



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Introduction

The Tenant seeks the return of their security deposit and recovery of the cost of their application fee, pursuant to sections 38 and 72 of the *Residential Tenancy Act* (“Act”). By cross application, the Landlords seek compensation, including recovery of their application fee, pursuant to sections 67 and 72 of the Act.

Issues

1. Is the Tenant entitled to the return of their security deposit?
2. Is the Tenant entitled to recover the cost of their application fee?
3. Are the Landlords entitled to compensation?
4. Are the Landlords entitled to recover the cost of their application fee?

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. No issues regarding the service of either parties’ evidence were raised during the hearing.

The tenancy began on November 1, 2022, and ended on October 31, 2023. There are two tenancy agreements, however.

One of the tenancy agreements was for a fixed-term tenancy cover the period of November 1, 2022, to October 31, 2023 (the “first agreement”). Rent was \$1,800.00 per month.

On September 10, 2023, the parties signed a second tenancy agreement for a fixed-term tenancy that would begin November 1, 2023, and end on October 31, 2024 (the “second agreement”). The second agreement also included the clause that the tenancy would end on October 31, 2024, and that the “LANDLORD OR FAMILY MEMBER WILL OCCUPY RENTAL UNIT.” Monthly rent on the second agreement was \$1,900.00.

There is a \$950.00 security deposit currently held in trust by the Landlords pending the outcome of these applications. \$900.00 was paid on October 27, 2022, for the first agreement, and an additional \$50.00 was paid in September 2023 for the second agreement.

During September and October 2023, the Tenant decided to move elsewhere. He attempted to assign the tenancy covered by the second agreement. The sole potential assignee that he proposed to the Landlords was not accepted by the Landlords. The Landlords advised him of such and in response the Tenant told the Landlords that they were breaching a material term of the tenancy agreement by not permitting the assignment. The Tenant gave the Landlords one day to correct the breach. (see Tenant’s “Failure to Comply with a Material Term” letter, October 20, 2023).

On October 21, the Landlords wrote a response to the Tenant, letting him know that they did not accept the Tenant’s proposed assignee (“Timothy”). And that the Landlords “recommend that you pack your complete stuff and will be ready to leave on October 31st at noon time.” Shortly thereafter, the Tenant emailed the Landlords, advising them that “I find your decision to withhold consent for assignment unreasonable, because you did not provide any reasons for withholding consent which is against our written agreement.

Despite my lease ending on October 31st, 2024. I will comply with your demand to move out on October 31st 2023". The Tenant vacated on October 31, 2023.

The Landlords seek compensation for the loss of rent from November 1, 2023, to the end of February 2024. Despite the Landlords' advertisement on Kijiji and on Facebook for the rental unit, they were unable to secure a new tenant until March 1, 2024. This portion of their application includes the following particulars:

A 1-year lease agreement was signed on Sept 10, 2023 for Nov 1, 2023 to Oct 31, 2024. The security deposit was paid by tenant. On Oct 5, 2023, the tenant expressed his desire to leave and find an assignee because he found a cheaper rent. We did not approve his suggestion of a candidate for assignee as he did not meet our criteria. We attempted to help tenant out by finding an assignee or a new tenant starting Oct 5. We continue to try to minimize our losses by finding a suitable assignee/tenant.

The Landlords also seek compensation of approximately \$950.00 for various costs related to cleaning and repairing the rental unit. The Landlords testified about these various costs and repairs.

Both parties submitted a substantial volume of documentary evidence, including letters, emails, photographs, and so forth.

The Tenant's application included the following particulars (reproduced as written):

Original damage deposit -950 Double damage deposit for compensation to end tenancy early due to breach of material contract term as per RTA - 950
Accommodation for 1 day to spend a day at hotel due to early move out on October 31, 2023 – 150

The Tenant did not submit a Monetary Order Worksheet, nor did he submit a copy of a receipt for the purported hotel stay. However, he briefly commented in the hearing that he was not pursuing the cost of the hotel stay.

Analysis

1. Landlords' Claim for Compensation (for Damages and Repairs)

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this dispute, the parties dispute the state and the condition of the rental unit at the end of the tenancy. Both parties submitted photographs of the rental unit at the start and at the end of the tenancy. The Landlords submitted a condition inspection report.

Section 21 of the *Residential Tenancy Regulation* ("Regulation") states that 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."

At this point, I wish to point out that the Landlords' condition inspection report is woefully inadequate and does not comply with several requirements under section 20(1) of the Regulation. The report does not contain the correct legal names of the parties (the signature section contain a few names, but there is no separate section of the report where the names need to appear). The report does not indicate the date on which the Tenant is entitled to possession of the rental unit. There is no address for service of the Landlords. Nor was there "appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments."

And the report was missing an entire statement that is required under subsection 20(1)(j) of the Regulation. Last, the report does not comply with subsection 20(2) of the Regulation.

In short, it is my finding that the Landlords' condition inspection report was not completed in accordance with the Regulation and thus is insufficient evidence as to the state of repair and condition of the rental unit. In the absence of the admissibility or evidentiary weight of the condition inspection, I am not persuaded that the Landlords have, on a balance of probabilities, that the Tenant breached section 37 of the Act. For this reason, the Landlords' claim for compensation for everything not related to the loss of rent (which is address below) is dismissed without leave to reapply.

As an aside, the Landlords may wish to consider using the recommended Condition Inspection Report (form RTB-27) available at www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb27.pdf. This report complies with both the Act and the Regulation.

2. Landlords' Claim for Loss of Rent

Before determining whether the Landlords are entitled to this claim, I must establish whether the tenancy was ended in accordance with subsection 45(3) of the Act. This is the section of the Act where, if a landlord (a) fails to comply with a material term of the tenancy agreement and (b) has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, then (c) the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

What is problematic in this dispute, however, is that the Tenant states (my emphasis) "Therefore, I have the right to end my tenancy if the matter is not corrected by October 21, 2023." But nowhere in the October 20, 2023, letter, or in any other correspondence or communication for that matter, does the Tenant indicate the effective date on which

the tenancy would end. In other words, the Tenant's notice to end the tenancy does not comply with subsections 45(3), 45(4), and 52(c) of the Act. For this reason, it is my finding that the tenancy did not end pursuant to any tenant's notice to end tenancy under subsection 45(3) of the Act.

However, the facts support a finding that the tenancy ended by virtue of subsection 45(1)(c) of the Act. This section states that a tenancy ends if "the landlord and tenant agree in writing to end the tenancy."

The Landlords' declaration, through their recommendation that the Tenant pack his belongings and "be ready to leave on October 31st" at noon, and the Tenant's reciprocal acknowledgement of the Landlords' "demand to move out on October 31st" is, taken together, a written agreement by the parties that the tenancy would end on October 31, 2023. This final agreement between the parties voids any attempted and noncompliant notice to end the tenancy from the Tenant, and it renders unenforceable any further tenancy agreement.

For this reason, it is my finding that the Landlords are not entitled to any compensation for the future loss of rent based on the second agreement. The tenancy ended before the second agreement would have otherwise gone into effect. The Landlords' claim for compensation for future loss of rent is dismissed without leave to reapply.

3. Landlords' Claim for Cost of Application Fee

The Landlords' claim to recover the application fee is dismissed without leave.

4. Tenant's Claim for Return (and Doubling) of Security Deposit

It is noted that the Tenant sought a doubling of the security deposit. However, the tenancy ended on October 31, 2023, and the Landlords filed their application on November 9, 2023, which is within the 15-day period required under subsection 38(1) of the Act.

Given the Landlords' compliance with subsection 38(1)(d) of the Act, the Tenant is not entitled to a doubling of the security under subsection 38(6)(b) of the Act.

However, the Tenant is entitled to the return of his \$950.00 security deposit, plus interest as calculated in accordance with the Regulation. Interest on the \$900.00 security deposit is \$22.26 (with a start date of October 27, 2022, and a return date of March 9, 2024). Interest on the \$50.00 security deposit is \$1.24 (with a start date of September 10, 2023, and a return date of March 9, 2024).

5. Tenant's Claim for Cost of Application Fee

The Tenant is entitled to recover the cost of the application fee of \$100.00.

In total, the Tenant is entitled to compensation in the amount of \$1,073.50. The Landlords are hereby ordered, pursuant to sections 38 and 72 of the Act, to pay this amount to the Tenant within 15 days of receiving this decision. The Tenant is granted a monetary order with this decision which he must serve upon the Landlords.

Conclusion

The Tenant's application is granted, and he is awarded \$1,073.50.

The Landlords' application is dismissed, without leave to reapply.

Dated: March 9, 2024

Residential Tenancy Branch