Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlords applied for compensation under section 67 of the *Residential Tenancy Act* ("Act") and for the filing fee cost under section 72 of the Act. Both landlords, one of the tenants, and an interpreter for the landlords attended a hearing on February 3, 2021, which was held by teleconference.

The parties confirmed that they had exchanged evidence, though the landlords appeared to believe that the evidence they received was related to a hearing on May 13, 2021. The tenant confirmed that they had received the relevant evidence.

Issues

1. Are the landlords to any or all of the compensation claimed?
2. Are the landlords entitled to recover the cost of 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 application. Only relevant evidence needed to explain my decision is reproduced below.

The landlords seek the following: (1) $5,977.55 for loss of rent; (2) $1,320.32 for rent arrears; (3) $2,467.50 for repairs; and, (4) $100.00 for the application filing fee.

The tenancy began on February 1, 2020 and it was a fixed term tenancy ending January 13, 2021. However, the tenants vacated on October 14, 2020. Monthly rent was $1,700.00 and the tenants paid a security deposit of $850.00. A copy of the written Residential Tenancy Agreement was submitted into evidence.

The tenancy did not, it should be noted, get off to a very good start. About five days after the tenants took occupancy (they moved in January 31, 2020), the tenants requested on February 5, 2020 that the landlords deal with several issues, including repairing a broken bathroom faucet handle, and on February 9 they referred to the oven having “a piece of metal sticking out.” These requests were summarized in a letter dated February 13, 2020. A copy of a letter dated February 5, 2020 listing requested repairs was in evidence.

On September 25, 2020, the tenants provided the landlords with a written notice that the landlords had failed to comply with material terms of the tenancy agreement. The letter, a copy of which was submitted into evidence, states, *inter alia:*

> The material breach that occurred is the following:
> - Bedroom one has water damage and remains uninhabitable
> - Bedroom two has no heating system
> - The kitchen oven is broken, it emits a strong burning toxic smell when turned on.
>
> This breach of material terms occurred on January 31, 2020 and February 9, 2020 to present. We feel that a reasonable amount of time to correct the breach is seven days from today. Therefore, I have the right to end my tenancy if the matter is not corrected by October 2, 2020. We’ve sent several letters to you concerning these issues on: February 5, February 13 and most recently August 24, 2020.

Copies of these previous letters were submitted into evidence. On October 1, 2020 the tenant sent an email to the landlords informing them that they posted a copy of a Mutual Agreement to End Tenancy form for the landlords to sign. On October 7, 2020, the landlords responded in a letter, which reads*:*

> As per the Mutual Agreement to End of Tenancy that you attached on our door on Oct 1, 2020, you wrote the vacate date and time as 1pm on Oct 15th, 2020. Please confirm to us by writing if you are moving out on the above date/time as soon as possible.

On October 9, 2020, the landlords sent a further letter to the tenants, in which the landlord state that they “disagree with the Mutual Agreement to End Tenancy.” The letter then continues:

> However, we would like you to choose one of the following times provided below and notify us in writing, so we can conduct a move out condition check when you move out on Oct 15th, 2020 [. . .]

A move out inspection was then conducted on October 15, 2020.

Because of the tenants ending the fixed term tenancy before its anticipated end date of January 31, 2021 the landlords argue that they suffered a loss of rent. They testified that they took out advertisements to find a new tenant and lowered the rent to encourage interest. However, they only secured a new tenant for February 1, 2021.

The parties entered into a rent repayment plan on August 24, 2020, a copy of which was in evidence. Installment payments were in the amount of $264.09 and there are 10 installments. However, no due dates are written down next to each amount. The landlords seek $1,320.32 which is the balance owing; the tenant disputes this and argued that they should continue with the repayment plan as previously agreed to.

Regarding the damage claims made by the landlords, I note that there is in evidence a completed “Condition of Rental Property Checklist.” I note that the “condition on departure” column notes very few changes from the “condition on arrival” column. Most are annotated with check marks or “N/A”. A few minor items are different, though: “sink tap broken, bathroom shower handle broken, water switch fell off.” There is “Water damaged” for the bedroom one floor. In bedroom three there are “some stains on wall [illegible] cover is molded.” For these repairs the landlords seek $2,467.50.

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.

Claim for Balance of Repayment Plan

The landlords seek the outstanding balance of the repayment plan. The repayment plan was entered into by the parties pursuant to section 4 of the *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation* (“Regulation”). However, I note that the date on which each instalment must be paid section of the Repayment Plan is absent, though this information is required by section 4(2)(c) of the Regulation. Therefore, I find the repayment plan itself to be invalid.

That said, the repayment plan is evidence that the tenants owe rent arrears in the amount of $1,320.32. The tenants did not dispute that this is the total amount owing. Further, as the tenancy has now ended, the landlords are not required to give their now-former tenants a repayment plan (see section 3(1) of the Regulation). They are, however, entitled to the full amount of rent arrears.

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 met the onus of proving their claim for the balance of rent arrears in the amount of $1,320.32. Thus, I award this amount to the landlords.

Claim for Loss of Rent

Ordinarily and most commonly, tenants may only end a periodic or a fixed term tenancy in accordance with sections 45(1) or 45(2) of the Act. However, a tenant may also end a tenancy (of either type) under section 45(3) of the Act, which states:

> 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.

Section 45(4) of the Act states “A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.” Section 52 states

> In order to be effective, a notice to end a tenancy must be in writing and must
> (a)be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy [. . .]

In this dispute, the tenants sent several requests over the course of the tenancy for some major issues, including but not limited to water damage, inoperable (or no) heating system in one of the bedrooms, and an inoperable stove. The provision of a heating system – and thus the provision of a habitable bedroom – is, I find, a material term of any tenancy agreement. “Water, electricity, heat” were included under section 3 of the tenancy agreement. Moreover, the landlords were responsible for repairing water damage to the other bedroom, which was uninhabitable.

The tenants gave the landlords many opportunities to repair and remedy these breaches, but the landlords only took care of some of the issues.

In summary, 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 tenant has met the onus of proving that they were within their legal right to end the tenancy under section 45(3) of the Act. Their warning letter of September 25, 2020 made it expressly clear that the tenancy would end on October 2 if the landlords did not address the issues regarding the breaches.

As the tenancy was ended in accordance with the Act, the landlords are not entitled to compensation for any loss of rent after the tenancy ended. Accordingly, this aspect of the landlords' claim is dismissed without leave to reapply.

Claim for Repairs

Section 37(2) of the Act states that when a tenant vacates, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The condition inspection report in this dispute contains some annotations of issues with the rental unit upon the tenants vacating. However, most of the damage for which the landlords seek compensation (namely, "faucet of sink broken and faucet of tub broken bedroom 3 : lots of stains and peeling paint on walls Kitchen: the oven control switch sensor was pulled out and new dents on the ceiling bedroom1: water damaged") are the very same issues for which the tenants had, almost from day one, sought repairs for.. Moreover, given the condition of the rental unit at the time the tenancy began, I am not persuaded that the tenants caused the damage for which the landlords seek money.

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 compensation related to repairs. Accordingly, that aspect of their claim is dismissed without leave to reapply.

Claim for 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 recover the cost of the filing fee. As the landlords were successful in respect of their claim for the rent arrears, I grant them an award of $100.00 for the filing fee.

Summary of Award, Retention of Security Deposit, and Monetary Order

The total amount awarded to the landlords is $1,420.32.

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 the tenancy has ended, I order the landlords to retain the tenants' $850.00 security deposit in partial satisfaction of the above-noted award. The balance of the award is granted by way of a $570.32 monetary order.

Conclusion

I grant the landlords' application, in part.

I order the landlords to retain the tenants' security deposit of $850.00.

I grant the landlords a monetary order in the amount of $570.32, which must be served on the tenants. If the tenants fail to pay the landlords the amount owed, within 15 days of being served the order, then the landlords 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: February 3, 2021

Residential Tenancy Branch