Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67 of the Act;
- an authorization to retain a portion of the tenants' security deposit in satisfaction of the monetary order requested, pursuant to section 72 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing. The landlord was assisted by advocate JF. Tenant HW was representing tenant PZ. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of documents

I accept the landlord's testimony that both tenants (respondents) were served the application and evidence in a single package by registered mail on July 17, 2020. The landlord served extra evidence on November 02, 2020, 3 days before the hearing. Tenant HW confirmed receipt of the July 17, 2020 package.

Rule of Procedure 3.14 states:

> […] documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I accept the landlord's application and evidence served on July 17, 2020 in accordance with section 71(2)(b) of the Act. Per Rule of Procedure 3.14 I reject the landlord's evidence served on November 02, 2020.

I accept the tenant's testimony that the landlord was served the response evidence named 'Condition Inspection Report 3rd edition' (the report) and was not served the response evidence document named 'Response Letter'. The landlord confirmed receipt of the report.

Rule of Procedure 3.15 states:

> […] the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I accept the tenants' evidence named the report was served in accordance with section 89(1)(c) of the Act. Per Rule of Procedure 3.15 I reject the tenants' evidence not served (the Response Letter).

Preliminary Issue – Request to Amend the Application to Include Utilities

At the hearing the landlord stated the tenant did not pay a utility bill in the amount of $3,104.32. This bill was only issued after the application was submitted.

Residential Tenancy Branch Rules of Procedure Rule 4.2 provides

> In circumstances that can reasonably be anticipated, **such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made**, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.
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> **(emphasis added**)

In this matter, the Notice of Dispute Resolution served by the landlord only requested a monetary order for compensation for unpaid rent. The Notice of Dispute Resolution Proceeding did not state that the landlord wanted compensation for unpaid utilities. I do not find that the tenants could reasonably have anticipated that the landlord would amend his application at the hearing to include a claim for compensation for unpaid utilities and, as such, I deny this request.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenants' security deposit?
3. an authorization to recover the filing fee for this application

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their application.

Both parties agreed the periodic tenancy started on October 01, 2016 and ended on June 30, 2020. Monthly rent was $6,700.00 due on the first day of the month. At the outset of the tenancy a security deposit of $3,250.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence.

The landlord is seeking for a total compensation in the amount of $2,550.00 for damages caused by the tenants to the bedroom door, window coverings, stains in the bathroom, wall damages and garbage bins.

Both parties agreed they attended the move out inspection on July 01, 2020. The landlord stated she forgot to sign the report. The report field 'security deposit deduction' is completed with N/A. The column 'Condition at the Beginning of Tenancy' was completed and the column 'Condition at the End of Tenancy' was only partially completed.

The report indicates ‘a few little holes’ in the main bathroom wall, ‘cover is full down’ in the bedroom, door damage and ‘wall peeled with stick’ in bedroom 4.

The landlord affirmed she added extra information to section ‘bedroom 4’ of the report after the tenant signed it because she forgot to verify these items during the inspection.

The tenant stated all the damages the landlord is claiming are regular wear and tear, the rental unit is 30 years old, the tenancy lasted 4 years and the landlord did not claim any expenses in the report. The tenant affirmed he was authorized to replace the bedroom door and the damages mentioned in the report are regular wear and tear.

The report does not mention the tenants’ forwarding address. However, the tenant affirmed he received the application package sent by the landlord after the tenancy ended.

Analysis

Section 7 of the Act state:

> Liability for not complying with this Act or a tenancy agreement
> 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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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 the case is on the person making the claim.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing:

> (1)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.

Section 71(2)(b) of the Act states the director may order that:

> (2)In addition to the authority under subsection (1), the director may make any of the following orders:
> (a)that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];
> (b)that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

Thus, based on the tenant's testimony confirming receipt of the application package sent by the landlord after the tenancy ended, I order that the landlord is sufficiently served the tenants forwarding address three days after the date of this decision. The landlord is cautioned to comply with section 38 of the Act.

Based on the report, I find the landlord did not list any deduction to the security deposit for damages caused by the tenants during the tenancy. The landlord did not explain why the field 'security deposit deduction' is completed with N/A.

Regulation 20(2) states:

> In addition to the information referred to in subsection (1), **a condition inspection report completed under section 35 of the Act [condition inspection: end of**

> **tenancy] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:**
> (a)a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;
> (b)if agreed upon by the landlord and tenant,
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> **(i)the amount to be deducted from the tenant's security deposit or pet damage deposit,**
> (ii)the tenant's signature indicating agreement with the deduction, and
> (iii)the date on which the tenant signed.
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> (emphasis added)

Regulation 21 states:

> Evidentiary weight of a condition inspection report
> 21 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.

I find the landlord's testimony does not outweigh the evidentiary value of the report, which shows there was no authorization of deduction to the security deposit.

Based on the undisputed tenant's statement, I find the rental unit was built over 30 years ago.

Section 32 (4) of the Act states: "A tenant is not required to make repairs for reasonable wear and tear." Per section 32(4) of the Act and Residential Tenancy Branch Policy Guideline 16, the landlord did not prove the tenant caused damages beyond regular wear and tear to the rental unit or that the tenant failed to comply with the Act. .

I do not accept the damages in 'bedroom 4', as these damages were added to the report after it was completed and signed by the tenant.

Thus, I dismiss the landlord's application without leave to reapply.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

Conclusion

I dismiss the landlord's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 10, 2020

Residential Tenancy Branch