Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSDS-DR MNDL-S FFL FFT

Introduction

The tenant seeks the return, and doubling of their security deposit, pursuant to sections 38(1) and 38(6) of the *Residential Tenancy Act* ("Act"). The landlord, by way of cross-application, seeks compensation for "Damages to appliances and lots of scratches & dents on the walls," pursuant to section 67 of the Act, and they wish to retain the tenant's security deposit in full or partial satisfaction of any amount awarded, pursuant to section 38(4)(b) of the Act. Both parties seek recovery of their application filing fees under section 72 of the Act.

The tenant filed an application for dispute resolution on September 1, 2020 and the landlord filed an application for dispute resolution on September 22, 2020. A dispute resolution hearing was held, by way of teleconference, on December 21, 2020. The tenant, the landlord, and the landlord's son attended the hearing and they were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Issues

1. Is the landlord entitled to compensation?
2. Is the tenant entitled to the return of his security deposit, and if so, is he entitled to a doubling of that amount?
3. Is either party entitled to recover the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues in the parties' applications. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on September 4, 2019 and ended on August 15, 2020. Monthly rent, at the end of the tenancy, was $1,600.00 and the tenant paid a security deposit of $750.00, which the landlord has not returned. A copy of a written tenancy agreement was submitted into evidence.

The tenant gave evidence that he provided his forwarding address, in writing, to the landlord on August 15, 2020. A proof of service document for the forwarding address, along with a third-party witness statement were submitted into evidence. The tenant confirmed that he did not provide written permission for the landlord to retain any or all of the security deposit.

The landlord did not dispute the tenancy information provided (such as start and end dates, the rent, or the amount of the security deposit) and he did not dispute that the tenant provided him with a forwarding address on August 15, 2020.

In his claim, the landlord testified that there was a brand-new washer and dryer at the start of the tenancy but that they were scratched by the tenant during the tenancy. Further, he gave evidence that there were scratches to the paint throughout the entire rental unit. He noted that it was last painted in 2018 and was “brand new.”

Several photographs of the scratched, painted walls, along with a few photographs of the scratched washer and dryer, were submitted into evidence. Also included were two photographs of invoices for the painting and appliance repair.

While the landlord testified that they did a walk-through inspection at the start of the tenancy, they confirmed that no Condition Inspection Report was completed either at the start or end of the tenancy. Indeed, the landlord’s son appeared not to have heard of this report, which I briefly described to him as a checklist for recording various aspects and parts of a rental unit property.

Nonetheless, the landlord’s son submitted that if the tenant had noticed any damages during the walkthrough that he ought to have brought that to the landlord’s attention for recording in the tenancy agreement.

The tenant, in rebuttal, denied that he caused any of the damages or scratches to the rental unit, and remarked that they were caused by the previous tenant. They “were not caused by us,” he added.

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.

1. Landlord's Claim for Compensation

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

In their application, the landlord claims compensation for "Damages to appliances and lots of scratches & dents on the walls."

If proven, such damages would give rise to a finding that the tenant breached section 37(2) of the Act, from which compensation might flow. 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 claims that the tenant caused damages, scratches, and dents. The tenant denies 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 landlord has failed to provide any evidence that it was the tenant who caused the damage. Photographs alone, taken at the end of the tenancy, do not prove that a tenant caused damages.

What is missing from the landlord's evidence is a completed Condition Inspection Report. A condition inspection report is required to be completed by a landlord at both the start of a tenancy (section 23 of the Act) and at the end of a tenancy (section 35 of the Act), and it is a valuable document that establishes the condition and state of a rental unit at the start and end of a tenancy. It is frequently the only type of evidence a landlord may have to prove that a tenant or tenants caused damage to a rental unit.

Section 21 of the *Residential Tenancy Regulation* set out the evidentiary value and weight of a condition inspection report:

> 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.

In the absence of any such report, I am unable to find that the tenant breached section 37(2) of the Act. As such, I find that the landlord is not entitled to compensation as claimed. Accordingly, his application is dismissed, without leave to reapply.

2. Landlord's Claim for Application Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was unsuccessful in his application, I must dismiss his claim for reimbursement of the filing fee.

3. Tenant's Claim for Return of Security Deposit

The tenant's application for the return of their security deposit is based on the requirements set out in subsection 38(1) of the Act. Subsection 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
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> 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.

In this dispute, the landlord acknowledged that he received the tenant's forwarding address in writing on August 15, 2020. The landlord did not, I find, repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Given the above, I find that the landlord did comply with subsection 38(1) of the Act, as he neither returned the security deposit nor filed an application for dispute resolution within 15 days of receiving the forwarding address. In this case, the landlord filed an application for dispute resolution on September 22, 2020, almost a month later.

In respect of the doubling provision, this is outlined in section 38(6) of the Act:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Here, having found that the landlord did not comply with subsection 38(1) of the Act, I therefore find that the landlord must pay the tenant double the amount of the security deposit in the amount of $1,500.00.

4. Tenant's Claim for Application Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. As the tenant was successful in his application, I grant his claim for reimbursement of the $100.00 filing fee.

In total, the tenant is awarded $1,600.00 in compensation. A monetary order in this amount is issued to the tenant, in conjunction with this decision.

Conclusion

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

I hereby grant the tenant a monetary order in the amount of $1,600.00, which must be served on the landlord. If the landlord fails to pay the tenant the amount owed, the tenant 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: December 21, 2020

Residential Tenancy Branch