Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

The landlord seeks compensation, including recovery of the application filing fee, pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act").

This matter was first held at a hearing on June 29, 2021. It was adjourned to today's date for the reasons outlined on page two of the Interim Decision.

Attending the hearing on December 7 were the landlord, his agent, the tenant, and an interpreter for the tenant. The landlord's agent and the tenant were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Tenant's Service of Evidence

In the Interim Decision of June 29, 2021, a copy of which was emailed to the tenant on June 30, on page two the following instruction (in bold typeface) was given:

> The tenant is required to provide copies of their evidence to the landlord no less than 14 days before the next hearing. The tenant may either email or mail copies of this evidence to the landlord or their agent.

At the hearing on December 7, the tenant (also through her interpreter) testified that they mailed their package of evidence to the landlord on Friday, December 3. In confirming the package status on the Canada Post registered mail tracking website, I was able to verify that the Canada Post Notice Card was left at the recipient's address on December 6. The landlord's agent (hereafter the "landlord" for brevity) testified that she went to the post office yesterday afternoon and was advised that the package would not be available until the afternoon on the day of the hearing.

Given the tenant's failure to comply with my instructions, and, taking into consideration that the tenant's late service of evidence does not comply with Rule 3.15 of the *Rules of Procedure,* under the Act, it is my finding that the tenant's documentary evidence shall be neither admitted nor considered in this decision.

Issues

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recover the cost of the application filing fee?

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 issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began March 1, 2017 and ended November 30, 2020 (the tenant moved out a few days later). The tenant paid a $800.00 security deposit, which is currently held in trust pending the outcome of this application. There was in evidence a copy of the written tenancy agreement.

The landlord seeks compensation for the following (as outlined on a Monetary Order Worksheet submitted by the landlord): (1) $141.75 for carpet cleaning; (2) $54.88 to repair a broken blind; and (3) $1,727.25 for cleaning the rental unit, excluding the above-noted carpet cleaning, for a total claim of $1,923.88. In addition, the landlord seeks $100.00 in compensation to pay for the application filing fee. Against any claim awarded the landlord seeks to retain the tenant's security deposit (though, as noted, the tenant previously agreed to let the landlord retain this deposit).

As described in the landlord's application, these claims are related to the "extensive cleaning of grease, kitchen, floors, lights, walls and carpets and repair of blinds. The owner is claiming for cleaning ($1727.25), carpet cleaning ($141.75) and broken blinds ($54.88), minus $800 security deposit. There was also water damage on kitchen cabinets that [the landlord] did not claim for."

The landlord testified that she conducted a visual inspection prior to the tenant moving out and observed that the rental unit was "extremely dirty." She told the tenant about her responsibility and obligation to clean the rental unit.

Concerned about how dirty the rental unit was, the landlord sent a couple of emails. On December 2 – the day of the move-out inspection – the landlord brought an interpreter with her to ensure that the tenant understood what was going on. The rental unit was "disgustingly dirty," she said. Indeed, the landlord remarked that it was "very, very dirty . . . one of the dirtiest I've ever seen." Later, the landlord added that it was "so bad" that there was slippery grease on the floor.

A Condition Inspection Report (the "Report") was submitted into evidence. The Report was completed on the possession and move-in date of March 1, 2017. The second half of the Report was completed on the move-out inspection date of December 2, 2020, a day after the move-out date of December 1. The rental unit was marked in its entirety as being in "Good" condition or, in several cases, as not applicable, at the start of the tenancy. Conversely, many areas of the rental unit were marked off as "Poor" and "Fair" in condition, while several other areas were marked as "Good" or "N/A." Several descriptions were also written next to the areas that were marked as "Fair" or "Poor."

At the bottom of page three of the Report there appears the signatures of the landlord's representatives and of the tenant, on both the move-in and move-out components of the Report. Just above the signatures there is an indication that the tenant agreed to a deduction of $800.00 from the tenant's security deposit. (Not surprisingly, the section in which a tenant's forwarding address is usually recorded is simply marked as "Not Needed.")

Submitted into evidence were an invoice for the carpet cleaning, a work order receipt for the blind repair, and an invoice for the rental unit cleaning. The invoices and receipt mirror the amounts claimed on the Monetary Order Worksheet, except for the carpet cleaning invoice which was for $283.50. This amount was for two rental units, and the landlord calculated out the amount for just the rental unit in question.

Last, submitted into evidence was a five-page PDF document containing a total of thirteen colour photographs of various items and areas of the rental unit. The photographs were of the carpets ("not cleaned"), a greasy and dirty stove and kitchen, a greasy microwave, a dirty refrigerator, and so on.

In the tenant's defense, she testified (variously through her interpreter and directly) that at the time of the events in question, she had recently become a single mom, and had recently gone through a divorce. She was suffering from depression and had difficulty sleeping.

She testified that the landlord “pushed me to move out.” The tenant’s mental health is “better now.” The tenant remarked about her “terrible English” and that she has “difficulty to express myself,” and that she “still can’t understood what’s going on.” It was at this point that I confirmed with her that the purpose of having the interpreter was to help her understand.

In respect of the landlord’s claims, the tenant testified that she tried her best to clean the rental unit. She spent time cleaning but that this may not have been up to the standards of the landlord. As for her agreeing to the landlord retaining her $800 security deposit, she was apparently under the impression that by agreeing to this retention that it would end any further claims. Had she realized that the landlord would ultimately seek more than $800, she said that she would not have signed the Report authorizing the amount to be kept. There was, as she put it, a “miscommunication” about that aspect of the Report.

Regarding the amount claimed for the cleaning, the tenant argued that it is excessive. Rather, $500 would be a more reasonable amount. As noted, no evidence was submitted by the tenant regarding alternative reasonable amounts.

The landlord provided a brief rebuttal, confirming (in answer to a question raised during the tenant’s testimony) that the carpets were not “double cleaned.” Rather, the cleaning company vacuumed the carpets and then another company came to clean them.

Analysis

At the outset, it is worth noting that 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. Claim for Compensation for Cleaning and Repairs

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.

In this dispute, the landlord seeks compensation for various matters related to cleaning of, and repairing (the blind) in, the rental unit.

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.

First, 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 that the tenant breached section 37(2) of the Act. The tenant did not leave the rental unit even remotely reasonably clean and undamaged, and I making this finding on the persuasive evidence of the detailed Report, the photographs, and the agent's testimony.

Second, it is my finding that the landlord's monetary loss for which he seeks compensation is directly related to the tenant's breach of the Act. Third, it is my finding that, on the basis of the invoices and receipt submitted into evidence, that the landlord has clearly established the amount of the monetary loss.
Last, has the landlord done whatever was reasonable to minimize his loss? It is my finding that the amounts claimed are reasonable, given the state of the rental unit.

For these reasons, the landlord has discharged its onus of proving their claim for compensation in the amount of $1,923.88. This amount is thus awarded.

2. Claim for 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 his application, I grant him $100.00 in compensation to cover the cost of the filing fee.

Summary of Award, Security Deposit, and Monetary Order

The total amount awarded is $2,023.88.

Section 38(4)(a) of the Act states that

> A landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or [. . .]

As the tenant agreed in writing, on the Report, that the landlord could keep the $800.00 security deposit. The balance of the above-noted award is thus $1,223.88. A monetary

order in this amount is issued in conjunction with this decision, to the landlord. It is the landlord's (or his agent's) responsibility to serve a copy of this order on the tenant.

Last, while the tenant argued that had she known her authorizing the landlord to retain the full security deposit that she would not have agreed to this retention, there is nothing in the Report, the Act, or the tenancy agreement which precludes a landlord from seeking additional compensation in excess of the security deposit.

Conclusion

The application is granted.

The landlord is granted a monetary order in the amount of $1,223.88, 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: December 7, 2021

Residential Tenancy Branch