Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PTR DEVELOPMENT HOLDINGS LTD.
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes: MNDL-S FFL

Introduction

The landlord applies for compensation against a former tenant, pursuant to sections 38(4)(b), 67, and 72 of the *Residential Tenancy Act* ("Act").

Both parties attended the hearing, along with a witness for the landlord.

No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained. (The only documentary evidence that the landlord was unable to confirm having received from the tenant, and which was not uploaded by the tenant, was a letter.)

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began on November 1, 2019 and ended on April 30, 2021. Monthly rent, which was due on the first day of the month, was $1,580.00. The tenant paid a security deposit of $790.00, and a key and fob deposit of $150.00, both deposits of which the landlord holds in trust pending the outcome of this application. In evidence is a copy of the written tenancy agreement.

In this application, the landlord seeks the following: $22.09 for the cost of replacing two rental unit keys and two mailbox keys; $150.00 for the cost of replacing two fobs at $75.00 each; $661.50 for rental unit cleaning costs; $802.20 for the cost of cleaning and replacements blinds; $120.75 for the cost of replacing light bulbs, wall repairs (patching) and painting; and, $100.00 for the cost of the application filing fee. The total claimed is $1,856.54.

A completed Monetary Order Worksheet, a completed Condition Inspection Report, seventeen colour photographs of the interior and balcony of the rental unit, and copies of invoices and quotes were submitted into evidence by the landlord.

The landlord testified that the tenant did not return the keys or the fobs. The tenant left the rental unit at the end of the tenancy in a state and condition requiring extensive cleaning. The tenant apparently had a cat, maybe two cats, which chewed on and damaged the blinds, which were subsequently requiring cleaning and replacement. Further, the landlord testified that the tenancy agreement included a condition (or term) whereby a tenant was required to clean the blinds at the end of the tenancy. Last, light bulbs needed to be replaced, and the wall needed to be patched due to holes.

The landlord's witness testified that he was present when the Condition Inspection Report was completed, in the presence of the tenant, and he also took the numerous photographs that were in evidence. He confirmed that the photographs were taken on April 26, 2021.

The tenant does not dispute that the rental unit needed cleaning, but he disputes that the rental unit was in such a state that it required $661.50 worth of cleaning.

The tenant pointed out that the tenancy ended on April 26, 2021, and that he believes the landlord did not file its application for dispute resolution until May 12, 2021. He explained that he pointed this point as it may relate to a doubling claim under section 38(6) of the Act. He further pointed out that, contrary to the landlord's assertion that they did not have his forwarding address, a forwarding address was included in the bottom of the Condition Inspection Report.

The tenant testified that he did not receive a copy of the Condition Inspection Report until May 26, 2021, after the landlord had filed its application. In respect of the Condition Inspection Report itself, the tenant claimed that it had been altered, as evidenced by having white out on it.

In respect of the dollar amounts claimed, he argued that $661.50 is disproportionate to the amount of cleaning actually required. (The landlord stated that it was 14 hours worth of cleaning.) And he pointed out that the rental unit only needs to be cleaned to a reasonable standard.

Regarding the claim for patching and painting, the tenant argued that he cannot be held liable for four small holes caused by the smallest of nails. Moreover, the tenant submitted that such a claim cannot be made unless it is specifically in the tenancy agreement.

In rebuttal, the landlord reiterated that no keys or fobs were ever returned. New locks were required. She stressed that the tenant's description of the rental unit being "slightly dirty" does not correspond with the condition of the rental unit as described in the Condition Inspection Report and portrayed in the multiple photographs. Further, the landlord pointed out that the counter-quotes provided by the tenant are not accurate or useful, as the quoter did not physically attend to the rental unit to provide an accurate estimate of the amount needing to be cleaned.

The landlord's witness apparently offered the tenant more time to clean (between April 26 and 30) but the tenant did not avail himself of this opportunity. The whole end-of-tenancy inspection event "ended on a sour note," she added. At this point, the landlord's witness briefly testified that sometimes he would make corrections to condition inspection reports. However, he was unable to comment on the Condition Inspection Report in question as he did not have a copy of it in front of him.

The tenant then described an altercation with the landlord's witness. According to the tenant it was the witness who instigated the physical interaction. For this reason, the tenant testified that he was unable to take additional photos of the rental unit.

In response, the landlord's witness testified that it was the tenant who instigated the altercation, with the tenant putting the witness into a chokehold and pushing him against the wall.

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 that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Claims #1 and #2: Keys and Fobs

The landlord seeks compensation for costs related to replacing keys and fob. They argued that the tenant did not return these. The tenant disputes the claim, and testified that he did, in fact, return the keys and fobs.

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 landlord has failed to provide any evidence that the tenant never returned the keys or the fobs.

For this reason, it is my finding that the landlord has not met the onus of proving this claim. The landlord’s claims for compensation related to unreturned keys and fobs is dismissed, without leave to reapply.

Claims #3, #4, and #5: Cleaning, Blinds, Lightbulbs, and Wall Repair and Painting

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate. This section of the Act applies to all tenancies, regardless of what condition or clause might be included in a tenancy agreement. Moreover, it applies to minor holes in walls that were not there at the start of the tenancy, and it applies to missing lightbulbs, which a tenant is required to replace at the end of the tenancy.

Based on the detailed Condition Inspection Report – which the tenant was present at when it was being completed – and based on the photographs submitted into evidence, I am persuaded on a balance of probabilities that the tenant breached section 37(2) of the Act. Conversely, I am not persuaded in the least that the condition of the rental unit was “slightly dirty,” as submitted by the tenant.

Based on the invoices submitted, including comparable quotes provided by the landlord, and the counter-quotes provided by the tenant, it is my finding that the amounts claimed

are reasonable and sufficiently support a finding that the landlord minimized its losses in respect of having to clean the rental unit, repair the walls, replace the lightbulbs, and clean and replace the blinds. Again, I disagree with the tenant's argument that the costs are disproportionate to the amount of cleaning having to be performed.

In summary, 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 met the onus of proving their claim for compensation for claims #3 through #5, in the amount of $1,584.45.

Claim #6: Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them $100.00 in compensation to cover the cost of the filing fee.

Summary of Award, Retention of Security Deposit, and Monetary Order

In summary, the landlord is awarded $1,684.45.

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, and given that the tenancy had ended, I order that the landlord may retain the tenant's security and key/fob deposits of $940.00 in partial satisfaction of the above-noted award.

The balance of the award, $744.45, is granted by way of a monetary order. A copy of the monetary order will be issued in conjunction with this decision, to the landlord.

Last, despite the information provided to me by the tenant during the hearing, Residential Tenancy Branch records indicate and confirm that the landlord filed its application for dispute resolution on May 5, 2021. Whether the tenancy ended on April 26 or on April 30, the landlord made its application within 15 days of the tenancy ending. As such, the landlord applied within time to claim against the security deposit, and there is thus no issue in respect of whether the tenant is entitled to a return or doubling of the security deposit.

Conclusion

The application is granted, in part.

The landlord is ordered and authorized to retain the tenant's security and key/fob deposits in partial satisfaction of the monetary award.

The landlord is granted a monetary order in the amount of $744.45, a copy of which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

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

Dated: November 3, 2021

Residential Tenancy Branch