



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Introduction

The Landlord seeks compensation under the *Residential Tenancy Act* (the “Act”). By way of cross-application the Tenants seek the return of their security deposit.

Issues

1. Is the Landlord entitled to compensation?
2. Are the Tenants entitled to the return of their security deposit?

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 in 2022 but there have been two tenancy agreements since. The second tenancy agreement began on August 1, 2023, and the tenancy was to be a fixed term ending on July 31, 2024. However, the tenancy ended early on February 28, 2024. The Tenants gave notice to the Landlord in mid-January 2024 that they would be leaving at the end of February.

Monthly rent was \$2,754.00 and the Tenants paid a \$1,377.00 security deposit. There is a written *Residential Tenancy Agreement* in evidence.

The Landlord seeks the following compensation totalling \$4,286.00 from their former Tenants (reproduced from the Landlord’s Monetary Order Worksheet:

Damage Repair Cost	\$966.00
Refrigerator Vegetable Cover Frame Replacement	\$103.60
Cleaning Services	\$367.50

Rental Advertisement	\$46.50
Finding a New Tenant through RMA	\$1,757.70
Rent loss between Mar and July 2024	\$945.00
Application Fee	\$100.00

The Landlord testified that there were various damages to the rental unit at the end of the tenancy. The amount claimed--\$966.00—is based on an estimate from a repair person, the work is not slated to begin until September 2024, and no monies have yet been expended on these repairs. There are, it should be noted, tenants currently in the rental unit.

The Landlord testified that the Tenants broke the refrigerator's vegetable cover frame. The Tenants testified that it was broken when they began the tenancy. It should be noted that there was a condition inspection report, but the columns related to the beginning of the tenancy and the condition of the rental unit at that time are blank. The Landlord has not yet purchased the refrigerator part.

The Landlord testified that they incurred cleaning costs of \$367.50 because the Tenants left the rental unit very dirty, in particular the kitchen and the bathrooms. The cleaners took several hours to clean the property. The Tenant testified that their photographic and video evidence shows that the rental unit was in a reasonable condition at the end of the tenancy.

The Landlord gave evidence that, because the Tenants broke the fixed-term tenancy, she had to take out advertisements (to find new tenants), and she did so starting as early as mid-January. After not finding a new tenant right away, the Landlord hired a property manager to secure new tenants, which they did. New tenants moved in March 1, 2024. The Landlord incurred costs for advertisements and a property manager.

The Tenants submitted that the Landlord was supposed to sign a mutual agreement to end the tenancy, but never did.

The Landlord also claims \$945.00, representing the difference in rent between what the Tenants were paying in rent to what the new tenants are paying, from March 2024 until the end of July 2024. This is when the fixed-term tenancy was to end.

Regarding the Tenants' application for the return of their security deposit, an arbitrator in a previous arbitration hearing (on April 29, 2024) requested that the Tenants read out

their forwarding address. The Landlord in that hearing acknowledged receiving the address. The Landlord then filed the present application on May 6, 2024.

Analysis

A. Landlord's Application

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.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

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?

1. Claim for Damage Repair Cost

For this claim, the Landlord has not, according to her testimony, expended any monies for repairs. The amount claimed is an estimate only, and any work is not supposed to begin until September 2024. Thus, I am not satisfied that the Landlord has, in fact, suffered any monetary loss because of any breach. (I make no findings regarding whether the Tenants breached the Act.)

Indeed, if any repair work was undertaken, it would not occur until almost 7 months after the Tenants have left the property. It would be unreasonable and unfair for the Tenants to pay for repairs this long after the tenancy ended given that there have now been new tenants living there over that period of time.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not met the onus of proving this claim. This claim is dismissed without leave to reapply.

2. Claim for Refrigerator Vegetable Cover Frame Replacement

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

The parties' evidence is contradictory on this claim, with the Landlord saying the Tenants broke the cover and the Tenants saying it was already broken when they began the tenancy. What is more, the condition inspection report completed on February 28, 2024, contains absolutely no information under the "Condition at Beginning of Tenancy" columns. In the absence of that information, I am unable to conclude on a balance of probabilities that the cover frame was not damaged at the start of the tenancy as the Tenants submit.

Taking into consideration the testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has failed to establish that the Tenants breached section 37 of the Act. This claim is dismissed without leave to reapply.

3. Claim for Cleaning Services

As with the claim for the refrigerator vegetable cover frame replacement, the condition inspection report is missing vital information as to the state and condition of the rental unit at the start of the tenancy. In the absence of that information, I am unable to conclude that the Tenants breached section 37 of the Act by somehow leaving the rental unit in anything but a reasonably clean condition. Indeed, having viewed the Tenants' two-minute-long move-out video, I am satisfied that they left the rental unit in a reasonably clean condition.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I must find on a balance of probabilities that the Landlord has not met the onus of proving this claim. This claim is thus dismissed without leave to reapply.

4. Claim for Rental Advertisement and Hiring of Property Rental Manager

The Tenants broke a fixed-term tenancy. A fixed-term tenancy may only be ended pursuant to section 45(2) of the Act—in other words, a fixed-term tenancy must run until its end date. If a tenant ends it earlier, in the absence of a mutual agreement to end the tenancy, then the tenant will have been found to have breached the tenancy.

While it is not lost on me that the Tenants expressed frustration with the Landlord's refusal to sign a *Mutual Agreement to End a Tenancy* (the "RTB 8" form), the Landlord was never under any obligation to do so. Even if she initially conveyed some interest in possibly doing so.

Based on the evidence before me, it is my finding that the Tenants breached section 45(2) of the Act by ending the fixed-term tenancy early. But for the Tenants' breach of the Act the Landlord would not have incurred losses related to the cost of finding a new tenant. Further, those losses have been established and proven: \$46.50 for advertisements and \$1,757.70 for a rental property manager. The taking out of reasonably costing ads and the hiring of a rental property manager (while not inexpensive in its own right), are, I find, reasonable steps taken by the Landlord to minimize their loss and potentially rather large losses.

Taking into careful consideration all the 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. Accordingly, the Landlord is awarded \$1,804.20.

5. Claim for Rent Loss

While the Landlord certainly can be said to have taken steps to minimize her loss in respect of rent income, I am not persuaded that the Landlord is entitled to the difference in rent between what the Tenants were paying and what the new tenants are paying. The Landlord or their rental property manager could have, but chose not to, rented the rental unit to new tenants at the same rent.

However, they chose to rent the property out at a lower rent and thus they must bear the loss of any difference not charged. For this reason, I am unable to find that the Landlord took reasonable steps (that is, charging the same rent) in minimizing her loss. This claim is dismissed without leave to reapply.

6. Claim for Cost of Application Fee

Pursuant to subsection 72(1) of the Act the Landlord is entitled to recover the cost of her application fee in the amount of \$100.00.

Summary of Landlord's Claims

In total, the Landlord is awarded compensation in the amount of \$1,904.20.

Pursuant to subsection 38(4)(b) of the Act the Landlord is authorized to retain the Tenants' security deposit of \$1,377.00 in partial satisfaction of the amount awarded. The Tenants are ordered to pay the balance of \$527.20.

The Landlord is issued a monetary order for this amount, with this decision, and the Landlord must serve a copy of the monetary order upon the Tenants. The monetary order may be filed and enforced in the Provincial Court of British Columbia.

B. Tenants' Application

Given that the Landlord is entitled to retain the entirety of the Tenants' security deposit, the Tenants' application for the return of their security deposit must be dismissed without leave to reapply.

Further, because the Landlord received the Tenants' forwarding address on April 29, 2024, and made her application for dispute resolution on May 6, 2024, the Landlord complied with subsection 38(1) of the Act and the Tenants are therefore not entitled to any doubled amount under subsection 38(6) of the Act.

Conclusion

The Landlord's application is granted, in part, and the Landlord is awarded compensation in the amount of \$1,904.20. The Landlord is authorized to retain the Tenants' security deposit and the Tenants are ordered to pay \$527.20 to the Landlord.

The Tenants' application is dismissed without leave to reapply.

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

Dated: July 31, 2024