Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S FFL

Introduction

The landlord seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"). They seek to retain some or all of a security deposit pursuant to section 38(4)(b) of the Act against any compensation awarded, and they seek to recover the cost of the filing fee, pursuant to section 72 of the Act.

The landlord's agent (hereafter the "landlord") and one of the tenants attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant oral and documentary evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The tenancy in this dispute began on June 10, 2020 and ended August 15, 2021. Monthly rent was $2,600.00. The tenants paid a $1,300.00 security deposit of which the landlord currently retains in trust pending the outcome of this application. A copy of the written tenancy agreement was in evidence.

In this application, the landlord seeks $887.50 in compensation for three items: (1) $630.00 for damages and carpet cleaning; (2) $157.50 for "some repairs"; and (3) $100.00 in estimated costs for replacing a missing fireplace cover. These amounts were itemized in a Monetary Order Worksheet which the landlord submitted into evidence.

The landlord gave evidence that the tenant did not attend (or was not available) at 7 PM on the date that they vacated, to participate in the move-out inspection. The landlord's colleague Alex tried arranging to conduct the inspection on August 16. Around 6 PM, he attended to the rental unit and the tenants had left the key for them (under a mat). The tenant did not attend for an inspection.

On August 19 around 6 or 7 PM, the tenant attended to the rental unit and the tenant "refused to finish" the inspection and she did not sign the Condition Inspection Report. The next day, the landlord or the agent's colleague sent a *Notice of Final Opportunity to Schedule a Condition Inspection* to the tenant, indicating that a second opportunity to conduct the inspection could occur on August 24, 2021 between 3 and 5 PM. A copy of this notice was tendered into evidence. The tenant did not attend on August 24 and the landlord ended up completing the condition inspection report by themselves.

In respect of the actual compensation being sought, the landlord testified that the rental unit was rented out as a furnished rental unit. Certain furniture was placed in certain rooms. The tenants moved most of the furniture into the garage but did not return it to the original places when they moved out. In addition, the tenant caused "big scratches" on the wall and a scratch on the refrigerator. The tenant left an excessive amount of garbage in the garbage bins that exceeded what the municipality would haul away; the landlord was left with having to remove the excess garbage. The carpets in the rental unit were not cleaned and the landlord hired a cleaner to professionally clean them. The landlord also spoke about a missing fireplace cover that he estimates would cost about $100.00; the missing cover has not, as of today's date, been purchased, and there was no estimate in the form of documentary evidence for this particular claim.

Submitted into documentary evidence by the landlord were eighteen photographs of various parts of the rental unit, a copy of a Condition Inspection Report (with move-in and move-out inspection dates of June 10, 2020 and August 24, 2021), an invoice dated August 28, 2-21 for "furniture moving, garbage disposal, carpet shampoo, [and] cleaning" in the amount of $630.00, and a quotation dated August 27, 2021 for "Patching holes and scrtches [*sic*], Paint touch-up and fridge scratch removing [and] Re-install TV mount" in the amount of $157.50.

The tenant disputes the entirety of the landlord's claim. She testified that the move-in inspection was conducted in her absence. (The landlord later countered this, and explained that due to COVID, the landlord did the inspection first, then handed her the report, after which she then entered the rental unit and reviewed all of the inspection points.) The move-in inspection report was signed by both parties.

In respect of the move-out inspection, the tenant testified that she was not aware that she needed to do a walk-out inspection. She left the keys for the landlord to "check out" the house themselves, on August 16. According to the tenant, she reached out multiple times to arrange for an inspection but was unable to do so because of her work hours. Ultimately, she attended to the rental unit on one evening, but the landlord's agent Alex had already completed the condition inspection report in her absence, and she refused to sign the report.

In respect of the furniture, the tenant testified that she was not aware that the furniture had to be returned to the original positions. There is, she remarked, nothing in the tenancy agreement or the appendix regarding placing the furniture back where it was at the start of the tenancy. The landlord countered this, saying there is such a requirement.

Regarding the carpet cleaning, the tenant testified that she did have it professionally cleaned, and there was an invoice submitted into evidence. (The landlord called into question the veracity of this invoice, suggesting that it was perhaps "made up.") The tenant testified that she left the rental unit in "great condition" and that all of the rooms were thoroughly cleaned. That said, the garage was, she admitted, "left pretty messy," though she offered, but was rebuffed, to dust or sweep it.

As for the actual claims, the tenant argued that the quotation for repairs is vague, and she questioned why the estimate for the fireplace replacement cover is absent any documentary evidence of the dollar amount. To this day, the replacement cover remains unpurchased. She denied taking the cover, noting that she has no use for such an item.

Submitted into documentary evidence by the tenants were a copy of an invoice for Coast Pro Cleaning Solutions Ltd. for "Move-out Cleaning (main and upper level) all areas [and for] Carpet Professional Cleaning" totalling $315.00, several colour photographs of the interior and exterior of the rental unit as it was at the start of the tenancy, various correspondence between the respondent K and the applicant JZ, and, eleven colour photographs of the rental unit as it was at the end of the tenancy.

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.

Preliminary Issue: Condition Inspection Report Completion

Before the landlord's claim for compensation is considered, I must first determine whether the landlord complied with the condition inspection requirements under sections 23 and 35 of the Act. If the landlord complied with these requirements, then they are entitled to make a claim against the security deposit.

Section 23(1) of the Act states that the "landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day."

In this dispute, at the start of the tenancy, the landlord inspected the condition of the rental unit and then handed the report to the tenant who then inspected the rental unit. While the landlord and tenant were not *physically* together, as in standing side by side while the inspection took place, it is my finding that the parties (who were both on the property at the same time) were sufficiently proximate in time and space to be considered to have together inspected the condition of the rental unit. The tenant would have had a near-immediate opportunity to disagree with any of the landlord's inspection findings had there been any. There appeared to be none, and both parties signed the report. As such, it is my finding that the landlord complied with section 23(1) of the Act.

As for the end of tenancy inspection, section 35(2) of the Act states that the landlord "must offer the tenant at least 2 opportunities, as prescribed, for the inspection." The two opportunities requirement is set out in some detail in section 17 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003, which states as follows:

> (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
>
> (2) If the tenant is not available at a time offered under subsection (1),
>
> (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
>
> (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

In this dispute, the landlord offered the tenant a first opportunity to attend for a condition inspection on August 16 at 6 PM. The tenant failed to attend. The landlord then proposed a date of August 19 between 6-7 PM, and the tenant then attended, but refused to sign the condition inspection report on the basis that some, or most, of the report had already been completed. She left the rental unit without signing the report.

The landlord then issued a notice of final opportunity for an inspection on August 24 between 3-5 PM. The tenant did not attend at this date and time, and the landlord completed the condition inspection report in her absence.

Based on the evidence before, the landlord ultimately offered the tenant not two, but three opportunities to attend to complete the inspection. There is no documentary evidence from the tenant to establish that she ever offered or proposed an alternate time and date. What is more, the tenant *did* attend on August 19, but chose not to participate in any sort of inspection or sign the report because the landlord's agent had already completed some of the report. I find that the tenant was mistaken in her belief that a condition inspection could not be completed simply because the landlord's agent had already completed some of the report. The tenant could, I find, have easily done a walk-through inspection of the rental unit with the agent, and could have quite easily disputed any aspect of the property that the agent might have already noted as being dirty or damaged. In other words, it was the tenant who chose not to participate in the end of tenancy inspection.

It is thus my finding that the landlord complied with section 17 of the Act and was therefore at liberty to file an application for dispute resolution claiming against the tenants' security deposit.

Claims for Compensation

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, it is my finding that the scratches on the fridge and the large gouge in the wall is damage not caused by reasonable wear and tear, but by the negligence of the tenants. It should be noted that the tenants did not make any submissions or argument in the hearing as to whether the damage was caused by reasonable wear and tear.

With respect, I must disagree with the tenant's argument that the landlord's claim for repairs is vague. The quotation for repairs is, in fact, rather detailed: patching holes and scratches, paint touch-up and fridge scratch removing, and re-install TV mount, for $157.50. Taking into careful consideration all of the 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 this aspect of their claim in the amount of $157.50.

Regarding the garbage disposal ($60.00) and carpet shampooing ($100.00), and cleaning ($90.00) this claim is based on a breach of section 37(2) of the Act which, I find, is proven on a balance of probabilities through the landlord's sworn testimony, condition inspection report, and the photographs. Furthermore, the amount has also been proven through the documentary evidence consisting of a receipt. The landlord is therefore entitled to compensation in the amount of $262.50 (including 5% tax).

As for the furniture moving, however, there is no term or clause in either the listing of furniture document or the two-page appendix to the tenancy agreement which states that the tenants were required to have the furniture moved back in the original spots. The landlord did not appear to have any problem with the tenants moving most of the furniture into the garage. And, while it might have been a courteous thing to do to put the furniture back where it was at the start of the tenancy, there was no legal requirement set out in the tenancy agreement that this was the case.

Thus, it is my finding that the landlord has not established that the tenants' failure to return the furniture to its original location within the rental unit breached either the Act or the tenancy agreement. As such, the landlord is not entitled to any compensation in regard to this aspect of their claim.

Next, while the landlord claims that the replacement fireplace cover will cost about $100.00, there is no supporting documentary evidence that this is the case. The cover has apparently not yet been replaced a full seven months after the tenancy ended, and the tenant disputes the amount claimed.

As the landlord has not proven with any supporting evidence that the cost to replace the cover is $100.00, this aspect of the landlord's claim must be dismissed.

Last, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord largely succeeded in their application, they are awarded $100.00 in compensation to cover the cost of the application filing fee.

Summary of Award and Return of Balance of Security Deposit

In total the landlord is awarded $520.00.

Pursuant to section 38(4)(b) of the Act the landlord is authorized to retain $520.00 of the tenants' security deposit in full satisfaction of the award granted. The balance of the security deposit ($780.00) must be returned to the tenants within 15 days of the landlord receiving a copy of this decision.

Conclusion

The landlord's application is granted, in part, subject to the amounts set out above.

This decision is final and binding on the parties and is made under section 9.1(1) of the Act. A party's right to appeal the decision is limited to grounds under section 79 of the Act, or, by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: March 14, 2022

Residential Tenancy Branch