Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

In this dispute, the landlords seek compensation for various matters, against their former tenants, pursuant to section 67 of the *Residential Tenancy Act* (the "Act"). In addition, they seek recovery of the filing fee under section 72 of the Act.

The landlords applied for dispute resolution on June 15, 2020 and a dispute resolution hearing was held on July 27, 2020. The landlords and the tenants attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

In terms of the initial matter of service of documents, the landlords only served one of the four tenants, in accordance with the Act. However, that tenant (C.L.) distributed the material to the remaining three tenants, each of whom indicated to me that they had had an opportunity to review the landlords' evidence in advance of the hearing, and that they were prepared to proceed with the hearing.

As such, while the landlords may not have served the Notice of Dispute Resolution Proceeding package in strict compliance with the Act and the *Rules of Procedure*, I find, pursuant to section 71(2)(b), that the notice and the documentary evidence was "sufficiently served for the purposes of the Act."

Finally, I note that I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application. As such, not all of the parties' testimony may necessarily be reproduced in full or in part within this decision.

Issues

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

Background and Evidence

The tenancy began on October 1, 2018 and ended on May 30, 2020. Monthly rent was $2,400.00 and the tenants paid a security deposit of $1,200.00, which the landlords currently hold in trust pending the outcome of this application.

In respect of the landlords' claim, they submitted a monetary order worksheet, which I reproduce an excerpt from, below:

> 1. Cleaning of the unit (does not include pressuring washing of the sun deck and walkways) 25 hours x $30.00 per hour = $750.00
>
> 2. Cleaning supplies approximately $75.00
>
> 3. Replacing planks for laminate flooring (large chips/chunks missing and darts falling on the floor causing chipping of the floor) approximately $600.00
>
> 4. Paint costs $35.93 + 16.48 = $52.41
>
> 5. Drywall repairs and paint 10 hours x $30.00 = $350.00
>
> 6. Replace Phantom Screen Door x 2 $250.00 each = $500.00
>
> 7. Repair buckled window screen approximately $20.00
>
> 8. Repair fireplace stone approximately $40.00
>
> _____
>
> Total $2,387.41

Also submitted into evidence was a copy of a completed Condition Inspection Report for both the start and end of the tenancy. In addition, the landlords submitted numerous photographs of the interior of the rental unit. The tenants submitted numerous photographs of the rental unit, into evidence.

The landlords gave evidence that the rental unit was dirty throughout, at the end of the tenancy. The fridge and stove were “absolutely disgusting” and “full of grease.” Nothing in the rental unit, except for the carpets, had been cleaned. There were crumbs, hair, coffee stains, grease chunks, cigarette butts, beer bottle caps, and so forth around the property, including in the exterior of the rental unit. The landlords took over two days to properly clean the rental unit. There was damage to various walls, which needed sanding, filling, and repairing. Chunks of drywall were missing. Every corner of every wall needed repairing, the landlords testified.

The tenants disputed the landlords’ claims and testified that the damage and issues to which the landlords gave evidence was either (1) already present in the rental unit when they took occupancy, or (2) a result of ordinary wear and tear. “We left if [the rental unit] in good condition,” the tenant C.L. remarked, adding “we did as we were asked.”

In addition to this testimony, the tenants on a few occasions brought up the fact that, while the landlord I.G. had done the initial walk-through inspection, that the landlord A.G. did the final inspection. According to the tenants, landlord A.G. was nit-picky and was “basically going through the place with a Q-tip,” looking for anything amiss.

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 (the “four-part test”) 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.

. . .

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 landlords claim compensation for various repairs and cleaning of the rental unit that was necessary because of how the tenants left the rental unit at the end of the tenancy. This claim is based on a breach of section 37(2) of the Act, which 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.

“Reasonable wear and tear” mean the natural deterioration that occurs due to aging and other natural forces, where a tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Having carefully reviewed all of the photographs submitted by both parties, and having reviewed the Condition Inspection Reports, I must conclude that the rental unit was not left reasonably clean, nor did the tenants leave the rental unit undamaged in a manner that can be explained away by reasonable wear and tear. Certainly, the damage and uncleanliness are not at the most outrageous spectrum that I have seen in such disputes, but, nor did the tenants appear to make a whole-hearted effort at having the rental unit reasonably clean and undamaged. The amount of wear and tear that comes through ordinary, careful and considerate use of a rental unit should not, after less than two years, resulted in multiple nicks in the wall, a missing fireplace stone, a ripped back door screen, and so forth. I note that the tenants’ photographs do not lend any weight to their argument that the damage was due to reasonable wear and tear. Finally, that the landlords gave the tenants permission to hang pictures and install a TV mount does not absolve them from liability and responsibility of repairing any damage to the wall.

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 that the tenants breached section 37(2) of the Act. Thus, they have met the first part of the four-part test for compensation.

Having found that the tenants breached the Act, I must next determine whether the landlords' loss resulted from that breach. This is known as *cause-in-fact,* and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach? If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage. If the answer is "yes," indicating that the loss or damage would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

In this case, the landlords would not have suffered, or will not suffer, loss but for the tenants' breach of the Act. The second part of the test is therefore satisfied.

The third criteria that must be proven is that of the value or amount of the loss or damage. A party seeking compensation must present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Regarding the labour costs of cleaning ($750.00) and drywall repair and painting labour costs ($350.00), while these amounts claimed are rather on the upper end of such costs, they are not wholly unreasonable. As such, I conclude that the landlords are entitled to compensation for these portions of their claim. The tenants did dispute the amount claimed or the time it took the landlords to clean the rental unit.

As for the remainder of the landlords' claims, no receipts, invoices, or estimates were submitted into evidence. While the amounts were estimates based on the landlords' knowledge, in a dispute where the respondent tenants do not admit liability (except for some lightbulbs, though no receipts were provided for these), the onus is on the landlords to establish by documentary evidence the actual costs. Or, where an estimate is provided, proof that the landlord intends to minimize loss by obtaining at least a few estimates. There is no documentary evidence to support the landlords' claims for these

remaining amounts. Therefore, I am not prepared to find that the landlords have proven the value or amount of the losses claimed, except for the labor costs noted above.

Finally, in terms of mitigating losses, the landlords undertook the cleaning and repairing themselves. This is, I find, a reasonable decision and action in minimizing losses.

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 compensation in respect of the labor costs claimed, in the amount of $1,100.00. The remainder of their claim is, however, dismissed without leave to reapply.

As the landlords were successful for at least some of their application, I grant their claim for reimbursement of the $100.00 filing fee under section 72 of the Act. In summary, the landlords are awarded $1,200.00 in compensation.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security 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 tenants’ security deposit of $1,200.00 in full satisfaction of the above-noted award.

Conclusion

I grant the application, in part, and award the landlords $1,200.00. The landlords are ordered to retain the tenants’ security deposit in full satisfaction of this award.

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

Dated: July 28, 2020

Residential Tenancy Branch