Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

The tenants applied on 23 January 2023 to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask us for the following orders against the landlords.

1. Return of their security deposit in the amount of $1,750.00 [the 'Damage Deposit'] and of their pet-damage deposit in the amount of $1,750.00 [the 'Pet Deposit'], paid to the landlords by 31 December 2021.
2. Reimbursement for the $100.00 filing fee for their application.

On 18 June 2023 (several weeks before the scheduled hearing of the tenants' application), the landlords filed their own application to the RTB for Dispute Resolution. They ask us for the following orders against the tenants.

1. Compensation in the amount of $4,305.00 for damage that the tenants caused to the rental unit [the 'Damage Claim'].
2. Compensation in the amount of $4,189.20 for lost rent '[a]nd over due bills' [the 'Compensation Claim'].
3. Reimbursement for the $100.00 filing fee for their application.

The tenants participated in both hearings of this dispute. And the corporate landlords also participated in both hearings, by way of an agent.

These hearings were conducted *via* teleconference: we heard only the voices of those who participated in this hearing. The parties' oral statements to us in these hearings were made neither under oath nor affirmation: we exercised our discretion under section 74 of the Act to not administer any oaths as part of this relatively informal and expeditious teleconference.

Note that we refer to the participants in this dispute in the plural form, even though a party may be an individual. We do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

Preliminary Matter – Parties to Disputes

The landlords applied to remove the corporation named in the tenants' application as respondents; and replace them with the corporation named in the landlords' application as the applicants.

At the first hearing of this dispute, the tenants opposed this application. Then, at the continuation of this hearing, the tenants consented.

As a result, we removed the corporation named in the tenants' application as respondents; and replaced them with the corporation named in the landlords' application as the applicants.

Issues to be Decided

Did the landlords apply to claim against the Damage Deposit and the Pet Deposit in accordance with section 38 (1) of the *Residential Tenancy Act* [the 'Act']?

Did the tenants comply with section 37 (2) of the Act on moving out of the unit?

Background and Evidence

The landlords told us the following about the end of this tenancy:

1) they received a forwarding address for the tenants on 28 November 2022;
2) the tenancy then ended on 17 December 2022;
3) the landlords cancelled two move-out inspections that were to occur that day;
   a) after the tenants had vacated the unit, the landlords offered to inspect the unit with them on 18 or 19 December;
   b) the landlords went ahead and inspected the unit without the tenants, and found it to be messy and dirty and needing some repairs;
4) over the coming weeks, they arranged to have these repairs made (on 8 & 13 January) and to have the unit cleaned (on 29 January);
5) the cleaning cost them $1,050.00 (corroborated with a copy of an invoice from cleaners); and
6) over six months after receiving the tenants' forwarding address, the landlords applied to claim against the Damage Deposit and the Pet Deposit.

The landlords corroborated some of their statements about the messiness of the unit with photographs depicting garbage and furniture left behind, and food left in the fridge. They did not direct us to any photographs depicting damage to the unit.

Despite filing the Compensation Claim, the landlords told us nothing about any delay in re-renting the unit after the tenants vacated, or about any overdue bills for which they were responsible.

For their part, the tenants deny that they were offered move-out inspections on 18 or 19 December, and the landlords did not refer us to records of any communications to corroborate their assertion that they offered such inspections. The tenants denied that they damaged the unit.

Analysis

We have considered all the statements made by the parties and the documents to which they referred us during this hearing. And we have considered all the arguments made by the parties.

In writing this decision, we are mindful of the nature and volume of other applications to the RTB for access to limited hearing time. Parties are given an opportunity to participate in a focused and time-limited hearing, and the Director must carefully allocate resources in hearing disputes and writing decisions. As a result of the above, we will provide below only minimal reasons for our decision, sufficient to understand our reasoning.

Did the landlords apply to claim against the Damage Deposit and the Pet Deposit in accordance with section 38 (1) of the Act?

The tenants have applied to compel the landlords to return their deposits. They argue that the landlords have not complied with the Act: as they phrase it, the landlords, ‘did not go through the proper channels to keep the deposits’.

The landlords oppose this application, and apply to keep these deposits to compensate them for the losses they say that they suffered at the hands of the tenants.

We find that the relevant section of the Act is 38 (1), which reads (with emphasis added):

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:

(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;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlords concede that they did not repay these deposits to the tenants. And so the question that is left is, 'Did the landlords make an application for dispute resolution claiming against the Damage Deposit and Pet Deposit within 15 days after the later of the end of the tenancy and the date they received the tenants' forwarding address?'

Clearly, the later of these dates is 17 December. And so the period in which the landlords could apply to claim against these deposits 15 days after 17 December. But the landlords conceded that they did not make their application until over six months later, on 18 June.

What is the consequence?

Section 38 (6) of the Act tells us that if a landlord does not comply with subsection (1), then there are two consequences:

1) the landlord may not make a claim against the security deposit or any pet damage deposit; and
2) the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As a result, the landlords must pay these tenants $7,000.00 (which is double the amount of the Damage Deposit and Pet Deposit), plus $72.74 in interest, calculated from 31 December 2021 to today's date.

We note that, while not argued by the landlords, we see no support for the contention that the tenants lost their right to the return of these deposits by failing to participate in the move-out inspection: the landlords conceded that they cancelled the first two inspections; and though they told us that they offered to inspect the unit with the tenants on 18 or 19 December, the tenants deny this. Absent any corroborating record of such an offer, we find it just as probable that the landlords did not make this offer (as the tenants claim) as it is that they did (as they claim). And we find that the burden to prove that this offer was made lies with the landlords.

Did the tenants comply with section 37 (2) of the Act on moving out of the unit?

Section 37 (2) reads (in part), 'When a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear…'

We understand the landlords' argument to be that these tenants did not leave the unit reasonably clean and undamaged.

The tenants conceded that the landlords are owed a certain amount of money for the state in which they left the unit when they moved out, but did not concede that they left the unit damaged.

It is for the landlords to prove on a balance of probabilities that the tenants did leave the unit damaged. But while they had photographs to corroborate the messiness of the unit, they had nothing to corroborate the allegation that the tenants damaged the unit (other than invoices from a plumber and a painter, and these we find to be neutral: all they indicate is that some weeks after the tenants moved out, the landlords had some painting and plumbing done – there is no corroboration as to *why* this was done). And so in the face of the tenants' denial that they left any damage, we again find it just as probable that the unit was undamaged as it was damaged. The landlords failed to prove any loss under section 37 beyond the cost of hiring cleaners ($1,050.00).

Considering the concession by the tenants that the landlords are owed 'something' for the state in which they left the unit; and considering that the photographs submitted by the landlords depict a unit that is too messy for new tenants to move in; we find that the tenants did not leave the unit reasonably clean, and so the cost of hiring the cleaners is supported.

In their application, the landlords allude to further losses resulting from not being able to rent out the unit as soon as they could have because of the state of the unit, and also to unpaid bills. But as noted above, they made no argument on this point, and offered no proof.

Even had they argued this part of the their claim, we note that it would have been a challenging argument to make, absent any evidence that the landlords had arranged for new tenants to move in mid-month; or any compelling statements as to why the landlords delayed for several weeks before having repairs made and cleaning (not done until almost six weeks after the move-out) carried out.

And so we grant part of the landlords' claim, in the amount of $1,050.00, and dismiss the remainder of their claim.

As for the filing fees for these applications, we find that each side shall bear its' own costs: both sides were partly successful.

Conclusion

We order that the landlords pay to the tenants $7,072.74 (under section 38 (6) (b)), representing their deposits plus interest and penalty; less $1,050.00 for cleaning costs incurred by the landlords, under section 67. We find this sum to be $6,022.74.

The tenants must serve this order on the landlords as soon as possible. If the landlords do not comply with our order, then the tenants may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the tenants can enforce our order as an order of that court.

We make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 17 January 2024

Residential Tenancy Branch