Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

In this dispute, the landlord seeks compensation for various matters pursuant to sections 67 and 72 of the *Residential Tenancy Act* (the "Act").

The landlord filed an application for dispute resolution on May 13, 2020 and a dispute resolution hearing was held, by way of teleconference, on September 14, 2020. The landlord agent (the "landlord") attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

The landlord testified that she served the Notice of Dispute Resolution Proceeding packages on both tenants by way of registered mail on May 15, 2020 and then a further package of evidence to the tenants by registered mail on August 14, 2020. Copies of the registered mail receipts and tracking numbers were submitted into evidence, and the Canada Post tracking website indicated that all four sets of packages were delivered.

Based on this undisputed oral and documentary evidence I find that the tenants were served in accordance with section 89 of the Act.

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 issue of this application.

Issue

Is the landlord entitled to a monetary award and order for the compensation claimed?

Background and Evidence

By way of background, the tenancy began on June 8, 2019 and it was a fixed term that was to end on May 30, 2020. The tenancy ended early, however, on April 30, 2020, after the tenants gave their notice to end the tenancy early.

Monthly rent was $1,150.00 and the tenants paid a security deposit of $575.00 and a FOB deposit of $100.00. The landlord currently holds the security and FOB deposits of $675.00 in trust pending the outcome of their application.

A copy of the written tenancy agreement was submitted into evidence. I note that the tenancy agreement included a liquidated damages clause in the amount of $575.00.

The landlord seeks the following compensation, as primarily set out in a submitted Monetary Order Worksheet, and confirmed orally during the hearing:

1. liquidated damages of $575.00;
2. rent for May 2020 (pro-rated until May 25, 2020) of $890.32;
3. invoice for repairs of $126.02;
4. lost fob cost of $25.00; and,
5. filing fee of $100.00.

Also submitted into evidence were a copy of an email, a rent ledger, advertisements, an invoice for the lost FOB, an invoice for repairs done to the rental unit, and, a copy of a new tenancy agreement for a tenant who moved into the rental unit on May 25, 2020.

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.

Section 67 of the Act states that

> 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 Liquidated Damages

In respect of the liquidated damages claim, a landlord is permitted to have as part of a tenancy agreement a liquidated damages clause. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. (See *Residential Tenancy Policy Guideline 4*.)

In this case, the tenants did not attend the hearing to dispute the validity of the clause. Further, the amount is reasonable, given that advertising costs (which the landlord submitted an invoice for) are approximately the amount of the liquidated damages.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for liquidated damages in the amount of $575.00.

Claim for Rent

Pursuant to section 45(2) of the Act, a tenant cannot end a fixed-term tenancy before the date on which it is agreed upon to end as stated in the tenancy agreement. If a tenant ends a tenancy before the agree-upon date, then they are potentially liable for any loss of rent to the landlord that flows from such an early termination.

In this case, the tenants ended the fixed term tenancy a month early, and thus they are *prima facia* liable for rent for May 2020. However, the landlord was able to secure a new tenant for May 25, 2020, thus reducing the amount owed by the tenants to $890.32. The landlord provided evidence of advertising for the rental unit and testified that there were not many applications, which was exacerbated by the pandemic. I find that the landlord has acted to reasonably mitigate its losses in relation to the loss of rent.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for loss of rent in the amount of $890.32.

Claim for FOB and Repairs

The landlord submitted invoices for costs related to replacing the FOB and repairs to the rental unit.

Subsection 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. The Condition Inspection Report, submitted into evidence, establishes that the tenants did not leave the rental unit undamaged. Thus, repairs resulted.

Further, section 37(2)(b) of the Act states that a tenant at the end of a tenancy must "give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property." In this tenancy, the tenants did not, which resulted in the landlord having to pay for a replacement FOB.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for repair and FOB costs of $126.02 and $25.00, respectively.

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 landlord was successful, I grant their claim for reimbursement of the $100.00 filing fee.

Summary of Award, Security Deposit Retention, and Monetary Order

The landlord is awarded a total of $1,716.34.

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 orders that the landlord may retain the amount." As such, I order that the landlord may retain the tenants' security and FOB deposits of $675.00 in partial satisfaction of the above-noted award.

A monetary order in the amount of $1,041.34 is issued in conjunction with this Decision.

Conclusion

The landlord's application is granted.

I hereby grant the landlord a monetary order in the amount of $1,041.34, which must be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord 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: September 14, 2020

Residential Tenancy Branch