Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The landlords filed an application for dispute resolution on August 20, 2020. A dispute resolution hearing was held before me, by way of teleconference, on December 8, 2020 and on March 1, 2021, at which the parties along with tenants' counsel attended.

Issue

Are the landlords entitled to the compensation sought, including that of the 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 tenancy in this dispute began on October 1, 2018 and ended on February 29, 2020. Monthly rent was $3,965.00 and the tenants paid a security deposit of $1,982.50. A copy of the written tenancy agreement was submitted into evidence. It should be noted that the landlords no longer hold the security deposit in trust.

In their application, the landlords seek compensation for cleaning costs (they allege that the tenants left the place in a condition that required cleaning), for repairing electrical damage, for repairing damage to walls caused by the tenants, for repair (or restoration) and installing of doors, for the tenants' damaging of the landlords' possessions, for mold

remediation and cleaning of landlords' furniture and possessions, all of which total $8,061.00. In addition, the landlords seek liquidated damages in the amount of $1,000. The landlords' primary, if not only, evidence on which they rely to substantiate their claim that the tenants caused damage requiring the electrical repairs, the wall repairs, and the door repairs, are previous decisions of the Residential Tenancy Branch.

In respect of the other claims, the landlord testified that the tenants left the rental unit in a state that required cleaning, and, the landlord testified that the tenants either damaged or (perhaps inadvertently) removed some of the landlords' personal property which was stored in the basement. The landlord did not give any testimony or make submissions regarding their claim for liquidated damages.

The tenants deny all of the landlords' claims, and tenants' counsel made submissions in this respect, including an argument that the landlords are barred from relying on the previous decision on the basis of *res judicata.*

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 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.

Claim for Compensation for Cleaning, and Walls, Electrical, and Door Repairs

Sections 32(3) (and 4, to a lesser degree) and 37(2) of the Act are two sections of the legislation from which a breach by a tenant may give rise to compensation to the landlord.

Specifically, sections 32(3) and (4) of the Act state that

> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

> (4) A tenant is not required to make repairs for reasonable wear and tear.

Further, 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.

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In this dispute, the landlords' entire case depends on "admissions" by the tenants in previous arbitration decisions (as found by the arbitrator) and for which three of the four decisions submitted include reference to property damage.

First, in respect of tenants' counsel's argument that *res judicata* ought to bar the landlords from relying on these previous decisions, I must disagree. *Res judicata* means that a decision-maker (such as an arbitrator or a judge) cannot settle an issue that was definitively settled within a previous decision. The legal issues that were in front of the previous arbitrators in three of the decisions related to notices to end tenancy and for tenants' compensation.

In other words, while the underlying facts may be related to the present application before me, the issues themselves were distinct. The fourth decision (dated July 23, 2020) related to the landlords' claim for compensation for the same subject matter as the present dispute, but the landlords' application in that decision was dismissed with leave to reapply. Thus, I do not find that the issue before me is the same as those that were in, or that it was settled by, previous decisions.

Second, I am not, as a matter of natural justice, able to make a finding of fact – namely, that the tenants "admitted" to causing the alleged damage for which the landlords now seek compensation – based solely on previous arbitrators' findings of fact. Whatever oral or documentary evidence that was presented to, and which may have led to previous arbitrators making their findings of fact, was not before me. Moreover, I must consider the requirement set out in section 64(2) of the Act which states that

> The director [that is, the arbitrator] must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

In other words, I am required to make my own findings of fact within this decision on the merits of this case as disclosed by the evidence admitted in this case. Therefore, I do find that previous decisions made by other arbitrators to be evidence of the tenants' breach of the Act or the tenancy agreement.

Third, there is in evidence no copy of a Condition Inspection Report. As noted during the hearing, and for which I here reiterate, section 21 of the *Residential Tenancy Regulation* speaks to the evidentiary 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.

For reasons that were never explained, the landlords did not complete a condition inspection report either at the start of or at the end of the tenancy, as is required by sections 23 and 35 of the Act. Thus, there is no evidence before me to establish the state of repair and condition of the rental unit when the tenants took occupancy on October 1, 2018.

In the absence of such evidence, I cannot then find that any change to the property occurred during the tenancy (including leaving the rental unit in a state that required cleaning, damage, removal of doors, and so forth) and thus I find no evidence that a breach occurred.

Indeed, the tenants' witness, who was a tenant immediately before the tenants took occupancy, testified that when he moved out "there was sawdust and wires hanging out of walls." He described the house as looking "like a construction site." There was, he testified, holes in the walls and things that had been hung. The landlord did not cross-examine the witness or otherwise dispute his testimony.

Taking into consideration all the oral testimony and documentary evidence presented before me, including the witness' testimony, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving that the tenants breached the Act or the tenancy agreement with respect to leaving the rental unit clean, damaging walls, damaging electrical systems or circuits, damaging or uninstalling doors of any kind, or causing damage requiring mold remediation and other related cleaning. Accordingly, this aspect of their claim is dismissed without leave to reapply.

Claim for Loss or Damage to Landlords' Personal Property

With respect to the landlords' claim for compensation related to the damage or loss of their personal property, I find that this aspect of their claim to be outside the jurisdiction of the Act.

At the outset, it should be noted that there is no requirement anywhere within the Act or the regulations for a tenant to take care of, secure, or otherwise look after a landlord's personal property left in an area of a rental unit to which the tenants have regular access. By all accounts, the tenants rented the house, including the basement. That the landlords chose to store some of their personal belongings there was solely their decision, and for which the tenants were not responsible insofar as their legal obligations as tenants go. While the tenancy agreement includes the statement that "some furnishings / books/objects will be left in the house to be detailed in addendum / photo record," this reference to such objects does not place an obligation on the tenants to then be responsible for the safekeeping of those objects, insofar as their obligations are as tenants under the Act.

That said, common sense would dictate that a person ought not to knowingly or negligently damage, lose, or otherwise take another's property that they left behind (unless the property was abandoned). If the law of bailment applies to the damage or loss of the landlords' personal property, then this is a matter outside the Act. For this reason, I find that I am without jurisdiction to hear the landlords' claim regarding the alleged damage or loss of their personal property. Any claim for such damage or loss ought to be made under the *Civil Resolution Tribunal Act,* SBC 2012, c. 25.

Claim for Liquidated Damages

In respect of the landlords' claim for liquidated damages, while tenants' counsel submitted that the landlords had not provided any copy of a tenancy agreement in which there was a liquidated damages clause, this does not appear to be the case. On page 1, paragraph (or clause) 5, the tenancy agreement clearly states that

> LIQUIDATED DAMAGES. If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of $1,000 as liquidated damages and not as a penalty for all

> costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

That said, the landlord provided no testimony, submissions, or argument in respect of this aspect of their claim. Without even the barest minimum of oral evidence I cannot consider a claim made by an applicant.

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 liquidated damages. This claim is dismissed.

Claim for Filing Fee

In respect of the claim for recovery of the 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 recover the cost of the filing fee. As the landlords were not successful in this application, I must dismiss their claim for the $100.00 filing fee.

Conclusion

I hereby dismiss the landlords' application without leave to reapply.

Should the landlords disagree with this decision their relief is to file an application under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

This decision is final and binding, except where permitted by the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 3, 2021

Residential Tenancy Branch