Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Tenant filed two applications for dispute resolution under the *Residential Tenancy Act* (the "Act"). The first application, filed on September 7, 2023, is for compensation and to recover the cost of the application fee. The second application, filed on September 16, 2023, is for the return of the Tenant's security and pet damage deposit, and to recover the cost of the application fee.

Issues

1. Is the Tenant entitled to compensation?
2. Is the Tenant entitled to the return of their security and pet damage deposit?
3. Is the Tenant entitled to recover the cost of their two application fees?

Background and Evidence

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 began on August 31, 2020, and ended on September 1, 2023. Monthly rent was $2,000. The Tenant paid a $1,050.00 security deposit and a $1,050.00 pet damage deposit. There was a written tenancy agreement on this tenancy.

The Tenant seeks the return of their security and pet damage deposit in the amount of $2,100.00. They testified that they gave their forwarding address in writing to the Landlords by Canada Post Xpresspost on October 25, 2023. The Tenant also sent them the forwarding address by text message on September 7, 2023.

They further testified that at no time did they give their written authorization for the Landlords to keep the deposits, neither of the deposits have been returned, and they are unaware of any application made by the Landlords claiming against the deposit.

The Landlords gave evidence that the Tenant did not give them proper notice in ending the tenancy. Rather, the Tenant let them know mere days before vacating the rental unit. The Landlords scrambled to find new tenants and chose to retain the entirety of the deposits as compensation for the upcoming loss of rent.

The Tenant also seeks compensation in the amount of $2,000 for, as described in their application, “Loss of use of part of property for 21 days and knowingly letting us live in an unsafe environment and not fixing the issues.”

The Tenant explained that the house has mold and potential asbestos problems. They explained that the rental unit (the upper portion of the house) shared an HVAC system with the lower portion of the house (which had previous flood or water issues and black mold). The Tenant was concerned about the black mold and potential asbestos exposure to her, her three children, and family pets. There is a reference to a report authored by a restoration company that looked at the house that is submitted into evidence.

The Tenant also testified that the Landlords had blocked her access to the backyard, and that they had piled garbage everywhere, it was hard to a stroller through, and that there was about a three-week loss of use of the property.

The Landlords gave evidence that the Tenant in fact left the property damaged (one more reason why they did not return her security and pet damage deposits), the Tenant did not participate in any final condition inspection, and that the Tenant’s access to the backyard was not blocked. Yes, the carport was blocked at one point, but the carport was not part of the rental unit and was instead for the use of the people in the downstairs. Rather, the Tenant in fact had access to the backyard through the back up the rental unit in the upstairs and through the side of the house.

Analysis

1. Claim for Return of Security Deposit

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
> (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.

In this dispute, the Tenant provided her forwarding address in writing by text message on September 7, 2023. Based on the copy of a screenshot of that text message, which is preceded by a text from one of the Landlords, it is reasonable to accept that the Landlord received the Tenant's forwarding address on or about September 7, 2023. It is my interpretation that subsection 38(1)(b)'s phrase "in writing" can include a "written" text message. It is common, accepted knowledge that people "write" emails and "write" texts all the time. Therefore, I conclude that the Landlords received the Tenant's forwarding address in writing on or shortly after September 7, 2023.

The Tenant did not provide her written authorization for the Landlords to retain any of the deposits, as is required under section 38(4)(a) of the Act. And the evidence persuades me to find that the Landlords neither repaid the security and pet damage deposit nor made an application for dispute resolution claiming against the deposits. While it is not lost on me that the Landlords sought to retain the deposits to cover property damage and potential or actual loss of rent, they were legally required to file an application if they wanted to keep the deposits. In summary, then, I must conclude that the Landlords did not comply with subsection 38(1) of the Act.

Section 38(6) of the Act states that

If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

It is my finding that because the Landlords did not comply with subsection 38(1) of the Act, they must pay the Tenant double the amount of both the security and the pet damage deposit.

The Landlords are therefore ordered to pay $4,200.00 ($1,050.00 security deposit + $1,050.00 pet damage deposit = $2,100.00 x 2 = $4,200.00). In addition, the Landlords are required to pay interest on the security and pet damage deposits as calculated in accordance in accordance with the *Residential Tenancy Regulation* in the amount of $46.46, using a start date of August 31, 2020, and a return date of February 3, 2024.

As the Tenant was successful in her application for the return of the security and pet damage deposits, she is entitled to recover the cost of this application fee in the amount of $100.00, pursuant to section 72 of the Act.

In total, the Landlords are ordered to pay $4,346.46 to the Tenant. The Tenant is granted a monetary order for this amount with this Decision, and the Tenant must serve a copy of the order upon the Landlords. The order may be filed and enforced in the Provincial Court of British Columbia, if necessary.

2. Claim for Compensation

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.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

The Tenant's application advances a case of unsafe living conditions and blocked access. However, the Tenant has not stated which section or sections of the Act, the regulations, or the tenancy agreement was breached. Further, the Tenant provided no independent, supporting evidence to show any loss of use of the rental unit, and, with respect, the renovation company's "report" does not provide evidence of any actual black mold or asbestos exposure.

It is not my role as an independent decision-maker to read into an applicant's case or fill in the missing pieces. Rather, it is an applicant's responsibility for presenting their case and for proving all required elements in a claim for compensation.

For this reason, the Tenant has not met the onus of proving how the Landlords may have breached the Act, the regulations, or the Act. Secondly, even if such a breach had been proven, the Tenant has failed to persuasively explain how they arrived at the amount of $2,000 (which seems to be the full amount of the rent), or, what if any steps they took to mitigate their purported loss.

In short, i`t is my finding that the Tenant has not proven the required elements in a claim for compensation. Accordingly, the Tenant's application for compensation is dismissed without leave to reapply. The application fee for this application will not be ordered to be paid by the Landlords.

Conclusion

The application for the return of the Tenant's security and pet damage deposits is granted.

The application for compensation is dismissed, without leave to reapply.

This decision is final and binding, except where otherwise permitted under the Act, and the decision is made on authority delegated under section 9.1(1) of the Act.

Dated: February 3, 2024

Residential Tenancy Branch