Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, MNSD, MNDCL-S, MNDL-S, FFL

Introduction

In this dispute, the tenant seeks the return of her $500.00 security deposit and compensation equal to one month's rent of $1,750.00, pursuant to sections 38 and 67 of *Residential Tenancy Act* (the "Act").

The landlord seeks $115.50 in compensation for cleaning fees, $1,150.00 in compensation for loss of rent, and, recovery of the $100.00 application filing fee, pursuant to sections 67 and 72, respectively, of the Act.

The tenant filed her application for dispute resolution on June 5, 2020 and the landlord filed his application for dispute resolution on Jun 12, 2020. A dispute resolution hearing was held before me on September 29, 2020, at which time I heard and considered both parties' applications. Both parties 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.

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 will necessarily be reproduced within this decision.

Issues

1. Is the tenant entitled to any or all of the compensation as claimed?

2. Is the landlord entitled to any or all of the compensation as claimed?

Background and Evidence

This was the briefest of tenancies: it lasted all of 3 days.

It all started in May 2020, when the tenant was in need of a new rental accommodation. She communicated with the landlord about the rental unit, exchanged some information on LinkedIn, and signed a written Residential Tenancy Agreement. She executed the agreement without, however, having physically visited the rental unit.

The tenancy agreement indicates that the tenancy was to commence on May 31, 2020, and it was to be a three-month fixed term tenancy ending on August 31, 2020. Monthly rent was $1,750.00 and the security deposit was $500.00, both of which were paid by the tenant. (There were some rather unusual rent payment arrangements in an addendum to the tenancy agreement. However, this aspect of the dispute is not relevant to the issues before me, so I will not address it further.)

At the permission of the landlord, the tenant moved into the rental unit a few days before the tenancy officially started and took occupancy of the rental unit on May 28, 2020. However, after just a few days, she vacated the rental unit on May 31.

For reasons that she described below, she had to end the tenancy at that point. And, as such, she seeks to recover the rent paid for June 2020 and the return of her security deposit.

Upon arriving at the rental unit, on May 28, the tenant testified that it was “so, so, so hot in the apartment.” It was “not safe for the baby to sleep” in the rental unit, and they slept on the floor. She added that “there was something wrong it [the rental unit].” The tenant then found another place to stay and then vacated the rental unit three days later.

In his testimony, the landlord explained that after he received the tenant’s email about the rental unit being hot, he almost immediately investigated. He spoke with the building’s handyman, who reported nothing out of the ordinary in respect of the property being hot. He also spoke to another person who said there was nothing wrong with the heat. The landlord offered to install an air conditioner, but the tenant refused to accept this solution.

In rebuttal, the tenant testified that she had looked into the air conditioning solution and said that there was no way an air conditioner could be installed the next day. Rather, it would be “weeks and weeks” before something could be installed.

Throughout his discussions, the landlord said that it became “abundantly clear” to him that the tenant had found another place and simply wanted to terminate the tenancy. In closing submissions, the landlord said that the heat issue “seemed fabricated.”

Regarding the claim for cleaning costs of $115.50, submitted in evidence by the landlord was a cleaner’s invoice, which includes a description of the rental unit. The cleaners cleaned the rental unit on June 1, 2020, after the tenant had left. The tenant disputed the landlord’s claim and said that the rental unit was “perfectly clean.”

In respect of his application for compensation, the landlord testified that while he found a new tenant for mid-June 2020, he lost $850.00 in rent for the period between May 31, 2020 and the date on which a new tenant took occupancy. In addition, he incurred an additional loss of rent (because the rental unit had to be rented out at a lower amount) in the amount of $300.00 for all of June, July and August 2020, for a total of $1,150.00.

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.

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. did the party breach the Act, the 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 what 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.
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> (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.

Landlord's Claim for Loss of Rent

Section 45(2) of the Act deals with the method by which a tenant must end a fixed term tenancy. This section of the Act reads as follows:

> A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (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.

Prima facie, the tenant gave notice before the tenancy had almost begun. In other words, the tenant breached the Act. However, it is worth assessing whether the tenancy was ended in compliance with section 45(3) of the Act, which states that

> If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of the tenancy agreement would have been that the rental unit was suitable for occupation and not, in the tenant's words, "so, so, so hot." Indeed, an oven-like rental unit might give rise to a landlord's breaching of section 32(1)(b) of the Act:

> A landlord must provide and maintain residential property in a state of decoration and repair that [. . .] having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

That is, that a sweltering rental unit is unsuitable for occupation by a tenant. In this situation, though, the tenant provided no documentary evidence of the actual temperature of the rental unit. No photographs from a thermometer or a thermostat were submitted into evidence. If, as the tenant claims, the rental unit was “not safe for the baby to sleep,” then I question her choice in deciding to remain in the rental unit for three days, and I am less persuaded by her argument that the rental unit was, in fact, unbearably hot. Taking into account the landlord’s evidence that he could find nothing wrong with the temperature of the rental unit, I am not persuaded by the tenant’s argument that she had to end the tenancy because of alleged heat. And, if the rental unit was unbearably hot, then a tenant (if they are to avail themselves of section 45(3) of the Act) must at least give their landlord a reasonable period of time to fix the problem. Here, the tenant gave the landlord no time whatsoever to address the issue.

For these reasons, I cannot find that the tenancy was ended in compliance with either sections 45(2) or 45(3) of the Act. Therefore, I find that the landlord has proven the first criteria on which compensation may be found.

Having found that the tenant breached the Act, I must next determine whether the landlord’s 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 landlord would not have lost rent for approximately two weeks but for the tenant’s moving out on the day that the tenancy was to actually begin. The amount of the lost rent was established through undisputed testimony.

Additionally, while the tenant asked the landlord about how much rent he ultimately collected, the landlord was upfront in testifying that he lost $850.00 for June 2020, and an additional $300.00 for the three-month period over which the tenancy would have been in force. The landlord took immediate steps to find a new tenant and thus I find that he did what was reasonable in minimizing his 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 landlord has met the onus of proving his claim for loss of rent in the amount of $1,150.00.

Landlord's Claim for Cleaning Costs

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.

The landlord testified that the rental unit required cleaning, which cost him $115.50. The tenant disputes this claim and testified that the rental unit was "perfectly clean." The landlord submitted a cleaner's written description of the condition of the rental unit, which was cleaned on June 1, 2020.

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. The landlord's evidence may very well describe the condition of the rental unit when the tenant moved out, but it does not tell me anything about the condition of the rental unit at the start of the tenancy (that is, when the tenant took occupancy on May 28, 2020).

To cite section 21 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2002:

> 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.

There is no copy of any Condition Inspection Report submitted by the landlord in support of his application to seek compensation for cleaning costs. These reports are fundamental and vitally important in determining the true condition of the rental unit just before, or at the time, a tenant takes occupancy. They then provide an accurate description of the condition of the rental unit after the tenant leaves. What is important to understand here is that section 37(2) of the Act presumes that a rental unit will be clean and undamaged when a tenant takes possession. A preponderance of evidence (in the form of a Condition Inspection Report, for example) is needed to establish an accurate before-and-after picture on which a basis for compensation may be considered.

Here, however, I do not find that the cleaner's description to be a preponderance of evidence to the contrary of the tenant's submission that the rental unit was "perfectly clean."

Thus, 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 landlord has not proven this claim. This claim is therefore dismissed without leave to reapply.

Landlord's Claim for Recovery of 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 in respect of his claim for loss of rent, I grant his claim for reimbursement of the filing fee of $100.00. In summary, then, the landlord is granted $1,250.00.

Tenant's Claim for Compensation and Return of Security Deposit

As comprehensively examined above, the tenant breached both section 45(2) of the Act and the tenancy agreement by ending the tenancy in the manner that she did. She has not established what section of the Act, the regulations, or the tenancy agreement that the landlord breached that would give rise to her being compensated for the amount of rent paid in the amount of $1,750.00.

However, as $1,750.00 was received by the landlord for June 2020, and June was the last month's rent, pursuant to *Residential Tenancy Policy Guideline 29* a "security deposit" includes monies received by a landlord that includes the last month's rent. As such, I find that the tenant's security deposit, for the purposes of these applications and the Act, to be in the amount of $2,250.00 ($1,750.00 plus $500.00).

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
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> (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.

While undated, the tenant submitted into evidence a photograph of a message sent to the landlord with the tenant's forwarding address. I note that the landlord applied for dispute resolution within 15 days of the tenancy ending on May 31, 2020.

Summary of Awards and Monetary Order

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 authorize the landlord to retain $1,250.00 of the tenant's $2,250.00 security deposit in full satisfaction of the above-noted award.

The balance of the award, $1,000.00, must be returned by the landlord to the tenant within 15 days of receiving this Decision. A monetary Order for the tenant is issued in conjunction with this Decision to the tenant.

Conclusion

Both applications are granted, in part, subject to the summary of awards and monetary order referred to above.

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

Dated: September 30, 2020

Residential Tenancy Branch