Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL-S, MNDL-S, FFL, MNSDS-DR, FFT

Introduction

The landlords seek compensation from their former tenant. The tenant seeks compensation from her former landlords. Both parties filed applications for dispute resolution shortly after the tenancy ended, under the *Residential Tenancy Act* ("Act"). This decision shall address, and resolve, the parties' dispute.

A dispute resolution hearing was convened on August 22, 2022. Both parties attended, were affirmed, and no service issues were raised. As noted, the dispute resolution hearing was recorded by audio by the Residential Tenancy Branch.

Issue

Are the landlords or the tenant 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 April 1, 2021 and ended on or about December 31, 2021 or January 1, 2022. A copy of the written Residential Tenancy Agreement was submitted into evidence. The agreement reflects that the tenancy was a fixed-term tenancy scheduled to end (and then convert to a periodic tenancy) on March 31, 2022.

The tenant gave the landlords a notice to end tenancy before the end of the fixed-term tenancy. Notice was given on December 27 that she would move out on December 31. Keys were handed over on January 1, 2022.

In their application the landlords seek $2,850.00 in compensation for lost rent in January 2022 which resulted from the tenant's giving last-minute notice. Online advertisements were promptly put up and a new tenant was found for occupancy on February 1, 2022. Monthly rent was kept at the same $2,850. The landlords had many interested, prospective tenants but none of the prospects were interested in commencing the tenancy before February.

It is the tenant's position that her notice to end tenancy was given pursuant to, and incompliance with the Act whereby the landlords had breached a material term of the tenancy agreement but failed to correct the situation. She spoke of the landlords' extensive renovations in their backyard which interfered with the tenant's right to quiet enjoyment. Her privacy was also intruded upon, partly as a result of the manner in which the recycling and garbage was managed in the laneway. The tenant described the rental unit as very not private. The tenant felt very unwelcome and micromanaged by the landlords. Apparently after she cut the grass one of the landlords was on his hands and knees redoing the grass for forty-five minutes. (The landlord denies this.)

The tenant testified that she was planning on moving out as long as six months before she ended up doing so. She indicated her intentions to vacate to the landlords. In the end the tenant gave short notice to end the tenancy and that the relationship by then had deteriorated. Copies of numerous emails and text between the parties were submitted into evidence by the tenant.

Also, in their application the landlords seek $1,598.15 for costs related to painting, repairs, and cleaning to the rental unit. Invoices and receipts, along with a Monetary Orde Worksheet were submitted into evidence. Copies of a condition inspection report, including an addendum to the report at the end of the tenancy was submitted into evidence. The landlords testified that the rental unit was found to be dirty, appliances not cleaned, food left behind, along with many holes and drill holes. They further testified that the rather contentious inspection at the end of the tenancy ended with the tenant and her mother leaving before the inspection was completed. Further opportunities were given to the tenant to return and complete the inspection, but nothing further happened on this.

In response, the tenant testified that the language used by the landlords during the move out inspection were "tactical" to make the rental unit look worse than it really was.

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 Loss of Rent

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.

A tenant may not, unless section 45(3) of the Act applies, end a fixed-term tenancy earlier than the date on which that tenancy is specified in the tenancy agreement to end (see section 45(2) of the Act).

Section 45(3) of the Act states that

> If 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.

At the outset I note that the tenant used the correct form (under section 52 of the Act) when providing notice to end the tenancy. However, despite the listed dates of the purported breaches of various material terms of the tenancy agreement, I am not persuaded that the landlords breached material terms of the tenancy agreement. While I recognize that there was noise issues, garbage, and recycling issues, and so forth, the tenant's rather insufficient evidence as to actual breaches simply does not persuade me that the landlords failed to comply with material terms of the tenancy agreement.

Thus, taking into consideration all of the oral and documentary evidence before me, it is my finding that the tenant has not proven that she had the necessary grounds on which to give notice to end the tenancy under section 45(3) of the Act. Therefore, it follows that the tenant breached section 45 of the Act and the landlords may be compensated.

The landlords have on a balance of probabilities proven that they suffered a financial loss of $2,850.00 in respect of rent for January 2022. It is my finding that they made reasonable efforts to mitigate any such loss by advertisement the rental unit almost immediately after being given the tenant's notice to end tenancy and by keeping the rent the same for any prospective tenant.

Therefore, in respect of this claim, and taking into careful consideration all of 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 of $2,850.00.

2. Landlord's Claim for Repairs, Cleaning and Painting

A landlord must complete a condition inspection report at both the start and end of a tenancy (see sections 23 and 35 of the Act, and also Part 3 of the *Residential Tenancy Regulation).* The proper completion of a condition inspection report cannot be overemphasized, as "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" (section 21 of the *Residential Tenancy Regulation).*

The problem in this dispute is that the condition inspection report was not completed at the start of the tenancy. Vast swaths of the report are blank. Another problem is that the condition inspection report contains an addendum regarding the inspection at the end of the tenancy and the entire column "Condition at End of Tenancy" simply has a downward line drawn through it with the notation "SEE ADDENDUM." I find that the addendum does not provide the necessary listing of each of the items that are listed within the condition inspection report itself.

In short, I am not persuaded that the condition inspection report was properly completed and as such I am unable to find that the tenant breached section 37(2)(a) of the Act from which compensation may flow. Further, while the parties submitted various lengthy videos, these only depict the state and condition of the rental unit during the final, contentious move-out inspection. I do not find that either video provides the required preponderance of evidence in cases where a condition inspection report was not properly completed.

Given the above I decline to award the landlords any compensation in respect of this aspect of their application. This aspect of the application is thus dismissed.

3. Tenant's Claim for Compensation

In her application the tenant seeks the return, and doubling, of her security deposit.

The tenancy ended on December 31, 2021 or January 1, 2022 and the tenant stated in her application that her forwarding address was given to the landlords on January 2, 2022. The landlords filed their application for dispute resolution, claiming against the security deposit, on January 10, 2022.

Under section 38(1) of the Act a landlord must either repay the security deposit or file an application for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. In this dispute the landlords filed their application within the 15-day requirement. As such, the doubling provision (section 38(6) of the Act)—which only applies when a landlord does not meet the 15-day requirement set out in section 38(1)—does not apply. The tenant is therefore not entitled to a doubled amount.

4. Landlords' and Tenant's Claims for Recovery of Application Filing Fees

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, the landlords were only successful with one of their two claims. As such, they are entitled to recover $50.00 of their application filing fee and thus this amount is ordered to be paid by the tenant. Conversely, the tenant was not successful with her application is thus not entitled to recover the cost of her application filing fee.

Summary

In total the landlords are awarded $2,900.00.

Section 38(4)(b) of the Act permits, upon authorization, a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is ordered and authorized to retain the tenant's $1,425.00 security deposit in partial satisfaction of the amount awarded.

The tenant is hereby ordered, pursuant to section 67 of the Act, to pay $1,475.00 to the landlords. A copy of a monetary order in this amount is issued in conjunction with this decision, to the landlords. This monetary order must be served by the landlords upon the tenant and the order is, if necessary, enforceable in provincial court.

Conclusion

IT IS HEREBY ORDERED THAT:

1. **the landlords' application is granted, in part. They are awarded $2,900.00.**
2. **the landlords retain the tenant's security deposit.**
3. **the tenant pays to the landlords a total of $1,475.00.**
4. **the tenant's application is dismissed, without leave to reapply.**

This decision is final and binding, 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 an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: August 23, 2022

Residential Tenancy Branch