



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Introduction

The Landlord sought compensation under the *Residential Tenancy Act* (the “Act”).

The Landlord filed two applications, though they appear to be identical and are considered “repeat” applications. This decision will consider the applications as if they were one single application.

This matter was first heard on June 21, 2024, at which time it was deemed necessary to briefly adjourn so that the Tenant could serve their evidence upon the Landlord. This appears to have been done. The Landlord also submitted a monetary order worksheet.

Issue

Is the Landlord entitled to compensation?

Background and Evidence

The tenancy began on March 1, 2023, and ended on March 1, 2024. It is important to note that the Landlord did not complete a condition inspection report at the start of the tenancy; however, a report was completed at the end of the tenancy.

Monthly rent was \$3,500.00. The Tenant paid a security deposit of \$1,750.00. It appears that the Tenant also paid some sort of “advanced deposit” of \$1,750.00; the Landlord did not dispute that they had collected this additional deposit.

While the Tenant himself and his family vacated the rental unit around the end of September 2023, they sublet the rental unit to other tenants until the Landlord took over management of these subtenant in March 2023.

The Landlord sought \$6,759.40 in compensation for repairs, labour, deep cleaning, mold removal, painting, missing light bulbs, and replacement costs for broken and missing furniture. Included in these claims was the claim for two application fees (\$200), a claim for a BC Hydro deposit, and \$3,500.00 for unpaid rent for February 2024. The Landlord provided testimony regarding these various claims.

The Tenant disputed the entirety of the Landlord's claims and called them "absurd." The Tenant acknowledged that no rent had been paid for February 2024.

Analysis

1. Claim for Unpaid Rent

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. The Tenant acknowledge that they did not pay rent for February 2024. Therefore, it follows that the Landlord is entitled to compensation for unpaid rent in the amount of \$3,500.00.

The Landlord legally collected, and retains, a security deposit of \$1,750.00. The Landlord also collected—contrary to the Act—an additional deposit of \$1,750.00. To be clear, this was not a pet damage deposit. Rather, it was an amount that the Landlord demanded of the Tenant at the start of their tenancy. While an additional deposit of this nature is permitted in Ontario, such is not the law here in British Columbia.

That having been said, the Landlord is in possession of two deposits totalling \$3,500.00. In other words, the amount of the rent. The Landlord may retain those two deposits in full satisfaction of his claim for unpaid rent.

2. Remaining Claims

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?

In this application, the Landlord sought compensation for various matters including cleaning, repairing, and for broken or damaged furniture. The Tenant disputes all these claims. While the Landlord submitted various photographs of the rental unit at the start and at the end of the tenancy, he did not submit a completed condition inspection report. This is a vital piece of evidence upon which much turns.

Indeed, section 21 of the *Residential Tenancy Regulation* states that

In dispute resolution proceedings, 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 the absence of a completed condition inspection report from the beginning of the tenancy, I am unable to find, on a balance of probabilities, that the Landlord has proven that the Tenant breached the Act. As such, the first element of the four-part test is not proven and the Landlord's claim for compensation (other than for the unpaid rent) must be dismissed without leave to reapply.

In respect of the claim for \$500 for a BC Hydro deposit, the Landlord did not fully or properly explain the nature of this claim. Further, the Landlord provided no supporting documentary evidence to bring clarity to this claim or how the Tenant might owe this amount to the Landlord. Accordingly, I am not persuaded that the Landlord has sufficiently made out a claim and this aspect of the Landlord's application is dismissed.

3. Claims for Application Fees

It is unclear why the Landlord decided to file two applications for dispute resolution. While the Landlord was successful in their claim for unpaid rent, given that the Landlord was not permitted or authorized by law to collect an additional deposit, I decline to award the Landlord any recovery of the application fees.

Conclusion

The applications are granted, in part, for the claim for unpaid rent. The remainder of the applications are dismissed without leave to reapply.

The Landlord is authorized to retain the two deposits in full satisfaction of the unpaid rent.

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

Dated: July 3, 2024

Residential Tenancy Branch