Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S MNDCL-S FFL MNSDB-DR FFT

Introduction

The landlords seek a monetary order against their former tenant pursuant to section 67 of the *Residential Tenancy Act* (the "Act"). The tenant seeks a return, and doubling, of their security and pet damage deposits, and the return of a key fob deposit. Both parties seek compensation for the cost of their application filing fees.

A hearing was held on November 29, 2022. The tenant and one landlord attended. The parties were affirmed, and no service issues were raised.
I
Issues

1. Are the landlords entitled to compensation as claimed
2. Is the tenant entitled to the return of a portion of her security deposit and the pet damage deposit, and a doubling of those amounts?
3. Is the tenant entitled to the return of a key fob deposit?
4. Is either party entitled to recover the cost of their 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 issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began August 1, 2021 and ended on December 31, 2021. Monthly rent was $1,500.00. The tenant paid a security deposit of $750.00, of which $424.54 was authorized by the tenant to be retained by the landlords at the end of the tenancy. The tenant also paid a pet damage deposit of $500 and a key fob deposit of $150.00. A copy of the written tenancy agreement was submitted into evidence.

In their application the landlords sought $424.54 in compensation for a chargeback from the strata. This was related to damages caused to the hallway and stairwells in the common area of the residential property when the tenant moved in at the beginning of August. This amount claimed was authorized by the tenant to be retained. As such, I need not address this particular claim any further.

The landlords also seek compensation in the amount of $1,174.53 for damages that the strata corporation incurred to repair the elevator. According to the landlords the tenant or the tenant's movers damaged the elevator when the tenant was moving out. The landlord testified that the tenant's husband got stuck in the elevator, and the fire department along with the ambulance had to be called.

Submitted into evidence by the landlords was a quotation dated February 15, 2022. The quote was for restoration and refinishing of the elevator interior door frames and elevator interior returns. The amount quoted is $1,174.53.

Also submitted is a letter dated March 30, 2022 from the strata manager to the landlords in which the manager states that the damage to the elevator door, the dent, was not there prior to the incident. And, that "there have been no other impacts or accidents at or near the elevator before or after this move."

Last, the landlords seek $25.00 in compensation for a visitor parking pass (of the plastic kind that hang from a rear-view mirror) that was not returned by the tenant. The amount claimed is what it costs the landlords to have the pass replaced.

The tenant testified that the first time she provided her forwarding address to the landlords, in writing, was by way of a *Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit*. This notice was sent by Canada Post registered mail on March 24, 2022 and received by the landlords on March 28, 2022. The landlords made an application for dispute resolution on March 29, 2022. The tenant briefly commented that the male landlord would have "known where she lived" after she moved out, there is nothing to substantiate this assertion.

The tenant seeks the return of the balance of their security deposit in the amount of $325.46, the return of their pet damage deposit in the amount of $500.00, and the return of the $150.00 key fob deposit. The landlord remarked that the tenant had returned the key fob and that the $150.00 was returned to the tenant; the tenant denies that this amount was ever returned to her. Finally, the tenant seeks that the deposit amount be doubled.

Regarding the claim for elevator-related compensation the tenant argued that there is no evidence or proof that she caused the damage to the elevator. There is no evidence, she submits, that establishes that the dent was caused by her. While the tenant admits that the shattered glass was caused by her glass table being broken upon moving, this did not result in the elevator damage.

Last, the tenant questioned why the quotation for the elevator repair work was dated six weeks after they vacated the rental unit.

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. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

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.

Landlords' Application

Claim for Visitor Parking Pass

While the tenant may have not returned a visitor parking pass, the landlords have not provided any documentary evidence to support the amount claimed of $25.00. Nor, it should be noted, is there any term in the tenancy agreement that refers to a $25.00 charge should a visitor parking pass not be returned.

Given the above, I am not satisfied that the landlords have proven this claim. This aspect of the landlords' application is therefore dismissed.

Claim for Elevator Damage

Section 32(3) of the Act states that

> A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant, or a person permitted on the residential property by the tenant.

In this dispute, the landlords claim that the tenant or her movers caused damage to the elevator. The only evidence to support this claim is in the form of a letter from the strata manager which includes comments about the damage not being there before (or after) the "incident." The tenant denies that they or their movers caused the damage, and she argued that there is no proof that she caused the damage.

I am inclined to agree with the tenant's argument. The strata manager's letter was authored almost three full months after the alleged incident took place. The manager's comments are not supported by any sort of elevator condition inspection report, or, for that matter, any photographs of the elevator as it was before the tenant moved out.

Finally, the manager's letter must be given little evidentiary weight: the letter does not constitute the same level of evidentiary weight had it been provided in the form of a sworn affidavit, nor did the strata manager testify, under oath, at the hearing to explain how she established the condition of the elevator before and after the tenant moved out.

For these reasons, I place little weight on the only piece of documentary evidence provided in support of the claim for compensation related to the elevator damage, and on a balance of probabilities find that the landlords have not proven this claim.

Claim for Filing Fee

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee.

As the landlords were not successful in their application, they are not entitled to recover the cost of the application filing fee.

Tenant's Application

Claim for Return of Key Fob Deposit

The tenant claims that she returned the key fob to the landlords but that the landlords have not returned the $150.00. Conversely, the landlords claim that they have returned the $150.00 to the tenant. Neither party provided any proof that the money was or was not sent. However, because this is the *tenant's* claim, it falls upon the tenant to prove her case on a balance of probabilities.

In the absence of any supporting, documentary evidence to support her claim—which is disputed by the landlords—I'm unable to conclude that she is entitled to $150.00 for the returned key fob. As such, this aspect of the tenant's application is dismissed.

Claim for Return (and Doubling) of Security and Pet Damage Deposits

The tenant is, because the landlords have not proven their monetary claims, entitled to the return of the balance of her security deposit ($325.46) and the entirety of her pet damage deposit ($500.00) for a total return in the amount of $825.46.

Section 38(1) of the Act states that

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Regarding the tenant's claim for double the return, section 38(6) of the Act states that

> If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the landlords received the tenant's forwarding address, in writing, on March 28, 2022 and filed their application for dispute resolution the next day. As such, it is my finding that the landlords complied with section 38(1) of the Act and the tenant is therefore not entitled to a doubled amount under subsection 38(6).

Claim for Filing Fee

As the tenant was partly successful in her application she is, pursuant to section 72(1) of the Act, entitled to a partial recovery of the filing fee in the amount of $50.00.

Conclusion

The landlords' application is dismissed without leave to reapply.

The tenant's application is granted, in part, and the tenant is entitled to a monetary order in the amount of $875.46. The landlords are hereby ordered pursuant to sections 67 and 72 of the Act to pay to the tenant this amount.

A copy of a monetary order is issued with this Decision to the tenant. The tenant must serve a copy of the monetary order upon the landlords. While the monetary order is enforceable in the Provincial Court of British Columbia the parties are encouraged to make payment arrangements outside of the court process.

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: November 30, 2022

Residential Tenancy Branch