Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For Tenant: MNSDB-DR, FFT
For Landlords: MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

In this dispute, the landlords sought compensation under section 67 of the *Residential Tenancy Act* (the "Act"), and the tenant sought compensation for the return of his security and pet damage deposit under sections 38 and 67 of the Act. Both parties also seek recovery of the application filing fee, under section 72 of the Act.

The tenant filed his application on February 25, 2020 and the landlords filed their application on March 30, 2020. A dispute resolution was held, by way of teleconference, on May 11, 2020. All parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Neither party raised any issues with respect to the service of documents or evidence, and both parties confirmed that they served copies of evidence on the opposing side.

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 these applications. As such, not all of the parties' testimony may be reproduced below.

Issues

1. Is the tenant entitled to the return of his security and pet damage deposits?

2. Are the landlords entitled to compensation and if so, may they retain any or all of the tenant's security and/or pet damage deposits?

3. Is either party entitled to recovery of the filing fee?

Background and Evidence

The basic facts concerning the tenancy are relatively undisputed: the tenancy began on April 1, 2019 and ended on or about February 1 or February 15, 2020. The tenancy was to be a one-year fixed term tenancy. Monthly rent was $2,400.00 and the tenant paid a security deposit of $1,200.00 and a pet damage deposit of $600. A copy of the written tenancy agreement, along with addendums, were submitted into evidence.

The landlord (K.G.) testified that "this all started" when he spoke to the tenant in mid-December 2019 about two strata complaints that might result in fines. During that discussion, the tenant told the landlord that he would be giving notice to end the tenancy for mid-February 2020. The exact date seemed to vary, however. The notice to end was verbal, but there was some discussion about this matter by text. The landlords did not agree to the tenant wanting to end the tenancy early and were concerned about rent not being paid after the tenant left. In mid-January 2020 the tenant told the landlords that he would be vacating the rental unit on February 1, 2020. The landlords "tried out best to find new tenants" but did not end up finding a new tenant until a March 1, 2020 start date. The tenant moved out of the rental unit on February 1.

The tenant testified that he hand-delivered his forwarding address by leaving it on the landlords' front step on or about February 15, 2020. He could not recall the exact date because "it was so long ago." However, the landlords confirmed in testimony that they recall receiving the tenant's forwarding address or about February 15. Finally, the tenant confirmed that he did not provide any written consent for the landlords to keep any of the security and or pet damage deposits.

The tenant claims that the landlords did not return the security and pet damage deposits as they ought to. The landlords seek to keep the security and pet damage deposit for various matters, which are as follows:

1. $100.00 for two strata council fines related to infractions of the strata bylaws; a copy of correspondence from the strata corporation confirm these amounts ($50.00 for each of two infractions) was submitted into evidence;
2. the cost of a replacement fridge ($1,800.00 was given as an estimate) which was necessary due to the door being dented by the tenant;
3. the cost to replace blinds that the tenant's dog and run back and forth through (the blinds were estimated to cost $410.00 to replace);
4. the cost to replace lightbulbs totalling $50.00;

5. replacement keys that the tenant allegedly had not returned in the amount of $194.25 (a locksmith receipt was submitted into evidence);
6. a nominal amount to repair and replace a broken central vacuum outlet and also some holes in the wall;
7. the cost to have the rental unit professionally cleaned in the amount of $420.00; the landlord testified that they had an agreement with the tenant to have the house professionally cleaned, which they allege it was not; and,
8. the rent for February 2020 in the amount of $2,400.00.

The landlords did not provide any documentary evidence, such as an online ad, regarding their efforts at finding a new tenant. They did testify, however, that they took out Castanet ads, for example, and that they were advertising the rental unit for a possession date of March 1, 2020. It should be noted, however, that the tenant submitted a copy of a text message conversation dated January 5, 2020, in which the landlord tells the tenant that they (the landlord) has two showings on the Sunday.

But for the holes in the wall and the broken vacuum outlet, the tenant denies liability for the landlords' various other claims. He notes that there was no Condition Inspection Report completed either at the start of or at the end of the tenancy. Regarding the dent in the refrigerator, he testified that it was there when he moved in. The landlords referred to a video which shows an undented fridge. In response, the tenant argued that the video could have been taken at any time. As to the cleanliness of the rental unit, he said "the photographs show the house is clean." He was referring to a series of photographs that he had submitted portraying the rental unit on the day he moved out.

The parties disagreed about which keys were returned, and it was unclear which keys were actually returned. The landlord testified that when they went to unlock the door of the rental unit (after the tenant had left), it did not work. So, they had to call a locksmith, who remarked that he had been there before.

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 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.

Claim for Unpaid Rent

In this dispute, the tenant gave notice to end the fixed-term tenancy on February 1, 2020. The date specified in the tenancy agreement as the end of the tenancy was April 1, 2020. His text messages to the landlord confirm that he was ending the tenancy on February 1, 2020. Ending the fixed-term tenancy early is a clear breach of the Act. Specifically, section 45(2) of the Act states that

> 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.

Based on the testimony and documentary evidence, I find that the tenant breached the Act. Further, but for the tenant's breach of the Act, I find that the landlords would not have suffered a loss of rent. In other words, causation between the tenant's actions and the landlords' loss has been proven, I must conclude.

The next question that must be answered is: have the landlords proven the amount or value of their damage or loss? I find that they have. Monthly rent was $2,400.00. The tenant did not pay rent for February and the landlords' new tenants did not take possession of the rental unit until March 1, 2020.

Finally, have the landlords done whatever was reasonable to minimize the damage or loss? I find that they did. While there is absence of advertisements, the landlords testified that they tried their best to find new tenants. And, while the tenant seems to dispute that they made any such efforts, the text message of January 5, 2020 clearly shows that the landlords were doing their best to find someone. Subsequent text message re-affirms the landlords' efforts. Given these facts, I find that the landlord did was what reasonable in trying to minimize the loss of rent for February 2020.

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 met the onus of proving their claim for loss of rent of $2,400.00.

Claim for Holes in Wall and Broken Vacuum Outlet

The tenant admitted liability for these damages. The landlord was unable to provide an exact cost for these but remarked that the outlet part would cost about $12.00.

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.

I find that there was a breach of section 37 of the Act, as agreed by the tenant's admission of liability. However, as the landlords did not present an exact accounting of costs (it was mainly time they expended, they testified), I grant the landlords nominal damages in the amount of $100.00.

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Claim for Cleaning, Fridge Dent, Blinds, Keys, Lightbulbs

The landlords seek costs related to cleaning, replacing a dented refrigerator, dirty blinds, and replacing lightbulbs. The tenant disputes all of these claims and did not admit to being liable for any of these costs as claimed.

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 – such as a Condition Inspection Report – that the tenant is liable.

The evidentiary weight of a properly completed condition inspection report cannot be overemphasised. Indeed, as section 21 of the *Residential Tenancy Regulation* 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.

The landlords did not have a preponderance of evidence demonstrating the condition of the rental unit at the start of the tenancy. And, I must place little weight on an undated video of the rental unit. Indeed, the tenant’s photographs of the rental unit at the end of the tenancy portray a clean rental unit. A properly completed condition inspection report would have established the state of the rental unit at the start of the tenancy, including keys (how many were handed out), lightbulbs, blinds, appliances, carpets, etc.

I conclude that, given the lack of a preponderance of evidence relating to these claims, I dismiss this aspect of the landlords’ application.

Claim for Strata Fines

The landlords seek $100.00 to cover fines that were levied by the strata against the landlords for various breaches of the strata bylaws. However, the landlords have not

established which section of the Act, the regulations, or the tenancy agreement the tenant breached which results in him being liable for these fines.

What is missing here is what is called a Strata Form K. This form is vital in situations where a landlord rents his or her strata property to a tenant, because it ensures that the tenant is aware of the strata's bylaws and rules. When renting in stratas, tenants and landlords must follow the *Strata Property Act* and regulations and the strata's bylaws and rules, in addition to legislation around residential tenancies.

In other words, if a tenant is provided with a Form K – and where a landlord can prove that the tenant had a signed copy of a Form K – then those strata bylaws and rules form a material term of the tenancy agreement. Thus, if a strata bylaw or rule is breached by a tenant then that tenant may be liable for any fines. In this case, however, the landlords have not established that they provided a copy of a Form K to the tenant. Therefore, the tenant cannot be held liable for any breach of the bylaws or rules. For these reasons I must dismiss this aspect of the landlords' application.

Landlords' 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 some of their claims, I grant their claim for reimbursement of the filing fee in the amount of $100.00.

A total monetary award of $2,600.00 is granted to the landlords.

Tenant's Claim for Compensation

The tenant seeks compensation in the amount of $3,600.00, not including the filing fee of $100.00. The $3,600.00 is based on a doubling of the security deposit of $1,200.00 and the pet damage deposit of $600.00.

Section 38 of the Act addresses the legal rights and responsibilities of landlords regarding tenant security and pet damage deposits.
Section 38(1) of the Act states

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application 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 dispute, the tenancy ended February 1, 2020 and the landlords acknowledged receiving the tenant's forwarding address in writing on or about February 15, 2020. Therefore, the landlords had until approximately March 1, 2020 to either repay the tenant's security and pet damage deposits or make an application for dispute resolution claiming against those deposits. They did neither, and instead waited until March 30, 2020 to apply for dispute resolution. There is, also, no evidence that the tenant agreed in writing that the landlords could retain any of the deposits.

Section 38(6) of the Act states that

(6) If a landlord does not comply with subsection (1), 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.

Here, the landlords did not comply with section 38(1) of the Act, and therefore the landlords must pay the tenant double the amount of the security and pet damage deposits in the amount of $3,600.00.

Regarding the claim for recovery of the filing fee, I grant the tenant's claim for reimbursement of the filing fee of $100.00.

A total monetary award of $3,700.00 is thus granted to the tenant.

Summary of Awards

The landlords were awarded $2,600.00 and the tenant was awarded $3,700.00, with the balance of $1,100.00 being in the tenant's favor. As such, I grant a monetary order to the tenant in the amount of $1,100.00. This order is issued to the tenant in conjunction with this decision.

Finally, I appreciate that the landlords are "new" and unfamiliar with their obligations under the legislation. To that end, they are encouraged to familiarize themselves with sections 23, 35, 36, and 38 of the Act. Further, the landlords may wish to familiarize themselves with their obligations with regard to renting a strata property at https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/renting-buying-selling/renting-in-stratas/tenants-in-stratas.

Conclusion

I grant the landlords' application, in part, and award them $2,600.00.

I grant the tenant's application and award him $3,700.00. I issue the tenant a monetary order in the amount of $1,100.00, which must be served on the landlords. 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 section 9.1(1) of the Act.

Dated: May 11, 2020

Residential Tenancy Branch