Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

In this dispute, the landlords seek compensation against their former tenants under section 67 of the *Residential Tenancy Act* (the "Act"), including recovery of the filing fee under section 72 of the Act.

The landlords applied for dispute resolution on February 13, 2020 and a dispute resolution hearing was held, by way of telephone conference, on May 5, 2020. All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues in respect of the service of documents or evidence were raised by either party.

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. As such, not all of the parties' testimony may necessarily be reproduced below. I emphasize this last point: while vast swaths of testimony were about mold, mold is not the quintessence of the actual legal issues.

Issues

1. Are the landlords entitled to compensation as claimed?
2. Are the landlords entitled to recovery of the filing fee?

Background and Evidence

The tenancy began in January 2019 and was initially a fixed-term tenancy lasting six months. In June 2019 the tenancy was renewed for a one-year fixed term lasting one year, with an expiry in June 2020. Monthly rent was $1,800.00 and the tenants paid a security deposit of $900.00 and a pet damage deposit of $900.00, both deposits of

which are currently held in trust by the landlords. A copy of the written tenancy agreement was submitted into evidence.

On December 9, 2019, the tenants gave the landlords a written notice that they would be ending the tenancy on January 31, 2020. (Both parties referred to an attempt by the tenants to have the landlords sign a mutual agreement to end the tenancy; however, as this agreement was never completed, it is of little importance in this dispute.) Since the tenancy was supposed to end in June, the landlords seek compensation of $7,200.00 for rent that they argue was lost from February to May 2020, inclusive.

The landlords testified that they took out an advertisement in the local paper for the rental unit, and claim costs of $28.00 for that ad. In addition, they testified that they spread information about the availability of the rental unit by word of mouth, and “places where there might be potential renters,” such as the local police detachment. The landlords had “several people looking” but no one has rented the rental unit.

The landlords seek additional compensation in the amount of $567.00 for costs related to repairing a damaged butcher’s block and $475.00 for repairs made to a fence panel.

The butcher’s block was glass covered and, in the kitchen, and the landlords argued that while it was in good shape at the start of the tenancy, the tenants must have moved the glass because the wood was stained and split, suggesting that the tenants had spilled liquid onto the block. The amount claimed is the cost to replace the block.

Regarding the fence, the landlords testified that the tenants removed a large panel in the fence in order to move their trailer into the back yard, where they kept it during the tenancy. The fence panel was out of alignment after the panel’s removal and reinstallation. The landlords explained that they did not give the tenants permission to remove the fence panel. The amount claimed is based on a quote obtained from a repairperson. I inquired as to the age of the fence, to which the landlords replied that the fence was new when they purchased the property about 14 years ago.

There was a completed Condition Inspection Report submitted into evidence, and which refers to: “water damage butcher block” in the *Condition at End of Tenancy* column. There is no reference to the butcher block in the *Condition at Beginning of Tenancy* column, though the “Countertop” is marked as “Good” indicated by a check mark.

At the bottom of page two of the report there is a hand-printed entry that reads, “Fence for vehicular access to backyard falling apart, gat[e] access not easily operable.” The

landlord explained that this notation was recorded at the end of the tenancy. There is, I note, no reference or indication of the state of the fence at the start of the tenancy.

In addition, the landlords incurred and are claiming $157.50 for the cost of a mold inspection report. This report was “needed to be done to refute the tenants’ false claims made [within the community] that there was mold.” The landlords spoke of the small and closely-knit community where rumours of mold can prove disastrous. In final submissions the landlords reiterated that “the only reasons we had to get the DKI report is because the tenants were telling people we had mold.” Regarding the mold, the landlords surmise that it was simply a “scam” or a method for the tenants to get out of their tenancy early, as the tenants had bought a house in November 2019.

The tenants testified about the reasons they ended the tenancy early, namely, that there were significant mold issues in the rental unit, and that there were health issues resulting from said mold. Regarding the butcher’s block, they said that they never removed the glass that was on top of the block. They argued that any damage that did occur would have been reasonable wear and tear. Regarding the fence, the tenants admitted that they removed and put back the fence panel at the start of the tenancy and at the end. There was a conversation wherein the tenants asked the landlords if they, the tenants, could put their trailer in the back, to which the landlords said, “no problem.” One of the tenants testified that “there was no inspection of the exterior of the property at the start of the tenancy.”

Regarding the landlords’ efforts to try and find new tenants, the tenants argued that there “was not one attempt to rent” the rental unit and that the advertisement in the local paper was not taken out until February 2020. And, that “there is no other evidence of posting” or advertising.

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. Further, when an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria 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 whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) 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.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I will address each of the landlords' six claims below.

Claim for Loss of Rent

The tenancy was a fixed-term tenancy ending in June of 2020. The tenants terminated the tenancy well before the tenancy was to end, by giving notice on December 9, 2019.

Section 45(2) of the Act states the following about ending a fixed-term tenancy:

> A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
> (a) is not earlier than one month after the date the landlord receives the notice,
> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
> (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I find that the tenants breached section 45(2)(b) of the Act. The tenants did not argue, nor is their sufficient evidence to support a hypothetical argument, that they had a legal right to end the tenancy under section 45(3) of the Act.

The second criteria – did the landlords suffer a loss as a result of this breach? – can be answered in the positive. But for the tenants' breach of the Act the landlords would not have suffered a loss of rent for the months after the tenants vacated the rental unit. The amount claimed is for loss of rent for February, March, April, and May 2020, which totals $7,200.00.

The fourth criteria must now be assessed: have the landlords done whatever is reasonable to minimize the damage or loss? I must conclude that they have not. The only evidence of the landlords' attempts to find new tenants is a single advertisement in the local newspaper that was not purchased until February 11, 2020, after the tenants moved out. The landlords testified that they attempted to find new tenants by visiting certain places in the community and by word of mouth. The tenants argued that there is no evidence of any attempt to find new tenants.

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 over and above their testimony that they did what was reasonable to minimize a loss of rent. Indeed, taking out a single advertisement long after the tenants provided their notice to end the tenancy is not reasonable. One would expect a reasonable person (in the legal sense of the phrase) to start looking for new tenants immediately, especially in a small community in which the rental unit is located. There is no evidence or records of anything else done to prove that the landlords actually attempted to find new tenants, no record of showings, and no evidence of additional listings on-line or elsewhere. This is not to say that the landlords did not do this, but there is no evidence that they did.

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 landlords have not met the onus of establishing that they did all that was reasonable to minimize their loss. For this reason, I deny their claim for loss of rent.

That said, I award nominal damages to the landlords. "Nominal damages" are a minimal award and may be awarded where no significant loss has been proven (or where it has been found that the applicant failed to take reasonable steps to minimize their loss), but

it has been proven that there has been an infraction of a legal right. I award the landlord nominal damages in the amount of $100.00.

Claim for Advertising

While I have found that the landlords failed to take reasonable steps in minimizing the looming potential loss of rent, I cannot ignore that they at least did something. In this case, they did take out an advertisement. But for the tenants' breach of the Act as noted above, the landlords would not have had to incur advertisement costs. For this reason, I grant the landlords' claim for $28.00 for advertising.

Claims for Butcher Block Damage and Fence Panel Damage

Both of these claims may be dealt with together, as they relate to alleged property damage. The landlords claim that the tenants damaged the fence by removing the panel and that they damaged the butcher's block. The tenants admitted to removing and putting back the fence panel but deny damage to the butcher's block.

Section 32(3) of the Act states that

> A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I note that the tenants testified that the landlords said it was "OK" if the tenants put the trailer in the backyard. However, they did not testify that the landlords said it was OK for them to remove the fence panel, which the tenants admitted to doing. Regardless of the age or condition of the fence, the tenants had no legal right to remove the fence panel without the landlords' permission. In doing so, they put themselves into the legal requirement found in section 32(3) of the Act to repair the damage to the fence, which they did not.

But for the tenants' removal of the fence panel the landlords would not have had to incur a cost to repair the fence. While the landlords only obtained one quote to repair the fence, the amount claimed of $475.50 is reasonable in the circumstances. However, given that the fence is approximately 14 years old, I must apply depreciation to the amount claimed. Wooden fences have a useful life of 15 years (*Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements).* A depreciated amount of 93% reduces the landlords' claim to $33.29, which is the amount awarded.

Regarding the butcher block damage, the landlords claim that the tenants damaged it. The tenants dispute this. I note that the only documentary evidence that might have established the true state of the butcher's block at the start of the tenancy is the Condition Inspection Report, which was silent on the condition of said block. There is no photographic evidence of the state of the block at the tenancy's start.

Section 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. Without evidence that a tenant damaged a rental unit – which is established through a before-and-after documentation (that is, a Condition Inspection Report) – a landlord cannot claim damage that may or may not have been caused by a tenant. Indeed, the importance of a Condition Inspection Report cannot be over-emphasized, particularly in cases such as this where the dispute boils down to a he said she said. Section 21 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003, states

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Here, there is no preponderance of evidence to establish what state the butcher's block was in at the start of the tenancy. As such, I conclude that the landlords have not proven that the tenants caused damage giving rise to a claim for damages.

Claim for Mold Inspection Report

Regarding this claim, the landlords did not establish what section of the Act, the regulations, or the tenancy agreement the tenants supposedly breached thereby creating a loss for which the landlords ought to be compensated.

The landlords explained twice in their testimony that they felt they needed to obtain this report in order to quell false claims made by the tenants (to the community) about mold. While such conduct is, if it is true, reprehensible, it is not an action which may be brought under the Act. There is, in short, no legal obligation on a tenant to not go about saying things (true or false) about the rental unit or the landlord. As such, this aspect of the landlords' claim is dismissed without leave to reapply.

Claim for Filing Fee

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 with certain aspects of their claim, I award them $100.00 for the filing fee.

Summary of Award

I award the landlords a total of $261.29, comprising $100.00 in nominal damages for the tenants' breach of section 45(2)(b) of the Act, $28.00 for advertising costs, $33.29 for the fence (depreciation applied), and $100.00 for the filing fee.

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 [an arbitrator] orders that the landlord may retain the amount." As such, I order that the landlords may retain $261.29 of the tenants' security deposit in full satisfaction of the above-granted award. Further, the landlords are ordered to forthwith return $1,538.71 of the balance of the tenants' security and pet damage deposits. A monetary order (granted to the tenants) is issued in conjunction with this decision.

Conclusion

The landlords' application is granted, in part, and they are awarded $261.29. The landlords are ordered to retain this amount of the security deposit. Further, the landlords are ordered to return the balance of $1,538.71 to the tenants.

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: May 6, 2020

Residential Tenancy Branch