Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNSD, FFT, FFL

Introduction

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

The landlords applied for dispute resolution on January 15, 2020 and the tenants applied for dispute resolution on January 23, 2020. The applications were heard together at a dispute resolution hearing on June 9, 2020 and on August 13, 2020. The first hearing was adjourned to allow the parties to properly exchange evidence. On August 13, 2020, the landlord (M.J.) and the tenants attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties at the second hearing.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* under the Act, to which I was referred, and which was relevant to determining the issues of these applications.

Issues

1. Are the landlords entitled to any or all of the compensation claimed?
2. Are the tenants entitled to the return of any or all of their security deposit?
3. Is either party entitled to recovery of the filing fee?

Background and Evidence

By way of background, the tenancy started on October 15, 2016 and ended on December 31, 2019. Monthly rent was initially $3,000.00, later increasing to $3,090.00. The tenants paid a security deposit of $1,500.00 and a pet damage deposit of $500.00, both amounts of which the landlords currently hold in trust. A copy of the written tenancy

agreement, including an addendum and a notice of rent increase, were submitted into evidence. Neither party disputes the above-noted background facts.

Landlords' Application for Compensation

The landlord testified that they are seeking $840.00 for cleaning costs, $425.00 for storage and removal costs, and $100.00 for the application filing fee. A copy of a receipt for the cleaning costs, from a cleaning company, was submitted into evidence.

Regarding the storage and removal costs, the landlord testified that she was told by a realtor that estimated costs of removing and storing of the tenants' property would be anywhere between $250.00 and $800.00; the landlord recognized that this was a fairly wide range, and as such she sought something in the mid-point. The landlord submitted copies of emails from a realtor, and in those emails were references to estimated costs. There were, however, no actual estimates from either a moving or storage company.

The landlord testified, in response to a question I asked about a Condition Inspection Report, that "no formal report" was completed at the start of the tenancy. However, she asked multiple times, both by text and verbally, for the tenants to attend at the end of the tenancy to do a walk-through inspection. None was ever done, and no Condition Inspection Report was ever completed at the end of the tenancy. Several photographs of the rental unit were submitted into evidence by the landlord.

The cleaning company was permitted by the tenants to conduct a cleaning of the rental unit on December 30, 2019. The landlords are the parties who ordered that the cleaning take place.

In addition to the above-noted claim for cleaning, the landlord testified that the tenants left behind a swimming pool (it appears to be a large, above-ground pool), tables, and other various items.

In rebuttal, the tenants described the landlords' claims as "nonsense." The tenants testified that when they moved into the rental unit there was existing damage, and, more importantly, the swimming pool was already there. As for the cleaning, the tenant testified that this was done solely under the landlord's discretion, and that the tenants had "no say in that." Rather, the tenants had offered to do some of the cleaning, vacuuming, and so forth, but that the landlords insisted on the cleaning company doing that cleaning. Finally, the tenant S.C. explained that the cleaners "did a terrible job."

Tenants' Application for Security Deposit

The tenants testified and confirmed that they sent their new forwarding to the landlord by way of text message on December 27, 2019. A copy of this text message was submitted into evidence and includes the address and the landlord's response. Also submitted into evidence was a photograph of a letter that the tenants mailed to the landlords on January 3, 2020; this letter included the tenants' new forwarding address.

The tenants further testified that at no time did they provide written consent for the landlords to retain any or all of their security and pet damage deposits.

Regarding their application, the tenants seek the return of the deposits of $2,000.00 and seek a doubled amount pursuant to section 38(6) of the Act, for a total of $4,000.00. They also seek the $100.00 application filing fee, for a total of $4,100.00.

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.

Landlords' Application for Compensation

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.

. . .

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.

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. This includes leaving things behind. The landlord claims that the tenants left behind a pool and other items. The tenants dispute this, and say that the pool was already there when they moved in. They further deny that they left anything else (including cigarette butts) behind.

In the absence of any completed Condition Inspection Report, I cannot determine the true state of the property on the day that this tenancy started. And, where there is a dispute as to the state of the property at the day a tenancy started, the onus falls on the applicant to prove this.

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 landlords have failed to provide any evidence that the tenants breached section 37(2) of the Act. As such, any claim related to the removal and storage of property is accordingly dismissed.

As for the claim for cleaning costs, the landlords took it upon themselves to pay for a cleaning company. Nowhere in the tenancy agreement does it state that the tenants would be liable for the cost of the landlords hiring a cleaning company. Therefore, there is no legal basis on which the landlords may now claim for those costs.

If such cleaning costs were somehow necessary and justified in putting the rental unit into a condition such that it was at the start of the tenancy, there is no evidence that the rental unit required cleaning amounting to $840.00. Again, there are no photographs of

the rental unit at the start of the tenancy nor is there any completed Condition Inspection Reports that might establish the actual condition of the rental unit.

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 proving their claim for either the cleaning costs or for the estimated costs of storage and removal. Accordingly, the landlords' application for compensation is dismissed, as is their application for recovery of the filing fee.

Tenants' Application for Security Deposit

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

> 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.

Here, the tenants forwarded, and the landlord received, the tenants' forwarding address in writing by text on December 27, 2019. That the information was received in electronic format does not nullify that the address was provided; it was "in writing." The tenancy ended on December 31, 2019, and the landlords made an application for dispute resolution claiming against the security and pet damage deposits on January 15, 2020. As such, I find that the landlords applied within the 15 days that is required by the Act.

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

tenants have met the onus of proving their claim for the return of the security and pet damage deposits in the amount of $2,000.00.

Given that the landlords made an application within the 15 days as required by the Act, however, I need not consider the doubling provision under section 38(6) of the Act. The tenants are not entitled to a doubling of the security deposit.

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 tenants were successful, I grant their claim for reimbursement of the $100.00 filing fee. In summary, the tenants are granted a monetary award of $2,100.00.

Conclusion

I dismiss the landlords' application, without leave to reapply.

I grant the tenants a monetary order in the amount of $2,100.00, which must be served on the landlords should the landlords not pay the tenants in a timely manner. Should the landlords fail to pay the tenants the amount owed, the tenants may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

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

Dated: August 13, 2020

Residential Tenancy Branch