Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 321611 ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

In this dispute, the landlord seeks compensation under section 67 of the *Residential Tenancy Act* (the "Act") and recovery of the filing fee under section 72 of the Act.

The landlord applied for dispute resolution on January 8, 2020 and a dispute resolution hearing was held, by way of telephone conference, on May 29, 2020. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord testified that they twice served the Notice of Dispute Resolution Proceeding package on the tenant. Both times the packages were returned, unclaimed. Copies of the Canada Post receipt and tracking information was submitted into evidence. Failure to claim mail is not a valid reason to avoid service and doing so does not excuse a respondent from attendance at a dispute resolution hearing. As such, I find that the tenant was served in accordance with section 89 of the Act.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure,* to which I was referred, and which was relevant to the issues of this application.

Issues

1. Is the landlord entitled to compensation as claimed?

2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord testified and confirmed that the tenancy began on March 1, 2013 and ended on December 31, 2019, after the tenant gave notice on December 23, 2019 that she was ending the tenancy in one week. A copy of the tenant's notice and the written tenancy agreement were submitted into evidence. Monthly rent, which was due on the first of the month, was $1,079.00 at the time the tenancy ended. Further, the tenant paid a security deposit of $475.00, which the landlords currently hold in trust.

The landlord seeks the following amounts (for a total of $1,605.00):

1. $1,079.00 for rent for January 2020;
2. $70.00 for a parking pass and sticker that the tenant did not return;
3. $125.00 for rental unit cleaning and damages (comprising $75 for cleaning for three hours and $50 for repair of wall damages);
4. $106.00 for carpet cleaning;
5. $25.00 for an entry door key that the tenant failed to return; and,
6. $100.00 for the application filing fee.

Regarding the rent, the landlord testified that with only a week's notice to end the tenancy, there was inadequate time to find a new tenant for January. She explained that she immediately posted the rental unit for availability when the tenant gave her notice. However, and not surprisingly, the landlords were unable to find a new tenant in time for January 2020. Thus, they suffered a loss of rent for that month.

Regarding the cleaning, carpet cleaning, and the damages, the landlord testified about these matters and provided photographs (which showed a bit of a mess along with property damage) in support of her claim. In addition, a copy of the Condition Inspection Report was submitted into evidence, lending further support to the landlords' application. It should be noted that the tenant failed to attend for the final inspection, despite the landlords' repeated efforts to have her attend.

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria (based on sections 7 and 67 of the Act) before compensation may be awarded:

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 what is reasonable to minimize the damage or loss?

In this dispute, the tenant failed to provide notice to end the tenancy as required under section 45 of the Act, which requires a minimum of one-month notice be given before the end of the month for which the notice applies. I find that the tenant failed to comply with the Act in this regard.

Section 37(2)(a) 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 and photographic and documentary evidence, I conclude that the tenant breached this section of the Act by leaving the rental unit unclean and damaged.

Section 37(2)(b) of the Act requires a tenant to “give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property” when vacating the property. Again, I find that the tenant failed to comply with this section of the Act.

But for the tenant’s breaches of sections 37 and 45 of the Act the landlord would not, I conclude, have suffered the losses claimed.

Third, the landlords have proven the amounts claimed, with both an accounting of the labour, repairs, and the establishment of the rent amount. The amounts claimed are entirely reasonable and justifiable. And, fourth, given that the landlords moved quickly to find a new tenant, and given that the repair and cleaning costs are reasonable, I further find that the landlords did what was reasonable to minimize their loss.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I therefore find on a balance of probabilities that the landlords have met the onus of proving their claim for compensation in the amount of $1,605.00.

Finally, 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 landlords were successful, I grant their claim for reimbursement of the filing fee of $100.00, for a total monetary award of $1,705.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlords may retain the tenant's security deposit of $475.00 in partial satisfaction of the above-noted award. The balance of $1,230.00 is included in a monetary order that accompanies this Decision.

Conclusion

I grant the landlords a monetary order in the amount of $1,230.00, which may be served on the tenant. Should the tenant fail to pay the landlords the amount owed, the landlord must serve a copy of the order on the tenant and may file the order in the Provincial Court of British Columbia (Small Claims Court) for enforcement and collection.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 29, 2020

Residential Tenancy Branch