Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNRL-S, MNDL-S, LRSD, FFL, MNSDS-DR, FFT

Introduction

The Landlords seek compensation pursuant to sections 7, 67, and 72 of the *Residential Tenancy Act* (the "Act"). The Tenants seek the return, and doubling, of a security deposit and recovery of the application fee under sections 38 and 72 of the Act.

Issues

1. Are the Landlords entitled to compensation?
2. Are the Tenants entitled to the return, and doubling, of their security deposit?
3. Is either party entitled to the return 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.

The Landlords seek $26,163.30 in compensation for the following: (1) $23,400.00 for the Tenants' alleged and purported subletting of a basement suite in the rental unit over a period of 13 months; (2) $565.39 for the replacement cost of a cracked glass in the lower front basement window; (3) $71.66 for the cost to replace a severely cracked and unusable bin inside a fridge; (4) $1,260.00 for the restoration cost of garden beds and lawns; (5) $866.25 to replace 12 dead shrubs lost as a result of the Tenants' failure to water them; and (6) $100.00 for the application fee.

The Landlords testified that the Tenants sublet the lower suite in the house without the Landlords' knowledge or consent and that they, the Landlords, therefore lost the potential to earn rent from the situation.

The Tenants disputed this and testified that the Landlords knew the lower part of the house would be occupied by the corporate Tenant and its employees.

The Tenants testified that they watered the lawn and gardens as required to do under the tenancy agreement. Further, they testified that the broken window and broken fridge bin were not originally marked down on the condition inspection report.

The Tenants seek the return of their $2,150.00 security deposit and a doubling of this amount. They also seek to recover the cost of their application fee.

Both parties agreed that the tenancy ended when the Tenants moved out on March 31, 2024. The Tenants provided their forwarding address, in writing, to the Landlords on April 2, 2024. The Landlords filed their application for dispute resolution on April 30, 2024.

Analysis

1. Landlords' 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?

Regarding the claim for $23,400.00, regardless of whether the Tenants had permission to sublet the lower part of the house, the Landlords did not suffer any type of monetary loss. While I appreciate the Landlords' position that had they been able to sublet the lower part they would have earned rent, the Landlords do not appear to have made any effort to rent out the lower part. Indeed, the Landlords testified that they did not know about the "unauthorized" sublet for over a year. In other words, the Landlords cannot be

said to have suffered a theoretical loss when the Landlords took no steps in 13 months to rent out the lower suit. For this reason, I find that, even if the Tenants did sublet the lower portion without permission (and I make no findings one way or another in this regard), the Landlords have not proven a loss. This aspect of their claim is dismissed without leave to reapply.

Regarding the claim for the broken window, there is insufficient evidence before me to find that the window glass was broken during the tenancy, and not before. While it is noted on the condition inspection report, the state and condition of the basement living room window was simply not recorded on the report at the start of the tenancy. For this reason, I am unable to find, on a balance of probabilities, that the Tenants are liable for the broken window. This aspect of the Landlords' claim is thus dismissed without leave to reapply.

Regarding the broken fridge, I am satisfied based on the evidence that the Tenants breached section 37 of the Act, which 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. The condition inspection report makes it clear that the Tenants damaged the bin during the tenancy. The Landlords have proven a loss, there is little by way of mitigating that loss short of replacing the bin, and the loss would have not occurred but for the Tenants' negligence.

For these reasons, I grant the Landlords' claim for $71.66 for the purchase of a replacement bin for the refrigerator.

Last, regarding the dead shrubs and restoration cost of garden beds and lawns, while there is an entry in the condition inspection report for "lawn (front & back)" and "not been cut, negligence of care," these entries appear to have been made only during the end of tenancy inspection. There is no additional documentary evidence, such as photographs, depicting and establishing the state and condition of the lawn and gardens at the start of the tenancy. Nor, for that matter, any photographic evidence as to the state and condition of the lawn and gardens at the end of the tenancy. For this reason, I am unable to find, on a balance of probabilities, that the Landlords have proven a breach of the Act in relation to their claim for compensation for the gardens, lawn, and dead shrubs. This aspect of the Landlords' claim is dismissed without leave to reapply.

Because the Landlords were successful on one aspect of their claim, they are therefore entitled to an award of $100.00 under section 72 of the Act for the application fee.

In total, the Landlords are awarded $171.66 in compensation. The Tenants are ordered under sections 67 and 72 of the Act to pay this amount to the Landlords. The Landlords are issued a monetary order for this amount, and a copy of the monetary order must be served by the Landlords upon the Tenants.

2. Tenants' Application

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
>
> (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 tenancy ended on March 31, 2024, and the Landlords received the Tenants' forwarding address in writing on April 2, 2024. The Landlords did not repay any of the security deposit or make an application for dispute resolution within 15 days. Rather, the Landlords made their application for dispute resolution on April 30, 2024, well outside the 15-day requirement.

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.

In this application, the Landlords did not comply with subsection 38(1) of the Act and therefore they may not make any claim against the security deposit, and they must pay the Tenants double the amount of the security deposit. Therefore, the Tenants are entitled to double the amount of the security deposit in the amount of $4,300.00.

The Tenants are entitled to recover the cost of the application fee of $100.00, pursuant to section 72 of the Act.

The Tenants are entitled to interest in the amount of $77.37, as per the *Residential Tenancy Regulation* (for 2023, $2150.00: $35.15 interest owing (1.95% rate for 83.82% of year), and for 2024, $2150.00: $42.22 interest owing (2.7% rate for 71.59% of year).

In total, the Tenants are awarded $4,477.37. The Landlords are ordered to pay this amount to the Tenants, and the Tenants are granted a monetary order, a copy of which must be served upon the Landlords.

Conclusion

The Landlords are awarded $171.66 and are granted a monetary order for that amount.

The Tenants are awarded $4,477.37 and are granted a monetary order for that amount.

Each party must serve a copy of their monetary order upon the opposing party. Each party may file and enforce their respective monetary order in the Provincial Court of British Columbia (Small Claims) if necessary.

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

Dated: September 19, 2024

Residential Tenancy Branch