



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Dispute Codes MNRL-S MNDL

Introduction

The landlord seeks compensation from her former tenants for unpaid rent and utilities and compensation for costs to repair a rental unit pursuant to sections 26 and 67 of the *Residential Tenancy Act* (the “Act”).

Issue

Is the landlord entitled to compensation?

Background and Evidence

In reaching this decision, while I have considered all of the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.

The tenancy began June 1, 2021 and ended on May 20, 2022. Rent, which was due on the first day of the month, was \$3,150.00. The tenants paid a \$1,575.00 security deposit and a \$1,000.00 pet damage deposit. These deposits are being held in trust pending the outcome of the application. A copy of the tenancy agreement is in evidence.

The landlord seeks \$38,297.98 in compensation for what I shall call “repair costs.” The landlord also seeks \$1,065.35 in compensation for unpaid rent and unpaid utilities. The total amount sought is thus \$39,363.33. On the record, the landlord acknowledged and confirmed that she waives the any amount above the \$35,000.00 limit and that pursuant to section 58(2)(a) of the Act the landlord seeks a reduced amount of \$35,000.00.

The landlord testified under oath that the tenants owe unpaid rent for a portion of May 2022, unpaid water, unpaid gas, and unpaid electricity. A copy of a BC Hydro bill (with a billing date of May 10, 2022 in the amount of \$144.61) and a copy of a Fortis BC bill (with a due date of May 28, 2022 in the amount of \$203.17) were in evidence.

The tenant disputed this aspect of the landlord's claim and testified under oath that "everything was paid up in full" at the end of the tenancy. The tenant expressed bewilderment with this claim by the landlord and reiterated that she owes nothing.

The landlord's claim for repair costs entails a comprehensive litany of items: painting, drywall repairs, floor repairs, kitchen cabinet repairs, door repairs and replacement, new window replacements, and so forth. The landlord testified about these various repairs, including a claim for removing the tenants' garbage at the end of the tenancy. The landlord testified that the house was renovated in 2017, the year she purchased it.

In support of her claim the landlord submitted documentary evidence consisting of numerous photographs and a condition inspection report.

The tenant testified that they were given a short time to vacate the property and purportedly asked "can you get out ASAP?" The landlord apparently asked the tenants to move out within three days and told the tenant or tenants "don't worry" about the damages or repairs that the tenants had intended to address. "Don't worry about anything," the landlord allegedly remarked.

In relation to some of the specific repair issues, the tenant testified that the holes in the walls had been patched up but that no further repairs had been done because of the short timeframe for moving out. Further, the tenant testified that the windows that needed replacing were damaged by tree branches during a windstorm. The tenant T.H. ended up reinstalling the old windows as a stopgap measure after the new windows were smashed by the trees.

The tenant testified that "it is an old home and [was] never updated" except for the windows. It is the tenant's position and argument that any damage that was caused to the rental unit was ordinary wear and tear. She further argued that the landlord is simply trying to renovate the property for her son but make the tenants pay for the renovations.

The tenant submitted that the landlord is being very disingenuous in respect of this claim.

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 and Utilities

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. The requirement to pay utilities on time and as required by a tenancy agreement is covered under section 26 of the Act.

In this case, the landlord claims that the tenants owed a certain amount for unpaid rent and utilities. The tenants dispute this claim and submits that everything was paid.

In cases where both parties to a dispute provide equally plausible accounts of events or circumstances, the party making the claim must provide evidence beyond their testimony to support their claim. In this case, I find that the landlord has not provided any evidence that the tenants failed to pay these amounts. Certainly, while two utility bills were submitted into evidence, such documentary evidence does not establish that the tenants did not pay any amounts owing on these accounts. Further, there is no documentary evidence to support the landlord's claim that the tenants did not pay rent.

Taking into consideration all of the evidence before me, it is my finding that the landlord has not proven their claim on a balance of probabilities for unpaid rent and unpaid utilities and thus this claim is dismissed without leave to reapply.

2. Claim for Compensation for Repair Costs

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. 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.

However, what is important and worth noting is that the landlord advised the tenant J.H., in writing, that the landlord would waive any future legal action (including the landlord's estimate that repairs might cost at least \$30,000 if the tenant's son and co-tenant "picks his things in scheduled time today or hire someones [sic] to get all those things away. Then we are done. Nothing will happen."

It is further worth noting that the tenants provided photograph evidence that the tenants' property was removed from the rental unit.

What I find is that the landlord waived, or released, her right to seek compensation at a later date through this written statement. It is important to note that the landlord did not at *any* time during the hearing dispute that this waiver was given. Nor did the landlord dispute the authenticity of the tenants' documentary evidence in which the waiver—in a text message from the landlord to the tenant—was given to the respondent tenant.

Taking into careful consideration all of the evidence before me, it is my finding that the landlord has waived her right to pursue compensation due to the provision of her waiver. Therefore, the landlord's application for compensation is dismissed.

Conclusion

The 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: February 15, 2023

Residential Tenancy Branch