



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNDL-S, MNRL-S, FFL

Introduction

The landlords seek compensation for unpaid rent, for damages to the rental unit, and for the cost of the filing fee, pursuant to sections 26, 67, and 72, respectively, of the *Residential Tenancy Act* ("Act").

Attending the dispute resolution hearing were one of the landlords and the tenant; both the landlord and tenant were affirmed. While there were some service issues regarding the landlords' documentary evidence issues arising at the beginning of the hearing, based on the oral testimony given by the parties during the hearing I find that these issues do not impact or otherwise affect the outcome of this proceeding.

Issue

Are the landlords entitled to compensation?

Background and Evidence

The tenancy began August 1, 2021. Monthly rent was \$1,450.00 and this was due on the first day of the month. There is a \$725.00 security deposit which is being held in trust by the landlords pending the outcome of this application. A copy of a written tenancy agreement was submitted into evidence.

At some point in mid-February 2022, the tenant abandoned the rental unit. They did not provide the landlords with any form of notice to end tenancy. The landlord explained that the tenancy was a one-year fixed-term tenancy ending in July 2022.

The landlords seek \$3,500.00 for unpaid rent, \$1,000.00 for costs related to repairing and painting the rental unit, and \$100.00 for the cost of filing their application for dispute resolution with the Residential Tenancy Branch.

It should be noted that the landlords' Monetary Order Worksheet included two amounts, both based on two estimates that the landlords had obtained.

The landlord testified that no condition inspection report was completed at the start or at the end of the tenancy. The damage to the rental unit consisted of a rather plentiful amount of graffiti inside the rental unit. This was, remarked the landlord, "appalling to say the least." There was also damage to some arberite—like someone had taken a knife to it and punched holes. And there was damage to a countertop. Last, the landlord testified that she had to have the carpets professionally cleaned. This cost about \$300.

While the two estimates had been obtained by the landlords after the tenant vacated, the landlord testified that she ended up doing all the work (mostly painting) herself. There were no copies of any receipts for supplies submitted into evidence. Nor was there any log or record of the time spent by the landlord.

The tenant testified that due to a medical issue he had difficulty paying rent and ultimately had to move out. He did not want to get deeper into the hole and wanted to at least give the landlords an opportunity to find another tenant.

He testified that the rental unit was clean, though "very dated," at the start of the tenancy. Regarding the countertop, he could not say whether damage occurred, as there is no condition inspection report. As for the carpets, he testified that they were cleaned using a Rug Doctor, and he was at a loss as to why the landlords would need to have the carpet professionally cleaned. With respect to the graffiti, however, the tenant acknowledged that because it was caused by his "very defiant 13-year-old daughter" (who was dealing with trauma) he accepts responsibility for the damage.

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. Claim for Unpaid Rent

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent.

In this case, the tenant did not dispute that he owes the landlords the amount claimed. And while it is not lost on me that the tenant faced a difficult period of time, including being hospitalized, the Act makes no provisions for medical or other personal circumstances in setting aside the obligation to pay rent.

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 \$3,500.00 in compensation for unpaid rent.

2. Claim for Compensation for Damage to Rental Unit

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.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the 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?

Section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

Regarding the damage to the kitchen counter, the tenant disputes that he caused that. The landlord has not provided any condition inspection report by which the condition of the counter at the start of the tenancy may be used as a baseline.

Landlords are required to complete a condition inspection report at both the start of, and at the end of, a tenancy (see sections 23, 24, 35, and 36 of the Act). The importance of a condition inspection report cannot be underestimated, especially in a landlord’s claim for compensation for damage caused to a rental unit. Indeed, section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003, states the following:

In dispute resolution proceedings, 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.

Given the absence of any condition inspection report it is my finding that the landlords have not proven that the landlord damaged the kitchen countertop. Similarly, the absence of a condition inspection report leads me to find that the landlords have not proven that the rental unit carpets required professional cleaning. Therefore, any claim for compensation for the damage to the countertop and the cleaning of carpets must be dismissed.

Regarding the graffiti, the tenant admitted that it was ultimately his responsibility. What the landlords have not proven, however, is the *amount* of their monetary loss in terms of paint supplies and so forth. This would include any time that they spent on painting the rental unit. There are no receipts or invoices for the landlords' expenses which might support this aspect of the landlords' application for compensation. As such, I am not inclined to grant an amount that is not established by documentary evidence.

That having been said, I am prepared to award nominal damages. "Nominal damages" are a minimal award and may be awarded where a monetary loss has not been proven, but it has been proven that there has been an infraction of a legal right. In this dispute, the tenant admitted to being liable for the graffiti, and it is clear that the tenant breached section 37(2)(a) of the Act. The graffiti was certainly not in the rental unit at the start of the tenancy.

Given the above, it is my finding that the landlords are entitled to nominal damages in the amount of \$100.00.

3. Claim for 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, because the landlords were successful in their application, they are entitled to \$100.00.

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

The landlords are awarded a total of \$3,700.00.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. Given the above-noted award, the landlords are hereby authorized to retain the tenant's security deposit of \$725.00 in partial satisfaction of the amount awarded.

The balance of the award (\$2,975.00) is granted by way of a monetary order. A copy of this monetary order is issued in conjunction with this decision, to the landlords.

Conclusion

The landlords' application is hereby granted, in part, and subject to the amounts awarded above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 13, 2022

Residential Tenancy Branch