Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

The landlords seek compensation for unpaid rent pursuant to sections 26 and 67 of the *Residential Tenancy Act* ("Act"), compensation for various repairs and related expenses to the rental unit, and compensation to recover the cost of two application filing fees pursuant to section 72 of the Act. The tenant seeks the return of their security deposit pursuant to section 38 of the Act, and they seek recovery of the application filing fee.

Preliminary Background Matter: Tenant's Direct Request Application

A hearing was first held on May 7, 2021, at which only the landlords attended. That proceeding was adjourned to today's date to permit the landlords to amend their application (specifically, to add additional claims other than unpaid rent). Shortly after the first hearing, the tenant became aware of the dispute and filed an application for dispute resolution (specifically, a direct request application for the return of the security deposit) on August 11, 2021. For the purposes of an efficient resolution of the parties' applications, all three applications will be addressed and resolved in this decision.

Preliminary Issue: Service of Evidence

The landlord testified that they served their initial evidence package on the tenant in February 2021. That package was returned marked "RTS." In reviewing service, it appeared, and I find, that the landlords served the evidence and Notice of Dispute Resolution Proceeding package on the tenant at the forwarding address that they provided to the landlords. The forwarding address is for a law firm at which the tenant is employed. The tenant acknowledged that, not wanting to have anything further to do with the landlords, they had the package returned RTS.

The landlord testified that they served a second package of evidence (for the amended claim) to the tenant in mid-August. That package appears to have arrived at the tenant's

forwarding address, as she confirmed receipt of a Canada Post delivery and pick up card; the tenant had not however, as of today's date, gone to pick up the package.

Given the above, I find that the landlords served their evidence in compliance with the Act and the *Rules of Procedure.* Thus, I must also find that the landlords' evidence is to be accepted and considered in arbitrating this matter.

The tenant testified that they served copies of their evidence (including that for their direct request application) on the landlords, and the landlord confirmed receipt of that evidence. Based on this information, I find the tenant served their evidence on the landlords in compliance with the Act and the *Rules of Procedure,* and as such their evidence will be accepted and considered in this dispute.

Issues

1. Are the landlords entitled to compensation as claimed?
2. Are the landlords entitled to retain any or all of the tenant's security deposit in full or in partial satisfaction of any compensation awarded?
3. Is the tenant entitled to the return of their security deposit?
4. Is the tenant, or are the landlords, entitled to recover the cost of their filing fees?

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 April 1, 2019 and ended on January 31, 2021. Monthly rent at the end of the tenancy was $2,258.00. The tenant paid a security deposit in the amount of $1,150.00, which is currently being held in trust by the landlords pending the outcome of this dispute.

The landlords conducted and completed a condition inspection report both at the start and end of the tenancy. The tenant did not participate in the move-out inspection. A copy of the condition inspection report was submitted into evidence by the landlords.

In respect of the landlords' claim for unpaid rent, the landlord testified that the tenant still owes $1,700.00. Partial rent was paid for the latter part of December 2020 and early January 2021, but there remains $1,700.00 in unpaid rent.

In respect of the landlords' claim for damages and so forth, the landlords seek compensation for the following items and amounts (reproduced from the landlords' Excel spreadsheet submitted into evidence): (1) HARTLAND LANDFILL February 9, 2021 $ 58.25 (2) CLOVERDALE PAINT February 17, 2021 $ 105.48 (3) LORDCO February 18, 2021 $ 69.62 (4) CLOVERDALE PAINT February 22, 2021 $ 43.55 (5) CLOVERDALE PAINT February 23, 2021 $ 12.53 (6) HOME DEPOT February 23, 2021 $ 25.24 (7) HOME DEPOT February 24, 2021 $ 26.58 (8) PACIFIC PAINT February 25, 2021 $ 48.15 (9) CANADIAN TIRE February 25, 2021 $ 13.83 (10) VITA CLEANING February 25, 2021 $ 140.00 (11) HOME DEPOT February 25, 2021 $ 110.38 (12) HOME DEPOT February 27, 2021 $ 155.91 (13) GARAGE DOOR DEPOT March 3, 2021 $ 63.00 (14) AQUAMIST March 3, 2021 $ 168.00 (15) COREY HANLEY March 12, 2021 $ 300.00 (16) [landlord's first name] 19 HRS @ $20 $ 380.00 $ 1,720.52.

The total for this portion of the landlords' claim is $1,720.52. Invoices and receipts for the above-noted items were submitted into evidence. The landlord then proceeded to cover, in his testimony, the various damages and amounts claimed. They explained that when he first walked into the property to conduct the move-out inspection, everything "looked quite tidy."

However, upon closer inspection, things appeared to be dirty, various things were broken, the tub was dulled, and there was extensive painting that needed to be done. He remarked that there were an excessive number of nail holes in the walls, "at least a thousand [holes]." The screen door was broken, a plug was broken, and the stairs needed to be carpet cleaned.

The tenant testified that when she moved in, the previous tenant had been living there for about eighteen months and had left the place full of nail holes and dirty. "It was a dump," remarked the tenant. She noted that the property had not been freshly painted, and after twenty-one months of residency in the rental unit the place certainly had reasonable wear and tear. The tenant took issue with the screen door, saying that it had been damaged at the start of the tenancy. The garbage left on the lawn that had to be picked up was not of her doing, and, as for the missing keys, the tenant testified that she put them in the mailbox when leaving the rental unit at the end of the tenancy.

The tenant also testified that she brought many issues about repairs to the landlords during the tenancy but that the landlords were not particularly receptive or responsive to those complaints.

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.

1. Landlords' Claim for Rent Arrears

The landlords seek $1,700.00 in unpaid rent. The tenant did not dispute this claim (that is, they did not speak to, make mention of, or otherwise reference the claim in any way during the hearing.) As such, in taking into consideration all the undisputed 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 met the onus of proving their claim for unpaid rent in the amount of $1,700.00. Pursuant to section 67 of the Act I hereby award the landlords this amount in compensation.

2. Landlords' Claim for Repairs and Damage

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 landlords claim that the tenant did not leave the rental unit clean and undamaged when they vacated. The tenant disputes this and pointed out that the "[rental unit] was a dump" when they moved in, and that none of the damages or repairs claimed are attributable to her. If and where they are, it is explained by reasonable wear and tear.

In support of their claim, the landlords submitted a completed condition inspection report (the "report"). The report was completed at the start of the tenancy, and the tenant, it must be presumed, had an opportunity to dispute any information recorded on the report at that time. The tenant signed the report on March 30, 2019. Thus, I must find as a matter of fact that the report accurately reflects the state of repair and condition of the rental unit at the start of the tenancy.

The report was then completed at the end of the tenancy. The tenant was not present at this final inspection, despite the landlords providing two, and then one final, opportunity to attend the final inspection. These opportunities are evidenced by two emails and one final notice, copies of which were submitted into evidence. I must accordingly also find that the report accurately reflects the state of repair and condition of the rental unit at the end of the tenancy.

Section 21 of the *Residential Tenancy Regulation,* B.C. Reg. 234/2006, sets out the evidentiary weight of a condition inspection report: "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 tenant submitted 45 photographs of the interior of the rental unit. The photographs were purportedly taken on January 29, 2021. While the photographs, at first glance, depict a clean and undamaged rental unit, they unfortunately omit the detail – that is, the closer inspection – of the damage later recorded on the report. Had the tenant attended the final inspection then she would have had the opportunity to dispute the report's findings. Yet, that opportunity to attend was not acted upon.

Taking into consideration all of the parties' testimony and evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for compensation resulting from the tenant's breach of section 37(2) of the Act. Last, it should be noted that the extensive damages and repairs did not, I find, result from reasonable wear and tear.

Finally, while the landlords have proven their claim, I do not find that Mr. Hanley's labour of one hour to "Replace blinds" and one hour to "Replace and redrill shower road" to be particularly realistic. It does not take a layperson, let alone a professional handyman, an hour to replace blinds or redrill a shower road. Accordingly, I must reduce this portion of the claim by half, which is more in line with a reasonable amount to be claimed for such labour. This portion of the claim is reduced by $30.00, for a total award of $1,690.52.

3. Landlords' Claim for Application Filing Fees

The landlords seek to recover the cost of the filing fee for their first application (in which they had sought an order of possession) and for the cost of the fee for their second application (in which they sought to keep the security deposit, but for which no actual claim for damages was made).

While I find that the landlords are entitled to recover the cost of their initial filing fee, I find that their second application was wholly unnecessary. They simply sought to keep the security deposit without making any specific monetary claim against it. As previously explained to the landlords, a landlord does not simply "get to keep" a tenant's security deposit because a tenant fails to attend a condition inspection. As such, I am inclined to award compensation for only the first filing fee.

4. Tenant's Application for Return of Security Deposit

Given that the landlords were successful in their application, I must dismiss the tenant's application for the return of her security deposit. Likewise, the tenant's claim to recover the cost of her application filing fee must also be dismissed.

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

In summary, the landlords are awarded a total of $3,490.52.

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 landlords may now retain the tenant's security deposit of $1,150.00, in partial satisfaction of the above-noted award.

The balance of the award is granted to the landlords by way of a monetary order in the amount of $2,340.52. This order must be served on the tenant by the landlords.

Conclusion

I HEREBY:

1. grant the landlords' application;
2. dismiss the tenant's application, without leave to reapply;
3. authorize and order the landlords to retain the tenant's security deposit; and,
4. grant the landlords a monetary order for $2,340.52, which must be served on the tenant. If the tenant fails to pay the landlords the amount owed, the landlords may file and enforce the order in provincial court.

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

Dated: September 2, 2021

Residential Tenancy Branch