through 7, inclusive. I note that section 9 of the written tenancy agreement states that “[tenant] will be paying her BC Hydro portion to the landlord, which is 60% of the overall bill paid on bimonthly basis. The bills will be paid alongside with the rent.”

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. 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 tenancy agreement by not paying rent for August 2019. The tenancy agreement clearly states when and how much rent is to be paid. Moreover, section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. But for the tenant's failure to pay rent for August 2019 the landlord would not have suffered a loss of rent in the amount of $1,700.00. This amount is proven as per the tenancy agreement.

Finally, I find that the landlord did what was reasonable to minimize the loss of rent by trying to show the rental unit to prospective renters. Sadly, the tenant did not assist in this regard.

Likewise regarding the BC Hydro bill: the tenant was required to pay this, she did not, and the landlord has borne the cost of an unpaid utility bill.

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 met the onus of proving his claim for unpaid rent and for the unpaid hydro.

Regarding the remainder of the claim, I note that 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. Based on the oral testimony of the landlord and the submitted Condition Inspection Report, I conclude that the tenant did not leave the rental unit reasonably clean and undamaged. But for the tenant's breach of the Act under this section the landlord would not have suffered the damages claimed. He has proven the amounts in damages, and I find that what is claimed is reasonable.

While the landlord did not speak to what reasonable steps he took to mitigate these specific losses, the amounts claimed are within an acceptable and reasonable limit such that I do not find that he acted unreasonably in repairing the rental unit in a manner suitable for the next tenants.

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 met the onus of proving his claim for the costs related to repairing and cleaning the rental unit.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the $100.00 filing fee.

In summary, I award the landlord $2,056.85 in compensation as claimed. In partial satisfaction of this award the landlord is entitled to retain the full amount of the security deposit and the full amount of the pet damage deposit. The balance, $356.85, I grant by way of a monetary order which is issued in conjunction with this decision to the landlord.

As explained earlier, the $100.00 filing fee (and monetary Order) from the landlord's previous dispute will have to be enforced through small claims court.

Conclusion

The landlord is granted a monetary order in the amount of $356.85, which must be served on the tenant. Should the tenant refuse to pay the landlord, 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 subsection 9.1(1) of the Act.

Dated: January 20, 2020

Residential Tenancy Branch