Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

The landlord seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"), including recovery of the filing fee under section 72 of the Act.

A representative for the landlord, a tenant, and a witness, attended the hearing on May 25, 2021. Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Preliminary Issue: Service and Admissibility of Evidence

The landlord confirmed that they served copies of their evidence to the tenant along with the Notice of Dispute Resolution Proceeding. The tenant testified that they served copies of their evidence on the landlord by Canada Post registered mail. The landlord disputes that they received any evidence. The tenant provided a tracking number and the Canada Post website indicates that mail was delivered on May 19, 2021.

Rule 3.15 of the *Rules of Procedure* requires that a respondent's evidence "must be received by the applicant [. . .] not less than seven days before the hearing." In this case, the tenant's evidence was not delivered to (and was not received by) the landlord until six days before the hearing, in contravention of the *Rules of Procedure.*

The tenant did not make any argument as to how the evidence that was served late could be considered "new and relevant," which is the criteria by which late evidence may be accepted. The tenants' evidence consisted of one screen shot of a text message conversation from early January 2021 and five photographs of the rental unit purportedly showing damage caused by the previous tenant. The screen shot image was also submitted into evidence by the landlord.

Given the above, the tenants' evidence – other than the screen shot image – is not accepted and will not be considered in this decision.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began March 1, 2012 and ended on December 21, 2020. Monthly rent was $1,141.00 and the tenants paid a $500.00 security deposit. The tenancy ended after the landlord obtained an order of possession from the Residential Tenancy Branch on November 30, 2020 (see previous file). The landlord obtained a writ of possession from the Supreme Court and bailiffs were hired. The eviction occurred December 21, 2020.

The landlord seeks $4,069.40 for the cost of the bailiff services, $120.00 for court fees, and $588.00 for various costs related rental unit cleaning and fixture replacement (specifically, this was broken down as follows: bedroom and living room blinds replacement - $272.00; cleaning of unit and materials - $168.00; bifold doors - $90.00; and, fireplace/chimney cleaning - $38.00).

An itemized invoice for the cleaning from a maintenance company was in evidence, as was an invoice dated December 31, 2020 from Accurate Bailiff Services Ltd. for a writ of possession that was executed on December 21, 2020. Also, in evidence were a few photographs of the rental unit and completed Condition Inspection Report.

The landlord gave oral evidence regarding the state of the condition of the rental unit, including references to the blinds. It is worth noting that the move-out inspection was completed on December 22, the day after the bailiffs removed the tenants.

The tenant testified that she maintained the rental unit spotless. However, the damage and messiness referred to was, according to the tenant, caused by the bailiffs trudging through the apartment. "It was a mess," the tenant remarked. The bailiffs ended up putting all of the tenant's belongings onto the front lawn in the rain and snow. With these belongings was $10,000 worth of family heirlooms that have apparently gone missing.

Regarding the drapes and blinds, the tenant testified that they were already damaged when the tenancy began. However, the blinds were not missing at the end of the tenancy, the tenant maintained. The folding door was given to a building maintenance person, who had put the doors in storage. And, as for the fireplace, the tenant commented that if she knew that she was moving out “I would’ve cleaned it.” (It should be noted that the tenants received, by email, a copy of the decision in which the tenancy was ended, on December 1, 2020.) The tenant reiterated that if there was any mess, then it was caused by the bailiffs.

In respect of when and how the tenants provided their forwarding address to the landlord, the tenant maintains that they gave the landlord a piece of paper with the forwarding address on it. This occurred on December 22, 2020. A follow-up text sent on January 5, 2021 from the tenant to the landlord references this earlier date. This is the screen shot image that was earlier referenced.

The landlord testified that, yes, the tenant gave her a piece of paper, but it was on some sort of sticky paper and the address was not legible. “It was not readable,” she added. The landlord then asked the tenant to provide her with a legible forwarding address, preferably by text. In rebuttal, the tenant begged to differ with the landlord, and remarked that “it was legible.”

Analysis

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.

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 Bailiff Services and Court Costs

Section 84(1) of the Act states that

> (1) A decision or an order of the director may be filed in the Supreme Court and enforced as a judgment or an order of that court after

(a) a review of the director's decision or order has been

(i) refused or dismissed, or
(ii) concluded, or

(b) the time period to apply for a review has expired.

In this dispute, the landlord exercised their legal right under the Act and filed, and enforced, the order of possession (obtained in the previous file and decision of November 30, 2020) in the Supreme Court of British Columbia. Based on the tenant's own testimony, it appears that they were in the rental unit when the bailiffs attended to enforce the order of possession and execute the writ of possession. But for the tenants' refusal to comply with the order of possession the landlord would not have needed to file and enforce the order in the Supreme Court. Court filing fees cost the landlord $120.00 and enforcement cost the landlord $4,069.40 in bailiff fees.

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 establishing a claim for $4,189.40 in compensation related to the filing and enforcement of an order of possession under section 84 of the Act.

Claim for Cleaning and Repairs

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

At this point, it is also worth citing section 21 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003, which states that

> 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.

The Condition Inspection Report, along with a few photographs, show that the tenants did not leave the rental unit reasonably clean and undamaged at the end of the tenancy. The tenant argued that the mess, if any, was caused by the bailiffs trudging through the rental unit. They also argued that if they knew they were moving out then they would have cleaned the fireplace.

To be frank, I am not persuaded by the tenant's testimony. I find it difficult to believe that the tenants did not know that they would be moving when they received the arbitrator's decision on December 1, 2020. They knew that it was a reasonable likelihood that they would have to vacate, even after they filed an application for review consideration. The tenants had ample opportunity to clean the rental unit: three weeks, in fact. Further, the tenants provided no evidence supporting a claim about the blinds or the bi-fold doors being put into storage. Finally, while I would not be surprised if the bailiffs did walk through the apartment in their quest to remove personal property, the tenants provided no evidence to show the extent, if any, of a mess caused by the bailiffs.

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 their claim for compensation in the amount of $568.00 for costs related to cleaning and repairing (that is, blind replacement).

Claim for Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I award them $100.00 to cover the cost of the filing fee.

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

In summary, I award the landlord a total of $4,857.40, pursuant to section 67 of the Act.

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 order the landlord to retain the tenants' security deposit of $500.00 in partial satisfaction of the above-noted award.

The balance of the award is granted by way of a monetary order for $4,357.40. A copy of the monetary order is issued to the landlord in conjunction with this decision.

Finally, regarding the tenants' request for the return, and doubling, of the security deposit, there is no proof that the tenants provided their forwarding address to the landlord on December 22, 2020. While it is undisputed that the tenants gave the landlord a piece of paper with something written on it, the landlord claims that the information was illegible. The tenant disputed this but provided no evidence to the contrary to support her claim.

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 tenant failed to prove that they provided their forwarding address, in legible writing, to the landlord on December 22, 2020.

It was not until January 5, 2021 that the tenants provided their forwarding address to the landlord in writing (by text). The landlord applied for dispute resolution on January 20, 2021. Thus, I find that the landlord complied with section 38(1) of the Act in respect of the 15-day time limit. Having found that the landlord complied with section 38(1) of the Act, and having ordered the landlord to retain the security deposit, it follows that the tenants are not entitled to either the return or a doubled return of their security deposit, which is contemplated by section 38(6) of the Act.

Conclusion

The landlord's application is granted.

I hereby grant the landlord a monetary order in the amount of $4,357.40, which must be served on the tenants. If the tenants do not pay the landlord the amount owed, the landlord may, within 15 days of the tenants being served the monetary order, file and enforce the order in the Provincial Court of British Columbia.

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

Dated: May 26, 2021

Residential Tenancy Branch