Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL, FFT, MNDCL, MNDL, MNSDB-DR

Introduction

The landlords seek compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"). By way of cross-application the tenants seek the return (and doubling) of the security and pet damage deposits pursuant to sections 38(1) and 38(6) of the Act. Both parties seek to recover the filing fee cost, pursuant to section 72 of the Act. It should be noted that the landlords applied for dispute resolution on February 11, 2021 and the tenants applied for dispute resolution on February 17, 2021. My findings of fact and law for both applications are addressed in this decision.

All parties attended the teleconference hearing on June 11, 2021. No service of evidence issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Are the landlords entitled to compensation?
2. Are the tenants entitled to the return of their security and pet damage deposits?
3. Is either party entitled to recover the cost of their application filing fee?

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 issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on November 1, 2020, and the tenancy was to be a fixed-term tenancy ending on October 31, 2021. Monthly rent was $2,100.00 and the tenants paid a $1,050.00 security deposit and a $1,050.00 pet damage deposit. These deposits are held in trust by the landlords pending the outcome of this dispute. A copy of the written tenancy agreement was submitted into evidence.

There was some disagreement about when the tenancy actually ended. The tenants' application indicates that the tenancy end date was February 1, 2021. The landlord's position was that the tenancy ended on January 31, 2021, but that the tenants did not physically move out until February 1, 2021. During their testimony, the tenants explained that they had in fact left the rental unit on January 26 but returned and did the walk-through inspection on February 1. It was also explained, by the tenants, that they returned to the landlords two keys and two fobs on that date. Included in the tenants' evidence is a copy of the tenants' notice to end tenancy, in which they notify the landlords that the tenancy is to end on February 1, 2021. I will return to this matter of when the tenancy ended later in the decision.

In their application the landlords seek $2,251.50 in compensation, which may be broken down as follows:

1. $650.00 for wall repairs and painting;
2. $241.50 for toilet repairs;
3. $160.00 for cleaning costs;
4. $1,100.00 for loss of rent; and,
5. $100.00 for the filing fee.

The landlord testified that there were lots of holes and dents in the wall, along with many scratches (presumably caused by one or both of the tenants' cats, Luna and Nemo). There was also "a lot of furballs and hair everywhere," from the cats, said the landlord. The walls and baseboard needed to be primed and painted. The rental unit had been painted "right before the tenants moved in."

Regarding the toilet lever, the landlord testified that the lever and the flapper was broken. The toilet was only about a year to a year-and-a-half old. The landlord surmised that the handle had been "pushed really hard."

Regarding the cleaning, the landlord testified that the "place had to get really cleaned because cat hair" was everywhere. He had to get a cleaner to clean the rental unit.

Regarding the loss of rent, the landlord testified that because the tenants moved out on February 1, he was unable to get a new tenant to take occupancy until February 15. Thus, he lost half a month of rent, which he claimed in the amount of $1,100.00.

The landlord objected to the admissibility of the tenants' video evidence because it was taken after the landlord had left.

Submitted into evidence was a copy of the Condition Inspection Report, which was completed at the start and at the end of the tenancy. The inspection was “thorough and particular,” the landlord remarked, and the tenants signed the report (though it is noted that they did not agree with the report’s findings).

The tenants testified that in addition to the security deposit and the pet damage deposit, for which they seek the return, the landlord took a $100.00 deposit for keys and fobs. The deposit was not returned, even though the keys and fobs were returned.

The tenants clarified that they were out of the rental unit on January 26, 2021, but believed they had until February 1 at noon. They were both present during the final inspection. And it was at the final inspection when they provided their forwarding address to the landlord, in writing. The tenants’ forwarding address can be seen on the last page of the Condition Inspection Report.

In respect of the landlord’s claim, the tenant argued that there are no pictures of the alleged scratches. Moreover, the holes to which the landlord referred were already there when they moved in; the previous tenant had caused that damage.

Regarding the loss of rent, the tenants testified that the landlord never showed the rental unit to any prospective tenants. The tenants were home on all the dates that the landlord was supposed to be showing the place, but the landlord “never came by with any prospective tenants.”

Regarding the toilet damage, the tenants briefly explained that the flapper would sometimes get stuck, but that it was otherwise working. Indeed, the tenants self-described as “outspoken,” and they explained that if there had been any issues with the toilet, they would have surely told the landlord.

Both parties provided a fair amount of testimony regarding the cats, and whether and how a Form K had been provided by the landlord. Much was made of the Form K. However, for the purposes of this dispute, I find that the circumstances surrounding the Form K (and the related issues with how many cats were permitted) are not particularly germane. Those issues may be of greater importance in the parties’ other active dispute.

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.

Landlords' Claims for Repairs, Painting, Toilet, and Cleaning

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.

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.

In this dispute, the landlords claim that the tenants caused damage to the rental unit such that it needed to be repaired, primed, and painted. His claim includes costs related to repairing the toilet and for cleaning the rental unit. The tenants deny that they caused any of this damage, and that it was the previous tenant who caused it. The landlords submitted a forty-page PDF evidence package which included the Condition Inspection Report. The report reflects damage, but the tenants disagreed with the assessment of the report.

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 landlords failed to refute the tenants' counterargument that it was not them who caused the damage. And, while a condition inspection report is often determinative, something more is required when (a) the tenants explicitly dispute the report, and (b) there is nothing beyond the report to prove the landlord's claims.

There is, it should be noted, thirteen pages of photographs in the landlords' evidence package. However, I find that none of the photographs are of sufficient quality for me to make anything of them. I give them little weight, and they do not support the landlords' claims. The photographs (which appear to be poor-quality photocopies) provide no persuasive basis on which I might accept the landlords' claims about damage to the walls, baseboards, toilet, or cleaning.

Taking into careful 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 for repairs and painting, for the toilet, and for the cleaning.

This aspect of the landlords' application is dismissed without leave to reapply.

Landlords' Claim for Loss of Rent

The tenants gave notice on December 21, 2020 that they were ending the tenancy effective February 1, 2021. A copy of this notice was in evidence. It appears that the tenants gave notice to end the tenancy under section 146(3) of the *Strata Property Act,* SBC 1998, c. 43.

At this point, it is worth noting that my jurisdiction as an arbitrator under the *Residential Tenancy Act* does not extend to, or include, matters falling within the auspices of the *Strata Property Act.* Disputes involving matters under this statute fall squarely within the jurisdiction of the Civil Resolution Tribunal. As such, I am unable to make any findings in respect of whether the landlord breached the *Strata Property Act.*

That having been said, it may be the case that the tenants' notice to end tenancy falls within section 45(3) of the *Residential Tenancy Act*. This section of the Act permits a tenant to end a tenancy when 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.

Whether the tenants complied with, or breached, this section of the Act, however, is ultimately of little importance: the landlords provided no evidence that they in fact lost rent because of the tenants' vacating the rental unit on February 1, versus having left on January 31. There is nothing in evidence to persuade me that the landlords had any prospective tenants lined up ready to take occupancy on February 1.

Thus, given the absence of any such evidence, I am unable to find that the landlords lost rent because of the tenants' departure on February 1. Accordingly, I must dismiss this aspect of the landlords' claim without leave to reapply.

Landlords' 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 landlords did not succeed in their application, I dismiss their claim for compensation to cover the filing fee.

Tenants' Claim for Return of Security and Pet Damage Deposits

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the tenants provided, and the landlords received the tenants' forwarding address, in writing on February 1, 2021. The landlords then made an application for dispute resolution on February 11, 2021, which is within the 15-day time limit set out in section 38(1) of the Act.

As such, the landlords complied with this section of the Act. However, having dismissed the landlords' application in its entirety, the landlords must now repay the security and pet damage deposits in full to the tenants.

Given that the landlords complied with section 38(1) of the Act, the tenants are not entitled to a doubling of their deposits, as would be permitted under section 38(6) of the Act if the landlords had not complied with section 38(1) of the Act.

Finally, the tenants seek the return of a $100.00 key and fob deposit. The landlords did not make any submissions or testify as to this claim. As such, I am prepared to grant the tenants an award for this amount.

Tenants' Claim for 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 recovery of the filing fee. As the tenants were successful in their application, I therefore grant their claim for reimbursement of the $100.00 filing fee.

Summary

In summary, the landlords' application is dismissed, without leave to reapply. The tenants' application is granted, and the landlords are ordered to pay the tenants a total of $2,300.00. This amount is comprised of the $1,050.00 security deposit, the $1,050.00 pet damage deposit, the $100.00 key and fob deposit, and the $100.00 awarded for the filing fee.

A monetary order is granted to the tenants, in conjunction with this decision. Should the landlords not comply with the above-noted payment order, the tenants must then serve a copy of the monetary order on the landlords and, if necessary, file and enforce the order in the Provincial Court of British Columbia.

Conclusion

I dismiss the landlords' application without leave to reapply.

I grant the tenants' application, as set out in the above-noted summary.

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

Dated: June 15, 2021

Residential Tenancy Branch