Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNDL-S MNSDB-DR, FFT

Introduction

The Landlord seeks compensation, and the right to retain security and pet damage deposits, under the *Residential Tenancy Act* (the "Act").

The Tenants seek the return, and a doubled amount, of the security and pet damage deposits, and compensation for the cost of their application, under the Act.

Issues

1. Is the Landlord entitled to compensation?

2. Are the Tenants entitled to the return of their security and pet damage deposits, including a doubled amount?

3. Are the Tenants entitled to compensation for the cost of the application fee?

Background and Evidence

In a dispute resolution proceeding, an applicant must prove their claim on a balance of probabilities. I have considered the parties' testimony, arguments, and documentary evidence, but will only refer to evidence that is relevant and necessary.

The tenancy began on September 1, 2017, and ended on July 31 or August 1, 2022. Monthly rent was $1,330.00. The Tenants paid a $650.00 security deposit and a $650.00 pet damage deposit. The Landlord retains these deposits in trust pending the outcome of these applications. There are in evidence copies of two separate tenancy agreements, though they pertain to the same tenancy.

The Landlord sought $5,154.63 in compensation at the time they made their application. This amount was later reduced to $2,918.33. The Landlord submitted a monetary order worksheet at the time the application was filed, and he submitted an updated worksheet about a week before the hearing.

The Landlord seeks this compensation because of the Tenants' damage to the rental unit, including the yard. The Landlord seeks to retain the deposits against any compensation awarded. The Landlord testified that other than a walk-through report, no other condition inspection report was completed either in 2017 or in 2022.

The Landlord testified under oath that the property had been newly renovated at the start of the tenancy and that there was no damage. This included a newly sod yard that was landscaped. While the Landlord undertook some repairs after the Tenants left, he could not afford all of them and sold the property as is. He remarked that the unrepaired aspects of the property likely impacted the sale price.

There is a large portion the backyard on which a pool was located. The area beneath the pool killed the grass and the patch appears as a dirt area in the photographs. The Landlord testified that he was unaware of the pool until the end of the tenancy.

The Tenants testified under oath that they did not provide written authorization for the Landlord to retain the deposits and that they gave him their forwarding address, in writing, by leaving a piece of paper (with the forwarding address) on the counter with the keys on

the last day of the tenancy. They also texted him with their forwarding address, on the same day. The Landlord did not dispute this testimony or the related evidence.

The Tenants further testified that they did a final clean at the end of the tenancy and that the place was okay. They admitted that there was some wear and tear but stressed that the tenancy had been five years in duration. As for the pool, the Tenants testified that the Landlord was aware of the pool's existence, because he was living in the carriage house right behind the property for much of the duration of the tenancy.

As for the yard, the Tenants testified that, yes, the yard was "somewhat" maintained when they moved in, but that it was otherwise so overgrown with weeds and plants that it was a constant struggle to keep up with it. It is noted that the tenancy agreement addendum required the Tenants to maintain the yard. (However, there are no photographs of the yard as it was at the start of the tenancy.) The Tenants brought in gravel and other yard supplies to try and make the yard look nice. However, even after a week's absence from doing yard work, the yard was "a jungle again."

During rebuttal, the Landlord explained that the yard was "in good shape" at the start of the tenancy. And, while the Tenants were "good tenants," there was overall neglect with the property.

Analysis

Landlord's Claim

All items for which the Landlord seeks compensation fall under a potential breach of section 37(2)(a) of the Act. This section requires a tenant, when they vacate a rental unit, to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

While there was some sort of walk through report completed at the start of the tenancy in 2017, this document is wholly insufficient as an information gathering tool and falls short of what is required to be included in a condition inspection report. The requirements of what must be included in a condition inspection report are listed in section 20(1) of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003 ("Regulation").

There is also, I note, no condition inspection report completed at the end of the five-year tenancy. Certainly, there are lots of photographs of the interior and exterior of the property at the end of the tenancy, but no condition inspection report, and no photographs of the property as it was in 2017.

Section 21 of the Regulation states that

> 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.

It is noted that the Tenants dispute the entirety of the Landlord's claims. Rather, their position is that any purported damage caused was due entirely to reasonable wear and tear. As for the pool, while it may have damaged the lawn, there is insufficient evidence for me to conclude that the lawn was in any better shape in 2017.

Given that the Landlord has not provided any condition inspection report completed at the start and at end of the tenancy, and because the Landlord has not provided any preponderance of evidence regarding the state of repair and condition of the rental unit at the start and end of the tenancy, the Landlord has not proven any breach of the Act.

In summary, in taking into careful consideration the evidence before me, it is my finding that the Landlord has not proven his claim on a balance of probabilities. The Landlord's application is therefore dismissed.

Tenants' Claim

Section 38(1) of the Act states that

> (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the Landlord received the Tenants' forwarding address in writing on or about July 31 or August 1, 2022. The Landlord did not, however, repay the deposits or make an application for dispute resolution claiming against those deposits within 15 days after the end of the tenancy. The Landlord did not file their application until mid-October 2022. Thus, the Landlord did not comply with section 38(1) of the Act.

Nor, it should be added, would the Landlord have been entitled to make any such claim given that he did not comply with sections 24(2) and 36(2) of the Act. (That is, a landlord must have completed a condition inspection report at the start and end of a tenancy for them to be legally entitled to make any claim against a deposit.)

Section 38(6) of the Act states that

> If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this application, having found that the Landlord did not comply with subsection 38(1) of the Act, the Landlord is not entitled to make any claim against the deposits, and he must pay the Tenants double the amount of the deposits in the amount of $2,600.00.

The Tenants succeeded in their application and are thus entitled to their claim to recover the $100.00 application fee, pursuant to section 72 of the Act.

In total, the Landlord is ordered to pay $2,700.00 to the Tenants.

A monetary order is issued with this decision to the Tenants, and the Tenants must serve a copy of this order upon the Landlord by any means permitted under section 88 of the Act.

Conclusion

The Landlord's application is hereby dismissed, without leave to reapply.

The Tenants' application is hereby granted, and they are entitled to a monetary order in the amount of $2,700.00. A copy of this Order is issued with this decision to the Tenants.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: July 12, 2023

Residential Tenancy Branch