DECISION

Introduction

The Landlord seeks compensation against their former Tenant pursuant to sections 7 and 67 of the *Residential Tenancy Act* (the "Act"). The Landlord also seeks to recover the cost of their application fee.

The Tenant seeks the return of his security deposit, along with interest, pursuant to section 38 of the Act. The Tenant also seeks to recover the cost of his application fee.

Further to my interim decision of November 4, 2024, the parties have provided written submissions, and I have carefully reviewed those submissions, along with relevant evidence, in making this decision.

Issues

1. Is the Landlord entitled to compensation?
2. Is the Tenant entitled to the return of his 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 on either March 14 or March 15, 2023, and ended on either June 25 or June 30, 2024. (The parties differ a bit on these dates, though I do not find these discrepancies to be material.) The monthly rent was $1,895.00 and the Tenant paid a $947.50 security deposit on March 4, 2024. An Interac e-Transfer confirmation document is in evidence regarding this deposit and the date.

The Landlord currently holds the Tenant's security deposit in trust pending the outcome of these applications. There was a written *Residential Tenancy Agreement* in place on the tenancy and a copy is in evidence.

The Landlord seeks $1,817.88 for, as described in the Landlord's application: "The cost of the new carpet/removal of the old one is $1,044.29 plus $84.00 for a visit from the cleaners to address any urine on the underlay prior to install plus we have had to reimburse 6 days of rent to the new tenant as he could not sleep inside the unit at $71.18/day =$427.09. On top of that, the move out cleaning was $105.00 and the carpet cleaning of the old carpet was $157.50. Total expenses are $1,817.88."

There is a Condition Inspection Report ("CIR") submitted into evidence by the Landlord. The CIR appears to have been completed on June 27, 2024, the date of the move out inspection. Under the section "Master Bedroom" for floor/carpet, there is the Landlord's notation "Bad smell - carpet?" and the condition indicated as "Fair". The CIR is absent any information—that is, it was not completed—at the start of the tenancy.

The Landlord submits that the Tenant never made any complain about any foul odor during the tenancy, and that the bad smell can only be attributed to the Tenant's negligence or conduct during the tenancy. A tenant who took possession of the rental unit after the tenancy ended complained about the smell, and the Landlord ultimately replaced the carpet, after attempting to clean it. The Landlord also did some additional cleaning of the rental unit.

The Tenant disputes the entirety of the Landlord's claim. He submits that in early January 2024 the Landlord emailed the Tenant to inform that there is a smell coming from the apartment and that he would like access. (The Tenant was out of country at the time.) A few days later, on January 6, the Landlord tells the Tenant that he thinks there is a mouse in the vents or walls that is causing the smell. The Tenant submitted that "The suite in question is located close to railway tracks and the area is infested with rodents."

Regarding the Tenant's application, there is documentary evidence that the Tenant provided his forwarding address in writing by using an RTB47 form. He emailed this form to the Landlord on August 6, 2024, at 6:41 PM. There is, it is noted, no further email beyond this date; that is, there is no evidence as to when the Landlord received the email sent on August 6.

The Landlord filed their application for dispute resolution on August 23 and the Tenant filed his application for dispute resolution on August 26, 2024.

Analysis

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 respect of the Landlord's application, a crucial piece of evidence and required documentation is missing: a Condition Inspection Report completed at the start of the tenancy.

A landlord is legally required to complete such a report at the start of every tenancy, as per sections 23 and 24 of the Act. In this case, the CIR was only completed at the end of the tenancy. There is no evidence of the state and condition of the rental unit at the start of the tenancy.

Therefore, there is no way for me to determine whether the Tenant breached the Act, such as section 37 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. Further, it is worth noting that a completed condition inspection report 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 (section 21, *Residential Tenancy Regulation,* B.C. Reg. 234/2006, the "Regulation").

In this dispute, the Landlord did not provide a preponderance of evidence, or any evidence for that matter, establishing the condition of the rental unit at the start of the tenancy. Unless there is clear and convincing documentary evidence regarding the condition of the rental unit at both the end *and* the start of the tenancy, I am simply not prepared to find that the Tenant breached the Act or the tenancy agreement.

For these reasons, in 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 proven a breach of the Act by the Tenant. Therefore, the Landlord's application for compensation is respectfully dismissed without leave to reapply.

In respect of the Tenant's application for the return of his security deposit, it is noted that he provided his forwarding address in writing by email to the Landlord on August 6, 2024. In the absence of any evidence for me to find that the Landlord received the email on this date, I must apply section 44 of the Regulation*,* in which a record given or served by email is deemed to be received on the third day after it is emailed.

In this case, then, the Tenant's forwarding address was deemed to be received on August 9, 2024. The Landlord filed their application on August 23, 2024, which is 14 days after the deemed receipt of the Tenant's forwarding address, and thus within the 15-day deadline set out in section 38(1) of the Act. All of which is to say that the Tenant is entitled to the return of his security deposit with interest, but not entitled to any doubling of the security under section 38(6) of the Act.

The Tenant is entitled to recover the cost of his application fee in the amount of $100.00 pursuant to section 72 of the Act.

In total, the Landlord is hereby ordered to (1) return the Tenant's security deposit of $947.50 along with interest in the amount of $40.01[1], and (2) pay $100.00 to the Tenant for the cost of the Tenant's application.

Pursuant to section 67 of the Act the Landlord must pay $1,087.51 forthwith.

The Tenant is granted a monetary order, which he must served upon the Landlord. The monetary order may be filed and enforced in the Provincial Court of British Columbia.

[1] Calculated in accordance with the *Regulation,* applying a deposit date of March 4, 2023, and a return date of December 12, 2024, and by using the Residential Tenancy Branch's online deposit interest calculator at https://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html.

Conclusion

The Landlord's application is dismissed, without leave to reapply.

The Tenant's application is granted, and the Tenant is awarded $1,087.51. The Tenant is granted a monetary order for this amount, a copy of which must be served on the Landlord.

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

Dated: December 12, 2024

Residential Tenancy Branch