Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNSDS-DR, FFT

Introduction

The landlord seeks compensation from her former tenant pursuant to section 67 of the *Residential Tenancy Act* ("Act") and she seeks to retain the security deposit toward any award granted, pursuant to section 38(4)(b) of the Act. By way of cross-application the tenant seeks the return of his security deposit and a recoup the cost of the filing fee, pursuant to sections 38(1) and 72, respectively, of the Act.

Both parties attended the hearing on May 7, 2021. No issues of service were raised by the parties, though the tenant explained he had not served his documentary evidence on the landlord. For this reason, I cannot consider any documentary evidence that he submitted, but I will, however, consider his testimony.

Issues

1. Is the landlord entitled to any compensation?
2. Is the tenant entitled to the return of any of his security deposit?
3. Is the tenant entitled to recover the cost of the application filing fee?

Background and Evidence

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

The tenancy began on August 1, 2020 and ended on December 29, 2020. The tenancy was intended to be a one-year fixed-term tenancy ending August 1, 2021. Monthly rent was $2,050.00 and the tenant paid a security deposit of $1,025.00. A copy of the written Residential Tenancy Agreement is in evidence.

At some point in October or November 2020 the tenant told the landlord that he was unable to continue renting for the remainder of the tenancy. He ended up moving out at the end of December. The landlord hired a rental agency (Vanak International Properties) to search for, and find, a new tenant. A new tenant was found for January 1.

The landlord testified that the rental agency told her that it would be unable to secure a new tenant at the current rent of $2,050.00, and that the listed rent ought to be lowered to $1,025.00. Further, according to what the rental agency told the landlord, the rent would have to be lowered because of the pandemic and in the difficulty of finding tenants. (It is worth noting that the landlord testified about lowering the rent for the tenant, and that she had originally charged a higher amount to a previous tenant.)

In respect of her claim, the landlord seeks $700.00 for loss of rent. This represents the seven months remaining in the fixed term tenancy that would have continued to run had the tenant not broken the tenancy. Seven months multiplied by $100.00 is the calculation. In addition, the landlord seeks to recover $945.00 for the cost of hiring the rental agency. An invoice for the agency was in evidence.

Finally, the landlord seeks $258.70 for supplies and repair costs to a wall that was purportedly damaged by the tenant during the tenancy. A receipt and an invoice for the supplies and the contractor were submitted into evidence, along with several pictures of the wall. A completed Condition Inspection Report was in evidence. The landlord was unable to recall, and did not know, when the wall was last painted; she purchased the property about two years ago.

The tenant did not dispute that he damaged the wall (though not intentionally) but admitted that some of the paint coming off was the result of a hanging contraption that had been attached to the wall. However, he disputed that it would cost $258.70 to repair a wall that “wasn’t properly painted in the first place.” He added that the paint did not extend all the way up the wall to the ceiling, and that the wall “was already damaged.”

In respect of the landlord’s claim for loss of rent, the tenant argued that he was never provided with any copies of the listings for the rental unit. He took issue with the rent having to be lowered, and that the only place he saw a listing was on Craigslist. The tenant testified that in December there were only two scheduled walk-throughs for prospective tenants, and one of those was for the individual who would become the new tenant in January 2021. Further, he submitted that the rental unit was rented within 24 hours of it being listed. The landlord, in her final submission and rebuttal, testified that the agency likely listed the property other than just on Craigslist.

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on section 7 and on section 67 of the Act.

Regarding the landlord's claim for loss of rent, it is important to note that the tenant breached section 45(2) of the Act by ending the fixed term tenancy before the agreed upon end date of August 1, 2021. Further, the landlord would not have, *prima facie,* suffered a loss of rent but for the tenant's breach of the tenancy agreement.

However, has the applicant done whatever was reasonable to minimize the loss? I do think that she did. While the landlord testified about a conversation she had with someone at the property rental agency, and that this person said they could not find a new tenant at the rent of $2,050, this is hearsay evidence. Without any supporting documentary evidence from the rental agency, I assign little evidentiary weight to this hearsay. Further, there is no evidence before me to find that the agency actually made any effort at finding a new tenant willing to pay $2,050. In short, I cannot find that the landlord (or the rental agency) did what was reasonable to minimize the loss of rent. For these reasons I dismiss the landlord's claim for loss of rent.

Regarding the landlord's claim for the cost of the rental agency, this is a cost that the landlord would not have had to incur during the term of the tenancy had the tenant not broken the tenancy agreement. The amount charged by the rental agency is a reasonable fee to manage a property and find a new tenant, and thus I find on a balance of probabilities that the landlord is entitled to this claim. Accordingly, I award the landlord $945.00 in compensation for the cost of the rental agency.

Regarding the landlord's claim for the cost of supplies and repairs for the wall, it is worth noting that section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit undamaged except for reasonable wear and tear.

The landlord testified that chunks of paint had been peeled off. The tenant testified that while he damaged the wall, the wall was "already damaged" and that it "wasn't properly painted." Neither party made any argument about reasonable wear and tear.

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 that claim. In this case, I find that the evidence of the landlord is persuasive in supporting her claim regarding the damaged wall. The Condition Inspection Report indicated that the wall in question was in "good" condition at the start of the tenancy. The tenant signed the Condition Inspection Report at the start of the tenancy, indicating that he had agreed to the information as it was recorded on the report. What is more, even if the tenant was not given a copy of the report at the time of the final inspection, the photographs of the landlord clearly show a damaged wall. Perhaps the walls were "already damaged," but the tenant did not provide any evidence that this was in fact the case.

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 her claim for $258.70. Further, I find the amount claimed to be wholly reasonable in repairing what is more than just a cosmetic eyesore.

In summary, I award the landlord a total of $1,203.70 in compensation.

As the landlord has made a valid claim and is awarded an amount exceeding the amount of the tenant's security deposit, I dismiss the tenant's application for the return of his security deposit and for recovery of the application filing fee.

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 that the landlord may retain the tenant's security deposit of $1,025.00 in partial satisfaction of the above-noted award.

I grant the landlord a monetary order for the balance, in the amount of $178.70.

Conclusion

I grant the landlord's application, in part, and dismiss the tenant's application in its entirety, without leave to reapply.

I grant the landlord a monetary order, in the amount of $178.70, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may 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 7, 2021

Residential Tenancy Branch