Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the Landlords: MNDL-S, FFL
For the Tenant: MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The Landlords' application pursuant to the Act is for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee, pursuant to section 72.

The Tenant's application pursuant to the Act is for:

- an order for the landlords to return double the deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Landlords JL (the Landlord) and JP and tenant SK (the Tenant) attended the hearing. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The parties each confirmed receipt of the Proceeding Packages.

Based on the testimonies I find that each party was served with the Proceeding Package in accordance with section 89 of the Act.

Issues to be Decided

Are the Landlords entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Is the Tenant entitled to:

1. an order for the return of double the deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on April 1, 2021 and ended on March 31, 2023. Monthly rent when the tenancy ended was $5,500.00, due on the first day of the month. The Landlord collected and holds in trust the $2,750.00 deposit. The Tenant submitted the tenancy agreement into evidence. Clause 1(f) of the tenancy agreement states the Tenant must "maintain the lawn, garden, landscaping and walkways."

The Landlord confirmed receipt of the forwarding address in writing on March 30, 2023.

The Tenant did not authorize the Landlords to retain the deposit.

The Landlords submitted their application for dispute resolution on April 26, 2023.

The rental unit (the unit) was a 3 floor, 3,800 square feet, 4 bedroom single family house entirely occupied by the Tenant.

The Landlord affirmed he purchased the unit on March 31, 2022 and that it was renovated in 2016.

The parties conducted a move in inspection and completed a move in inspection report (the report), submitted the report into evidence. It states the rental unit was in satisfactory condition when the tenancy started, including the landscaping in the front,

back and side yards. The 6 photographs included in the report show a yard in good condition when the tenancy started.

The parties did not complete a move out inspection report.

The Landlords are claiming $9,534.90, as the Tenant damaged the unit's yards. The Landlord stated it will cost him over $20,000.00 to completely repair the yards, but the Landlord is only seeking the amount for a basic repair. The Landlord submitted into evidence a quote for the amount claimed.

The Landlord submitted into evidence 15 photographs taken when the tenancy ended. They show a severely damaged yard.

Clause 1(f), of Addendum A, signed by the Tenant, states: "the tenant agrees to maintain lawn, garden, landscaping and walkways".

The Tenant testified he cut the grass and did yard maintenance during the tenancy. Later the Tenant said he did not properly maintain the yard. The Tenant affirmed the property manager who managed the unit before the Landlord purchased it informed him that he only needed to cut the grass and that the current Landlord did not give him instructions regarding the yard maintenance.

The Landlord stated he informed the Tenant on March 31, 2022 to properly maintain the yard.

The Landlords are claiming $8,892.45, as the Tenant damaged the unit's walls. The Landlord testified the Tenant is responsible for an unknown number of nail holes and scratches. The Landlord does not know when the unit's walls were painted prior to the

tenancy. The Landlord submitted into evidence 36 photographs showing the unit's walls when the tenancy ended and an estimate for the amount claimed.

The Tenant said he did not damage the walls.

The Landlords are claiming $735.00 for cleaning expenses, as the Tenant did not clean the unit when the tenancy ended. The Landlord affirmed he paid the amount claimed and submitted an invoice.

The Tenant stated he hired 3 cleaners for 3 hours of cleaning and the unit was clean when the tenancy ended.

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 the case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Yard damage

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Policy Guideline 1 states:

2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

The Tenant's testimony about maintaining the unit's yards was contradictory.

Based on the report, photographs and invoice, I find the Landlords proved, on a balance of probabilities, that the Tenant breached the clause 1(f) of the tenancy agreement and section 32(3) of the Act by not maintaining the yards and the Landlord suffered the loss claimed.

As such, I award the Landlords $9,534.90.

Wall damage

Policy Guideline 1 states: "2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. 3. The tenant is responsible for all deliberate or negligent damage to the walls."

The Landlord's testimony about the number of nail holes and scratches was vague, as the Landlord does not know the number of nail holes and scratches.

I find the 36 photographs submitted show a minimum amount of wall damage, considering the unit's size. I find the wall damage is regular wear and tear, not deliberate or negligent damage.

Based on the photographs submitted into evidence and the parties' testimony, I find the Landlord failed to prove, on a balance of probabilities, that the Tenant damaged the unit's walls.

I dismiss the Landlords' claim.

Cleaning

Section 37(2)(a) of the Act states the tenant must reasonably clean the rental unit when the tenancy ends.

The parties offered conflicting testimony about the cleaning condition when the tenancy ended. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The Landlords did not provide any documentary evidence to support their claim. The Landlords did not call any witnesses.

I find the Landlords failed to prove the Tenant did not clean the unit when the tenancy ended.

I dismiss the Landlords' claim.

Deposit

Section 38(4) allows a landlord to retain from a deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security or pet damage deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit.

I accept the uncontested testimony the Landlords received the forwarding address in writing on March 30, 2023.

Policy Guideline 17 states that "If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit."

As the Landlords received the forwarding address on March 30, 2023 and only submitted their application on April 26, I find the Tenant is entitled to double the deposit.

According to the deposit interest calculator (available at

http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html), the interest accrued on the deposit is $52.05.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the Tenant is entitled to a monetary award of $5,552.05 (double the deposit of $2,750.00 plus the interest accrued).

Filing fee and summary

As both parties were partially successful with their applications, each party will bear their filing fee.

In summary, I award the Landlords $9,534.90 and the Tenant $5,552.05.

Policy Guideline 17 states that when both parties are awarded compensation “, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties.”

I award the Landlords $3,982.85.

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the Landlords a monetary order in the amount of $3,982.85.

The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 19, 2023

Residential Tenancy Branch