Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNSD, FFL, FFT

Introduction

In this dispute, the landlords seek compensation for various matters under section 67 of the *Residential Tenancy Act* (the "Act") and the tenant seeks compensation under section 38 of the Act. Both parties seek recovery of the filing fee under section 72.

The landlords applied for dispute resolution on February 11, 2020 and the tenant applied for dispute resolution on April 9, 2020. Both applications were scheduled for a hearing held on May 14, 2020. All parties attended and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No one raised issues with respect to the exchange or service of evidence.

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' testimonies may necessarily be reproduced.

Issues

1. Are the landlords entitled to compensation as claimed?
2. Is the tenant entitled to compensation as claimed?
3. Is either party entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on September 21, 2017 and ended on December 30, 2019. Monthly rent was $1,584.00 at the end of the tenancy. The tenant paid a security deposit of $737.50 and a pet damage deposit of $737.50. A copy of the written tenancy agreement was submitted into evidence.

On December 6, 2019, the tenant sent an email to the landlords notifying them that she was ending the tenancy effective December 31, 2019; she was prepared to pay for rent for January 2020 if necessary. However, the landlords were able to find a new tenant who moved in on or about January 1, 2020.

While the parties appeared to have conducted a walk-through inspection at the end of the tenancy, no Condition Inspection Report was completed either at the start of, or at the end of, the tenancy. Throughout the tenancy, the tenant owned a cat or two, and nearer to the end of the tenancy the two cats did not get along well, so the tenant had to separate them. In a large closet was situated the cats' litter box, and the cats allegedly urinated on the carpet and likely on a wall. It was decided that the landlords would retain the tenant's security and pet damage deposit until the landlords could determine how much it might cost to repair the carpet.

Having not heard back from the landlords, on January 17, 2020 the tenant sent an email to the landlords with the tenant's forwarding address on it, and additional commentary about the carpet repairs. The landlords acknowledged receiving the email. The tenant also sent her forwarding address in writing by registered mail to the landlords and presumes that it was eventually received.

Regarding the security deposit, the tenant testified that she did not provide written consent for the landlords to retain any or all of the security and pet damage deposits.

On February 11, 2020, the landlords mailed the tenant a cheque for the full security and pet damage deposits. This is the same date, I should note, that the landlords filed for dispute resolution; the tenant filed for dispute resolution on April 9, 2020. While the tenant received the return of her security and pet damage deposits, she seeks compensation in the amount of $1,475.00, which represents the doubled amount (minus the returned deposits) that may be claimed under section 38(6) of the Act.

The landlords seek compensation for the following items:

1. $1,025.85 for repairs, paint, and installation of flooring;
2. $261.41 for flooring materials;
3. $63.83 for paint;
4. $1,584.00 for non-payment of rent; and,
5. $100.00 for the filing fee.

The landlords seek the non-payment portion of their rent primarily because of the short notice that the tenant gave them to end the tenancy. They did testify, however, that a new tenant was found, and that the new tenant moved in for January 1, 2020. Thus, the landlords did not suffer a loss in rent for January 2020.

The remaining costs are related to the carpet in the closet room. As noted, the tenant kept her cats' litterbox in the room, and the landlords noted a "strong smell" when they inspected the rental unit. Apparently, the new tenant also remarked about the cat odor. (A written testimonial by the new tenant was submitted into evidence, reflecting this fact.) In an effort to get things moving along, the new tenant ripped up the carpet and underlay in order that the new carpet could be installed quickly. Also requiring cleaning was the walls, which were washed. An "ozone machine" was placed in the rental unit and left running for three days and nights in an effort to remove the smell, but to no avail. Eventually, work was done on January 6 and 7, 2020 in installing new carpet.

As to the age of the carpet, the landlords said that it was "pretty dated" and probably about ten years old. The painting, however, was much newer, and "painted just prior to the tenant moving in." In rebuttal, the tenant disputed this, noting that while the main rooms in the rental unit had likely been painted before she moved in, the paint in the closet was a different hue. Thus, it was unlikely to have been painted just before 2017.

Regarding the landlords' claimed amounts, the tenant argued that the amount of damages sought is excessive. She pointed out that there is no breakdown of the contractor's invoice which provides a brief entry for labour of 14 hours, totalling $819.00; this excludes a contractors fee and shop supplies of $126.00 and $32.00, respectively.

Further, the tenant argued that 14 hours of work to install carpet and paint seems excessive. Also argued was that the entire cost of repairs could have been done for significantly less. The tenant submitted that perhaps the landlords took the opportunity to simply "better" the rental unit.

In their response the landlords testified that they tried sourcing the materials as quickly and as cheaply as possible, and, that they were under a bit of a deadline given that their new tenant was already in the rental unit. As for the carpet, there is a minimum cut size that must be purchased, even if the purchaser only needs a portion of carpet, such as for a closet. Finally, they stressed that the rather high repair costs reflect what was needed in the circumstances, given the "severity of the odor."

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. I will first address the tenant's application before examining the landlords' application.

Tenant's Claim for Security Deposit

Section 38(1) of the Act states the following about a landlord's obligations at the end of the tenancy with security and pet damage deposits:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (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;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act speaks to the "doubling provision," as it is sometimes called, and states the following:

> (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this dispute, the landlords acknowledged receiving the tenant's forwarding address in writing (that is, by email) on January 17, 2020. Thus, the landlords had until February 1, 2020 to either repay the security and pet damage deposits to the tenant, or, to apply for dispute resolution. They did not return the security and pet damage deposits until February 11, 2020, which is also the date on which they filed for dispute resolution.

Given that they failed to return these deposits as required by the Act, I conclude that the landlords must pay the tenant double the amount of the security and pet damage deposits (minus the amount returned on February 11, 2020) in the amount of $1,475.00.

Tenant's 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 tenant was successful in her application, I grant her claim for reimbursement of the filing fee in the amount of $100.00.

In summary, I award the tenant a total of $1,575.00. However, this is subject to a reduction based on my findings below, regarding the landlords' application.

Landlords' Claim for Rent

Before addressing the landlords' application, it is important to be aware that, when an applicant seeks compensation under the Act, the applicant must prove on a balance of probabilities all four of the following criteria before compensation is 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.

. . .

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.

In this dispute, the tenancy ended on December 31, 2019 and the new tenant or tenants started their tenancy on January 1, 2020. The landlords provided no basis for seeking "rent" of $1,584.00, given that they suffered no actual loss as a result of the tenant's early termination of the tenancy. Certainly, the tenant breached section 45(1) of the Act by providing notice on December 6 that the tenancy was ending December 31, but the landlords have failed to establish any significant loss from this breach.

That having been said, the landlords are entitled to a nominal damage award of $1.00. "Nominal damages" are a minimal award and 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.

Landlords' Claim for Carpet and Wall Repairs

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. In most cases, a landlord can prove that a tenant breached this section by having a properly, fully completed Condition Inspection Report. And, as the tenant correctly explained in her written submission, a landlord revokes their right to claim against a security or pet damage deposit when that landlord fails to complete these reports as required by sections 23, 24, 35, and 36 of the Act.

That said, the landlords are entitled to seek general compensation as they are here, and in this case, the amount awarded to the tenant does not constitute the original security and pet damage deposits. Therefore, any award granted to the landlords may be applied against the amount awarded to the tenant.

The tenant, in her email of January 17, 2020, essentially accepts fault for the condition of the carpet. Nowhere in her correspondence with the landlords does she deny that her cats caused the damage to the carpet and wall. Therefore, the landlords have proven that the tenant breached section 37(2) of the Act. And, but for the tenant's damage, the landlords would not have suffered a loss.

As for the amount claimed in terms of labour, I am persuaded by the tenant's argument that there is no breakdown of labour. Simply asking for a portion of the total amount, as the landlords have done here, is unreasonable and not based on anything substantive. Indeed, 14 hours to lay a carpet and paint a closet wall is rather excessive. I am not in a position to speculate as to what time it actually took, given that some tradespeople work faster than others, but in my experience as both an arbitrator and as a homeowner, it does not take 14 hours. In any event, I find that the landlords have not established the amount, or the value of the labour costs involved. Accordingly, I dismiss this portion of their claim, and again award nominal damages of $1.00.

Regarding the carpet cost of $261.41, the amount claimed is reasonable. As the landlords pointed out, there is a minimum cut size when purchasing carpet. And, the supplier of this carpet is known to be at the lower end of carpet prices. Moreover, that the new tenant ripped up the carpet and underlay resulted in the landlords saving some money (though, I am sure that the new tenant simply wanted the stinky carpet removed). Thus, the amount claimed is accepted.

However, as I explained to the parties during the hearing, building elements have a useful life for which a depreciation must be applied. *Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements* states that the useful life of carpets is 10 years. As the carpet in the closet was installed approximately 10 years ago, I must apply 100% depreciation to the cost of carpet replacement. Thus, the amount claimed is reduced to zero.

As for the paint cost of $63.83, this is, I find, reasonable. The landlords testified that the rental unit was painted just before the tenant moved in; the tenant testified that this could not have been the case, as it was a different colour than the rest of the rental unit, thus suggesting the closet was painted well before she moved in. And, while the policy guideline, noted above, states that interior paint has a useful life of 4 years, I must respectfully depart from the policy guideline on this point. In my experience, interior paint has a longer useful lifespan than 4 years, especially when the occupant washes or cleans the walls. Certainly, paint in a kitchen or bathroom has a shorter lifespan than, say, paint in a closet or bedroom. Having briefly explained why I depart from the policy guideline, I

apply no depreciation to the amount claimed. Moreover, I note that the paint purchased was a special kind used to mask odors. The landlords were attempting to minimize any further loss or damage (and potential issues from the new tenant), I find. Therefore, I award the landlords the amount claimed of $63.83.

Landlords' Claim for Filing Fee

As the landlords were largely successful in their application, insofar as proving that the tenant breached the Act, I grant their claim for recovery of the $100.00 filing fee.

Summary of Awards and Balance Owing

I have awarded the landlords a total of $165.83, which is deducted from the tenants' award of $1,575.00. The tenant's revised award is $1,409.17 and a monetary order for that amount is issued to the tenant in conjunction with this Decision.

Conclusion

I grant the landlords' application, in part, and award them $165.83.

I grant the tenant's application and award her $1,575.00, from which the landlords' award is deducted. I issue a monetary order in the amount of $1,409.17, 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 under section 9.1(1) of the Act.

Dated: May 14, 2020

Residential Tenancy Branch