Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL-S, MNDL-S, FFL

Introduction

In this dispute, the landlord seeks compensation under section 67 of the *Residential Tenancy Act* (the "Act") and recovery of the filing fee under section 72.

The landlord applied for dispute resolution on January 12, 2020 and a dispute resolution hearing was held, by way of telephone conference, at 1:30 PM on June 5, 2020. The landlord and his wife attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; the tenant did not attend at any point during the 21-minute-long hearing.

Regarding service of the Notice of Dispute Resolution Proceeding, the landlord testified that this was served on the tenant by way of Canada Post registered mail. A receipt and a tracking number were submitted into evidence. Based on the undisputed testimony and documentary evidence of the landlord I find that the tenant was served in accordance with the Act.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure,* to which I was referred, and which was relevant to the issues of this application. Further, only relevant testimony has been included in this Decision.

Issues

1. Is the landlord entitled to compensation as sought?

2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy began on August 1, 2016 and ended on December 31, 2019. Monthly rent was $2,000.00 and the tenant paid a security deposit of $1,000.00, which the landlord currently holds in trust. A copy of the written tenancy agreement, including a one-page addendum, was submitted into evidence. The addendum indicated that the tenant was responsible for one-third of the hydro and Fortis utilities, later reduced to one-quarter.

In his application, the landlord seeks $1,243.96 in compensation for various costs related to the condition of the rental unit at the end of the tenancy, including cleaning costs, along with unpaid utilities. The landlord's wife testified that one of the recent bills was paid by the tenant, however, so they reduced the total amount sought to $1,173.80.

The matters for which compensation is sought is broken down as follows (this is excerpted from the landlord's Monetary Order Worksheet, and does not take into account the now-reduced utilities amount): BC Hydro for $81.09, Fortis for $107.27, refrigerator door replacement for $67.96, replacement toilet tank lid for $200.57, labor for handyman at $405.00, materials for handyman work at $132.07, and cleaning services fee of $250.00 (for ten hours of cleaning).

Submitted in support of the landlord's claim were numerous photographs refeclting the condition of the rental unit, receipts, and a completed Condition Inspection Report reflecting the condition of the rental unit at the end of the tenancy.

While there was no completed Condition Inspection Report at the start of the tenancy, the landlord and his wife testified that the rental unit was brand new (just delivered from the builder) at the start of the tenancy, and was therefore entirely in "good" and "new" condition. In the absence of any dispute by the tenant regarding this, the landlord's evidence is reflective of the condition of the rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states the following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

And section 67 of the Act states as follows:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this dispute, the tenant failed to pay all of the utilities as required by the tenancy agreement. Thus, she is liable for the BC Hydro and Fortis bills as presented by the landlord, later reduced by a certain amount.

Further, the tenant breached section 37(2) of the Act which 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 and the photographs, along with the landlord’s affirmation that the evidence accurately and honestly reflected the condition of the rental unit at the end of the tenancy, strongly support the argument that the tenant breached this section of the Act.

But for this breach, the landlord would not have incurred the various costs claimed. I note that the amounts claimed are reasonable.

Finally, I have no evidence or contrary information for me to find that the landlord did not do what was reasonable to minimize his loss.

Taking into consideration all the undisputed 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 met the onus of proving his claim for compensation in the amount of $1,173.80.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the $100.00 filing fee, for a total award of $1,273.80.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant’s security deposit of $1,000.00 in partial satisfaction of the above-noted award.

The balance of the award, $273.80, is issued by way of a monetary order that is granted in conjunction with this Decision.

Conclusion

I grant the landlord’s application.

Further, I grant the landlord a monetary order in the amount of $273.80, which may be served on the tenant. Should the tenant fail to pay the landlord the amount owed, the landlord must serve a copy of the order on the tenant and then file the order in the Provincial Court of British Columbia (Small Claims Court) for enforcement and collection.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 5, 2020

Residential Tenancy Branch