



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67; and
- an authorization to retain the tenant's security deposit (the deposit), under section 38.

Landlords SW and EL (the landlord) and the tenant attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

Preliminary Issue – Service

The tenant confirmed receipt of the notice of dispute resolution and the evidence (five receipts) in January 2021. The landlords did not submit copies of the receipts to the Residential Tenancy Branch (RTB). The landlord mailed a second package with evidence on May 03, 2021. Section 90 (a) of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Thus, the tenant is deemed to have received the second evidence package on May 08, 2021.

Rule of Procedure 3.14 states:

3.14 Evidence not submitted at the time of Application for Dispute Resolution
Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the

respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I accept the landlords served the notice of hearing in January 2021 in accordance with section 89(1)(d) of the Act. The five receipts not submitted to the RTB and the second evidence package deemed received less than 14 days before the hearing are excluded, per Rule of Procedure 3.14.

The tenant affirmed she mailed her evidence on May 06, 2021. Per section 90(a) of the Act, the landlords are deemed to have received the tenant's evidence on May 11, 2021.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The tenant's response evidence is excluded, per Rule of Procedure 3.15.

Preliminary Issue – Correction of the Tenant's Name

At the outset of the hearing the tenant corrected the spelling of her last name. Pursuant to section 64(3)(a) of the Act, I have amended the landlords' application.

Issues to be Decided

Are the landlords entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenant's deposit?

Background and Evidence

While I have turned my mind to the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed-term tenancy from January 01, 2020 to December 31, 2020. Monthly rent of \$1,900.00 was due on the first day of the month. At the outset of the tenancy a deposit of \$850.00 was collected and the landlords hold it in trust. The tenant stated she vacated the rental unit on December 01, 2020. The landlords affirmed they did not receive the keys and changed the locks on December 02, 2020.

Both parties agreed the tenant served the forwarding address in writing on January 15, 2021. The tenant did not authorize the landlord to retain the deposit. This application was filed on January 14, 2021.

The parties did not complete a move-in condition inspection report.

The landlords are claiming for compensation in the amount of \$275.35 for replacing the vanity damaged by the tenant during the tenancy. The tenant testified she did not damage the vanity.

The landlords are claiming for compensation in the amount of \$408.45 for the removal of the tenant's belongings from the rental unit and automobile parts left in the backyard. The tenant said all her belongings and the automobile parts were removed by her movers.

The landlords are claiming for compensation in the amount of \$690.00 for cleaning expenses because the tenant did not clean the rental unit when the tenancy ended. The tenant affirmed she cleaned the rental unit when the tenancy ended.

The landlords are claiming for compensation in the amount of \$367.50 for pest control and \$551.25 for air duct cleaning needed because of pest infestation. The landlord stated the tenant is responsible for the pest infestation in the rental unit. The tenant testified the rental unit had pest infestation when the tenancy started and she is not responsible for the pest infestation.

The total amount the landlords are claiming is \$2,292.55.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that 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 the case is on the person making the claim.

Move-in Inspection

Section 23(4) of the Act requires the landlord to complete a condition inspection report in accordance with the regulations.

Section 24(2) of the Act states:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [2 opportunities for inspection],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the landlords did not complete a condition inspection report when the tenancy started, the landlords extinguished their right to claim against the deposit, per section 24(2)(c) of the Act.

Security Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The forwarding address was provided in writing on January 14, 2021. The landlords retained the deposit.

In accordance with section 38(6)(b) of the Act, as the landlords extinguished their right to claim against the deposit and did not return the deposit within the timeframe of section 38(1) of the Act, the landlords must pay the tenant double the amount of the deposit.

Residential Tenancy Branch Policy Guideline 17 states the tenant is entitled to double the deposit if the landlords claimed against the deposit when their right to do so has been extinguished under the Act:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to \$1,700.00 (double the \$850.00 security deposit).

Landlords' monetary claims

The parties offered conflicting testimony regarding the rental unit's condition. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlords did not provide any accepted documentary evidence to support their claims. The landlords did not call any witnesses.

I find the landlords have not proved, on a balance of probabilities, that the tenant failed to comply with the Act, the Regulation or the tenancy agreement.

Thus, I dismiss the landlords' monetary claims.

Conclusion

I dismiss the landlords' application without leave to reapply.

Pursuant to section 38(6)(b) of the Act, I grant the tenant a monetary order in the amount of \$1,700.00.

The tenant is provided with this order in the above terms and the landlords must be served with this order. Should the landlords fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 19, 2021

Residential Tenancy Branch