



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL-S FFL

Introduction

The landlords seek compensation against their former tenants pursuant to section 67 of the *Residential Tenancy Act* ("Act"). They seek to retain the tenants' security deposit in full or partial satisfaction of any monetary award granted, pursuant to section 38(4)(b) of the Act. Last, they seek to recover the cost of the filing fee under section 72 of the Act.

Preliminary Issue: Service

The landlords attended the hearing, but the tenants did not. In such cases where respondents do not attend, I must be satisfied that the respondents were properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch's *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The landlords confirmed under oath that they served the Notice of Dispute Resolution Proceeding package by way of text message in August 2021 on the tenants. Copies of service by that method were provided into evidence. It is important to note that the landlords were granted an order for substituted service, which permitted service by text message, pursuant to a decision of an adjudicator dated August 17, 2021

Given the evidence before me, it is my finding that the respondents were appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for them to participate fully in these proceedings.

Issue

Are the landlords 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 issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on March 1, 2019 and ended on June 30, 2021. Monthly rent was \$1,650.00 and the tenants paid a security deposit of \$825.00. This deposit is currently held in trust pending the outcome of this application. A copy of a written tenancy agreement was submitted into evidence.

In this application the landlords seek \$8,022.30 in compensation for, as described in their application (reproduced as written):

Suite was uninhabitable after tenancy ended. There was feces, blood and food on walls and floors. Belongings and garbage were left throughout the unit and yard. There was bug infestation. Both toilets were intentionally plugged and the bathroom door was locked in order to delay access and remedy to the flooding toilet. Carpets were destroyed, as well as windows. June utilities were not paid and settlement of equal payment plan was not paid.

A detailed Monetary Order Worksheet was submitted into evidence, and it breaks down the claim into seven subclaims. These are for biohazardous cleaning, belonging removals, pest removal, repair to due vandalism, outstanding June 2021 utilities and unpaid utilities, and removal of belongings (a separate subclaim). Receipts or invoices for all of these claims were submitted into evidence, except for the removal of belongings (#7 on the Monetary Order Worksheet) for which cash was paid without a receipt provided. The landlords confirmed these amounts with me during the hearing.

Thirty-six colour photographs of the interior (and a few of the exterior) of the rental unit were submitted into evidence. If a picture is worth a thousand words, words alone cannot fully describe the horrendous condition in which the rental unit was left. Suffice to say the description provided above by the landlords accurately reflects and describes the condition and state of the rental unit. The immediate exterior of the rental unit, that is, the entrance area and pathway along the house, were no better.

It is worth noting that there are no condition inspection reports in evidence, though the landlords noted that such reports had been completed. As explained below, however, it is my finding that the absence of such reports is not fatal to the landlords' application.

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.

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.

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.

In this dispute, the oral, photographic, and documentary evidence persuades me on a balance of probabilities that the tenants left the rental unit quite the opposite of reasonably clean and undamaged when they vacated. And, while a condition inspection report is often helpful in proving a tenant's breach of section 37(2) of the Act, in this case, the absence of any such report does not affect my findings. A reasonable person could not, in considering all of this evidence, come to any other conclusion that the state and condition of the rental unit was in a far worse state and condition that it would have likely been at the start of the tenancy. Last, it is also my finding that the landlords did whatever was reasonable to minimize the damage and losses. Indeed, they did more than what was reasonable given the circumstances.

Taking into consideration all of 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 discharged their onus of proving their claim for compensation. This, I note, includes the claim for unpaid utilities, which are required to be paid pursuant to section 26 of the Act.

As the landlords were successful in this application, they are entitled to recover the cost of the application filing fee under section 72 of the Act. In total, the landlords are awarded \$8,122.30 in compensation.

Pursuant to section 38(4)(b) of the Act the landlords are ordered to retain the tenants' \$825.00 security deposit in partial satisfaction of the above-noted award. The balance of the award is granted by way of a monetary order in the amount of \$7,297.30.

A copy of this order is issued in conjunction with this decision, to the landlords.

The landlords must serve a copy of this monetary on the tenants. If the tenants fail to pay the amount owing within 15 days of receiving a copy of the monetary order, then the landlords may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The application is granted.

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

Dated: January 28, 2022

Residential Tenancy Branch