Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT MNSD FFL
MNDCL MNDL FFT

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the "Act").

The tenant's application for dispute resolution was made on May 12, 2020 (the "tenant's application") and he applied for compensation under section 67 of the Act. The landlords' application for dispute resolution was made on August 4, 2020 (the "landlords' application") and they applied for compensation under section 67 of the Act. Both parties also applied for recovery of the filing fee under section 72 of the Act.

A dispute resolution hearing was held on September 15, 2020 at 1:30 PM. The tenant, the landlords, and an agent (a family member) of the landlords attended the hearing before me and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Both parties confirmed the service of evidence to the other side, as required by the *Rules of Procedure* and the Act.

Issues

1. Is either party entitled to any or all of the compensation claimed?
2. Is either party entitled to recovery of the filing fee?

Background and Evidence

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of these applications are considered in my decision. As such, not all of the parties' testimony and submissions will necessarily be reproduced or referred to below.

The tenancy in this dispute began January 1, 2011 and ended on June 1, 2018. Monthly rent (at the end of the tenancy) was $4,050.00 and the tenant paid a security deposit of $2,000.00 (in cash, which the tenant explained he did not receive a receipt for). He also provided an uncashed cheque in the amount of $3,000.00 as a form of security deposit. A copy of a written tenancy agreement was submitted into evidence, which states that the tenancy started on July 1, 2015.

The landlords' agent (the "landlord") testified that the tenant "took over" the tenancy on this date and that a new tenancy agreement was executed. The tenant explained that he had been in the rental unit since 2011 with his mother (with whom the landlords do, or did, business). The tenancy agreement submitted into evidence refers to the $3,000.00 security deposit and handprinted next to this amount is the notation "(CONDITIONAL CHEQUE)".

The tenant testified that he was given a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") which indicated that the tenancy would end on May 13, 2018, but which also autocorrects to June 1, 2018. He testified that he paid rent for the last month, but that the landlord never compensation him for the last month's rent which is required when a landlord gives a notice to end a tenancy for landlord use of property. He argued that this amount of rent for May 2018 also ought to be doubled pursuant to *Residential Tenancy Policy Guideline 29.*

In addition to seeking a doubling of the last month's rent in the amount of $8,100.00, the tenant seeks the return and doubling of the cash security deposit of $2,000.00 in the amount of $4,000.00. He could not recall when exactly he provided his forwarding address to the landlords but stated that the landlords had visited his (post-tenancy) address on many occasions and knew where he lived. Finally, he confirmed that at no time did he provide written consent for the landlords to retain the security deposit.

The landlord's agent testified that "this isn't an ordinary tenancy," and provided a summary of some of the many purported issues that arose during the tenancy. However, given that these issues are not relevant to determining the issues of these applications I will not reproduce them further.

He testified that there was "no payment of a security deposit" at the time of the tenant's moving in. There were various verbal agreements between the parties made on good faith, however, regarding various matters. He further testified that any such agreements "outweighed" any claims for the security deposit or other purported amounts.

Regarding the landlords' application for compensation, a Monetary Order Worksheet (which the tenant remarked he had not received) was submitted and which outlined the various claims made by the landlords. These claims and amounts are as follows: mold removal and repair of $5,281.00, material costs for damaged floors and glass of $3,000.00, legal advice costs of $450.00, and, moving and cleaning fees of $1,500.00.

The landlord's agent acknowledged that they did not submit any receipts, invoices, or other related documentation (such as a work log for work done by the landlords) for any of the above-noted claims except for a lawyer's bill. There was, however, a few receipts for labour costs submitted into evidence. As an aside, I explained to the parties that claims for legal costs are not recoverable under the Act; only the filing is recoverable.

Next, the agent testified that there was no Condition Inspection Report completed either at the start, or at the end, of the tenancy. The move-in inspection consisted of a "friendly walkthrough" when the tenant moved in. There was nothing completed when the tenant moved out: "It was a big hassle that day," the agent remarked. Only a "quick walkthrough" was undertaken, and no formal paperwork was completed.

In rebuttal, the tenant disputed the accuracy and veracity of the photographs submitted by the landlords in support of their claim for damages. The photographs were, in his opinion, greatly reduced in size, undated, unlabeled, and stripped of metadata which might allow him to asses the evidence. Moreover, he argued that the photographs were a misrepresentation of the condition of the rental unit at the end of the tenancy.

Finally, the tenant submitted that he calls into question the strength of the landlords' claim for damages, given that had they not filed for dispute resolution after the tenant made his application, their claim would have been outside the two year limitation period. (Though, to be fair, the tenant only filed his application two weeks before the two year limitation period expired.)

In rebuttal, the landlord's agent argued that the photographs were not altered and were, in fact, an accurate depiction of the rental unit as the tenant left it at the end of the tenancy.

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.

1. Landlords' Claim

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities each of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 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.
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> . . .
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> 67 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.

The entirety of the landlords' claims (with the exception of the claim for the filing fee) are based on an argument that the tenant left the rental unit in a condition that resulted in the landlord incurring costs to repair, clean, and remediate mold. These three costs also resulted in moving costs to the landlords.

Subsection 37(2) of the Act states 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 landlords argue that the tenant caused damage, and so forth, that resulted in them incurring losses of $10,231.00. The tenant disputes the entirety of the landlords' claim.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlords have failed to provide any evidence that the tenants breached section 37(2) of the Act which would then form the basis for a claim.

While the landlords submitted photographs of the rental unit, I must lend them little evidentiary weight because they are undated, and it is impossible for me to determine when they were taken. Further, I have no photographs of the rental unit at the start of the tenancy. Finally, in the absence of a completed Condition Inspection Report, which in most cases is all the evidence a landlord needs in order to prove the condition of rental unit at the start and end of a tenancy (section 21 of the *Residential Tenancy Regulation),* I do not find that the tenant breached section 37(2) of the Act.

Given that the landlords have failed to prove, on a balance of probabilities, that the tenant breached the Act, the tenancy agreement, or the regulations, I need not consider the remaining three criteria as set out about and dismiss their entire application.

2. Tenant's Claim

A. Claim for Security Deposit

The tenant testified and argued that he paid $2,000.00 in cash for a security deposit. He explained that the landlords did not provide a receipt for this amount. The landlords' agent disputed this assertion, stating that "no payment of a security deposit" was paid at the time of the tenant's moving in. There is no additional documentary evidence submitted by either party to establish that the tenant paid a cash security deposit.

While there is one copy of an email sent from the tenant to the landlords in which he requests the return of the security deposit, there is no reference to the amount nor any confirmation or acknowledgment from the landlords that such an amount was paid.

Again, when two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In

this case, I find that the tenant has failed to prove on a balance of probabilities that he paid $2,000.00 in cash to the landlords.

Given the above, I must dismiss, without leave to reapply, the tenant's claim for compensation related to the alleged payment of a security deposit.

B. Claim for One Month's Rent

The tenant claims that he paid rent for May 2018, but that the landlords failed to compensate him as is required under section 51(1) of the Act, which states that

> A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this portion of the tenant's claim, he seeks a doubling of the amount ($4,050.00) for a total of $8,100.00. He referred me to two policy guidelines, *Residential Tenancy Policy Guideline 29. Security Deposits,* and *Residential Tenancy Policy Guideline 41. Administrative Penalties,* which he argued supports a doubling of the amount.

First, I set aside and will not consider guideline 41; this guideline refers to administrative penalties that may be imposed by the Director of the Residential Tenancy Branch, but for which I as an arbitrator lack delegated authority.

Turning to guideline 29, however, the tenant's reference and argument that the last month's rent is a security deposit appears to be based on the following passage within the policy (at page 1, first paragraph; footnote numbers omitted):

> The *Residential Tenancy Act* permits a landlord to collect a security deposit. Under that Act the issue often arises as to what a landlord may collect as a deposit or payment, other than the rent, at the commencement of a residential tenancy. The Act contains a definition of "security deposit", which also contains exclusions. As a result of the definition of a security deposit in the *Residential Tenancy Act* and the regulations, the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit: […] The last month's rent;

The policy then lists seven additional types of payments that may constitute a “security deposit” for the purposes of the Act.

I am not persuaded by the tenant’s argument, and the reason is this: the policy guideline starts by setting out the context of what might constitute a security deposit. It clarifies that (my emphasis) “the issue often arises as to what a landlord may collect as a deposit or payment, other than the rent, *at the commencement of* a residential tenancy.”

In other words, the temporal framework of what might constitute a “security deposit” establishes that it concerns itself with payments made at the beginning of a tenancy, and therefore excludes payments made at the end of the tenancy (such as the last month’s rent in the present dispute). Thus, in the context that “The last month’s rent” is included in the guideline’s list, this means a payment made by a tenant, at the start of a tenancy, to be applied to the last month of rent of the tenancy. The purpose of this policy is to set parameters on the (uncommon) practise of tenants having to pay the first and last months’ rent when they begin a tenancy.

For these reasons, I am not persuaded by the tenant’s argument that the amount claimed ought to be doubled.

As for the amount of $4,050.00, however, at no point in the hearing did the landlords or their agent dispute or otherwise disagree with the tenant’s claim for compensation for the last month’s rent. Indeed, they remained silent on this specific claim.

Taking into consideration all the undisputed testimonial evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for compensation in the amount of $4,050.00.

C. Claim for Filing Fee

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 tenant was partly successful in his application, I partially grant his claim for reimbursement of the filing fee and award him $50.00.

In summary, the tenant is granted a monetary order in the amount of $4,100.00, which is issued in conjunction with this Decision.

Conclusion

I dismiss the landlords' application without leave to reapply.

I grant the tenant's application, in part.

The tenant is granted a monetary Order in the amount of $4,100.00, the Order of which must be served on the landlords. Should the landlords fail to pay the tenant the amount owed, the tenant may file and enforce the Order in the Provincial Court of British Columbia (Small Claims Court).

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: September 16, 2020

Residential Tenancy Branch