



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Introduction

The Landlord seeks compensation pursuant to sections 26, 67, and 72 of the Residential Tenancy Act (the “Act”).

The Landlord filed one application for dispute resolution on August 31, 2023, and a second application for dispute resolution on October 18, 2023. The second application included additional claims and, basically included a revised claim made in the first application. For the purposes of this decision the applications will be treated as one.

The Landlord’s husband, the Landlord’s estates executor, and two respondent Tenants attended the hearing. There were no issues with respect to the service of documents.

Preliminary Issue: Naming of Parties

The Landlord who made this application recently passed away, and the Landlord’s husband attended the hearing as agent for the Landlord’s estate (hereafter the “Landlord” for brevity, and as the agent will be referred to in this decision). The Landlord’s estate’s executor briefly attended the hearing to confirm and authorize the Landlord’s husband to conduct the hearing in respect of the Landlord’s two applications.

I have updated the name of the applicant on the cover page of this Decision and the attached Order to reflect the passing of the Landlord and the creation of an estate.

Should there be any inadvertent errors in the naming of the applicant, either the executor or the Landlord’s husband may file or submit a request for correction with the Residential Tenancy Branch.

Issue

Is the Landlord entitled to compensation?

Evidence and Analysis

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

The tenancy in this claim ended on or about September 3, 2023. Monthly rent was \$3,000. There was a \$1,500 security deposit and a \$1,500 pet damage deposit. A previous arbitration decision resulted in the transfer of those deposits to the Landlord.

1. Claim for Unpaid Rent and Overholding

The Landlord seeks \$800.00 for unpaid rent and overholding rent. The particulars of the application states that "The tenants owed us \$3500.00 in unpaid rent as of August 31/2023. We agreed and received \$3000.00 from our pet & security deposits. The remainder owing is 500.00. Additionally, the tenants stayed 3 days past the move out deadline, leaving us in 3 days lost rent. Adding up to 300.00."

The Landlord submitted notarized records that reflect an amount owing of \$800.00. The Tenants disputed this claim but did not persuade me by either oral or documentary evidence that this amount is not owing.

Sections 26 and 57(3) of the Act require that a tenant pay rent under a tenancy agreement and requires a tenant to pay any amount that would be payable if a tenant overholds. Taking into consideration all of the relevant oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords has proven this claim and is thus awarded \$800.00.

2. Claim for Disposal of Abandoned Possessions

Section 37 of the Act requires that when a tenant vacates, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The Landlord seeks \$2,284.50 in compensation for costs related to hiring the Got Junk company to haul away two truckloads of property that the Tenants had abandoned. Several photographs of the abandoned property were submitted into evidence by the Landlord, and they depict vast quantities of everything from chairs to tables to other items. A receipt for the junk removal company was in evidence.

The Tenants testified that tried to get rid of much of this property by listing it as free, but they had no funds to remove it otherwise.

Taking into consideration all of the relevant oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving this claim and they are thus awarded \$2,284.50.

3. Remainder of Claims (Excluding Application Fees)

The remaining claims consist of claims for costs or losses related to a bathroom window, a damaged hall door, locks and keys, yard maintenance, a broken washing machine, a move out cleaning, a wall and window washing, and costs related to printing photographs for the Landlord's evidence package.

Despite the Landlord's agent's statement about a condition inspection report being included in the evidence, and despite my carefully going through every single page of the many packages submitted, no condition inspection report appears in evidence.

In the absence of evidence establishing the state and condition of the rental unit at the start of the tenancy, I am unable to make a finding that any of the damages or cleaning or repairing for which the Landlord seeks compensation were caused by the Tenants.

A condition inspection report is a critical piece of evidence in these types of claims. Why? Because, as stated in section 21 of the *Residential Tenancy Regulation*, "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."

In other words, without such evidence, I cannot find that the Tenants breached section 37 of the Act, and thus no compensation may flow.

Therefore, for these reasons, I must dismiss all remaining claims made by the Landlord. Including, as it were, the claim to recover the cost of printing photographs, as the Act does not permit costs or expenses related to arbitration be awarded (other than for the cost of the application fee).

4. Claim for Application Fees

Because the Landlord was successful with at least some of both of their applications, they are entitled to recover the cost of both application fees in the amount of \$200.00 (\$100.00 per application, pursuant to section 72 of the Act).

Summary of Award

In total, the Landlord is awarded \$3,284.80. Pursuant to sections 67 and 72 of the Act the Tenants must pay this amount to the Landlord's estate forthwith.

The Landlord's estate (specifically the agent) is issued a monetary order for this amount, with this Decision. The Landlord's agent or estate executor must serve a copy of the monetary order upon both Tenants. It should be noted that the monetary order may be filed and enforced in the Provincial Court of British Columbia.

Conclusion

The application are granted, in part, and the Landlord is awarded \$3,284.80.

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

Dated: January 13, 2024

Residential Tenancy Branch