Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL, FFL

Introduction

The landlords seek compensation pursuant to sections 67 and 72 of the *Residential Tenancy Act* (the "Act"). Attending the dispute resolution hearing were the landlords, the tenant, and the tenant's husband. The parties were affirmed, no service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained to the parties.

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 in this dispute began July 31, 2020 and ended July 30, 2021. Monthly rent was $2,400.00 and the tenant paid a $1,200.00 security deposit. The deposit was previously refunded to the tenant and is not an issue in this dispute. A copy of the written tenancy agreement was in evidence.

The landlords seek a total of $1,039.61 in compensation from their former tenant (amounts reproduced from the landlords' *Monetary Order Worksheet):* $25.00 for a late rent fee, $31.88 for repairs to a damaged floor, $134.34 to replace two missing fire extinguishers, $26.49 to replace "dead lightbulbs," $112.90 to replace damaged shelves, $504.00 to replace locks and keys, $105.00 to pay for the restoring the garden and yard, and $100.00 to pay for the Residential Tenancy Branch application filing fee.

The tenant does not dispute the amounts claimed for the late rent fee, for the missing fire extinguishers, or for the lightbulbs. As such, no evidence or testimony regarding those claims is reproduced further within this decision.

Regarding the damaged floor, the landlords testified that they had a large plant of theirs inside the rental unit. The tenants moved the plant and there ended up being mold underneath the plant caused by the moisture. The floor (which was installed in 2010) was damaged because of the mold and the landlords had to repair the floor. This cost them $31.88. Photographs of the floor and receipts were submitted into evidence in support of this claim. The floor is marked as “stained” on the Condition Inspection Report.

In response to this claim the tenant argued that the plant was the landlords’ and that the landlords “insisted” on keeping three “very large” plants inside the property. Indeed, one of the plants was so large that one could not sit down on the toilet without the leaves touching you. The tenant’s written submission reflected the tenant’s testimony, noting that the floor was “damaged by landlord's plant. Pictures from move-in show that plant. We did not agree to take care of any plants. The landlord insisted 3 plants stay and their plant did that damage to the floor. I provided more than reasonable care to all plants.”

In rebuttal, the landlords testified that it was their understanding that the tenants were to take care of the landlords’ plants and were to protect them during the tenancy. It should be noted that the six-page Residential Tenancy Agreement and a two-page Addendum to that agreement are silent in respect of any care or maintenance of the landlords’ plants. The landlords did not dispute the fact that their plants were being kept inside the rental unit.

Regarding the damaged shelves, the landlords testified that the tenant left a toilet brush on one of the shelves in the rental unit. Residual chemicals left on the brush seeped or dripped down on the shelf below and caused damaged. Photographs, a witness statement, and the Condition Inspection were tendered into evidence to support this claim. IKEA ended up being the replacement shelves, and receipts were in evidence. The Condition Inspection Report indicates that there are “2 damaged shelves” at the end of the tennacy.

(Nevertheless, it is worth noting that there is no corresponding section in the Condition Inspection Report indicating the condition of the shelves at the start of the tenancy; the section opposite in the report refers instead to the “Walls and Floor/Carpet” being in good condition.)

In rebuttal, the tenant testified that the shelves in question were already damaged when they moved in. She reiterated that she did not damage the shelves, and that the toilet brush in question was not hers and that it never was her toilet brush.

Regarding the cost to replace the locks and keys, the landlords testified that the tenant only returned three of the four keys that they had given her during the tenancy. As a result of being unable to contact her to arrange for the final key (which the tenant stated had been returned) they hired the company that had installed some sort of special fiberglass doors. The company travelled up to the rental unit and the landlords incurred a final cost of $504.00. Though, the landlord noted, they are only seeking to recoup half of the company's travel costs through this application. Receipts were in evidence. The Condition Inspection Report indicates that "2 FRONT [and] 2 UTILITY" keys were issued at the start of the tenancy and that "2 FRONT [and] 1 UTILITY" keys were returned at the end of the tenancy.

In rebuttal, and as noted above, the tenant testified that she "never used" the European style doors or keys and that she gave everything back (including the keys) when she vacated the property. The tenant further submitted that the landlords did not replace and install new locks when the tenants began the tenancy, and they disputed the rather expensive cost of replacing the locks.

Last, regarding the cost to restore the garden and yard, the landlords testified that it was a term of the tenancy agreement that the tenant would maintain the yard and garden. Term #7 of the Addendum to the tenancy agreement states that "Tenants are responsible for garden and yard maintenance and snow removal."

Under the *Exterior* section of the Condition Inspection Report the "Grounds and Walks" aspect of the property is marked as being in good condition at the start of the tenancy. At move out, the report indicates "garden/yard not maintained" and the condition is given a condition of "Poor." Also submitted into evidence are various photographs of the grounds.

In response, the tenant disputed that the yard and garden were uncared for. She testified that the condition of the yard was the the same at the end of the tenancy as it was at the start. She spent "many hours weeding," her son had also "spent many hours weed wacking," and they removed "bags and bags of weeds." It is therefore unreasonable, in the tenant's opinion, for her to have to now pay for weed removal.

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 landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

In determining whether a party must pay to compensation, there is a four-part test which must be met, and which is based on the above-noted sections of the Act: (1) Was there a breach of the Act, tenancy agreement, or regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

1. Claims for Late Rent Fee, Fire Extinguishers, and Light Bulbs

The tenant did not dispute the landlords' claims for the late rent fee ($25.00), the cost for the fire extinguishers ($134.34), and the replacement light bulbs ($26.49). As such, the landlords are awarded $185.83 in compensation for these undisputed claims.

2. Claim for Cost to Repair Floor

Prima facie, it is my finding that the tenants breached section 37(2)(a) of the Act which requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear" when they vacate. (This section of the Act shall also apply to the additional claims related to the shelves.)

Based on whatever the tenant did in respect of the landlords' plants, it is my finding that the moving of the plant pots resulted in moisture-causing-mold damage to the floor. But for the tenant's action, the damage would have likely (though not without certainty) have not occurred. The cost for the repair is proven.

Yet, it cannot be said that the landlords did whatever was reasonable to minimize their loss. The landlords ought not to have stored their personal property—three “very large plants”—inside the rental unit and then expected the tenant to take care of those plants. There is no requirement in the tenancy agreement or the addendum that the tenant care for them.

That the landlords made the decision to keep large potted plants inside the rental unit over the course of tenancy is not, I find, a reasonable action given the likelihood of moisture accumulating or forming under those pots. For this reason, having found that the landlords did not do whatever was reasonable to minimize their loss, this aspect of the landlords’ claim must be dismissed.

3. Claim for Replacing Damaged Shelves

The landlords argue that the tenant damaged the shelves by leaving a chemical-covered toilet brush; the tenant disputes that it was her toilet brush, and that she damaged the shelves.

When two parties to a dispute provide equally plausible 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 the case before me, I find the landlord has failed to provide any additional, persuasive evidence that the tenant damaged the shelves.

Oftentimes, a completed condition inspection is sufficient to prove a landlord’s assertions about damage caused by a tenant. This evidentiary weight is referenced in section 21 of the *Residential Tenancy Regulation* which states that “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.”

In this dispute, however, the condition inspection report makes no mention and contains no information regarding the state of repair and condition of the shelves at the start of the tenancy. As such, taking into consideration all the oral and documentary evidence before me, I find that the landlords have not proven that the tenant damaged the shelves. Therefore, the tenant has not been found to have breached section 37(2)(a) of the Act. No compensation may therefore flow.

4. Claim for Replacement of Locks and Keys

Section 37(2)(b) of the Act requires that a tenant "give the landlord all the keys" when they vacate the rental unit. In this case, the tenant was adamant that she had "returned everything," while the landlords argued that one of the four keys was not returned. The condition inspection report's information regarding one key not being returned is persuasive evidence that the tenant, despite being certain, failed to return one of the keys. But for the tenant's breach of section 37(2)(b) of the Act the landlords would not have had to go about replacing the locks or getting new keys.

The amount claimed is $504.00. While I noted that this amount is rather high in relation to ordinary lock replacements (which often run in the $100-$200 range), the landlords explained that the fiberglass doors of the rental unit require a certain lock. It is therefore reasonable, I must conclude, that a specialized door may require more expensive lock replacements. There is nothing in the evidence before me to find that the landlords could have done much to minimize the loss related to having new locks installed. While the amount claimed is rather high, it is not exorbitant.

Taking into careful consideration all the oral and documentary evidence before me, it is my finding that the landlords have proven on a balance of probabilities that they are entitled to compensation in the amount of $504.00 for the locks.

5. Claim for Garden and Yard Restoration

Regarding this claim, the landlords argued that the tenant did not meet the term of the tenancy agreement by which the tenant is "responsible for garden and yard maintenance and snow removal." They submitted that the tenant left the garden and yard in an unmaintained state, whereas the tenant argued about spending many hours weeding and weed whacking.

What is particularly troublesome with a term such as "garden and yard maintenance" is that it is vague. There are no specific tasks listed, nor is there a baseline from which a tenant would have some sense of certainty as to what a "maintained" garden and yard comprises and what it would not. In short, it is my finding that this specific term of the tenancy agreement is vague, and vague terms are unenforceable: subsection 6(3)(c) of the Act states that "A term of a tenancy agreement is not enforceable if [...] the term is not expressed in a manner that clearly communicates the rights and obligations under it." As such, it cannot be found that the tenant breached what is ultimately a vague term, and no compensation may flow. This aspect of the landlords' application is dismissed.

6. Claim for Cost of Application Filing Fee

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, as the landlords were largely successful in their application, they are granted compensation in the amount of $100.00 to pay for the application filing fee.

Conclusion

The application is granted, in part, and the landlords are awarded $789.83 in compensation. Pursuant to section 67 of the Act the tenant is ordered to pay this amount to the landlords within 15 days of receiving a copy of this decision.

A monetary order in this amount is issued in conjunction with this decision, to the landlords. The landlords must, if necessary, serve a copy of the monetary order on the tenant and may enforce the monetary order in the Provincial Court of British Columbia.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided 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: August 16, 2022

Residential Tenancy Branch