Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the landlord: MND-S, FF
For the landlord: MNSD, FF

Introduction

This hearing was convened as the result of the cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for the following compensation for alleged damage to the rental unit by the tenant, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the filing fee

The tenants applied for the following a return of their security deposit and recovery of the filing fee.

The landlord's representatives and the tenants attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The parties were affirmed.

The tenant confirmed receipt of the landlord's application and the landlord's agent said they did not know if they received the tenant's application. The agent who represented the landlord at the hearing was not the recipient of the tenant's application as the application was served to the landlord. I find the tenant's application was sufficiently served to the landlord.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlord's representative, JX, indicated they were present at the hearing to assist the landlord's agent, HR. HR was not the name of the agent who filed the landlord's application. It was apparent that that HR was associated with the landlord's agent group. JX was able to provide testimony on their own and interpret for HR.

HR during the hearing continued to speak out of turn, interrupt the proceedings, and chose to speak about matters which were not asked. Ultimately, after approximately 40 minutes into the hearing, I placed HR on mute in order to continue the hearing as the landlord would not stop talking and refused to answer my questions. HR was able to continue to listen to the hearing and JX continued to represent the landlord at the hearing. At the end of the hearing, JX disclosed that HR was hard of hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to use the tenant's security deposit to offset a monetary award, and recovery of the filing fee?

Is the tenant entitled to recovery of their security deposit and recovery of the filing fee?

Background and Evidence

The evidence showed the tenancy began January 1, 2021, and ended on March 31, 2023. Monthly rent was $1900 at the beginning of the tenancy and $1928 at the end. The tenant paid a security deposit of $950, which the landlord continues to hold. The tenant said they actually moved in on December 28, 2020.

The landlord's monetary claim is $3394 for repair, $100 for fob and key, and the filing fee of $100.

To describe their monetary claim, the landlord wrote the following in their application:

> *1. The whole unit wall to be patched, mudded and sanded, and then repaint (not include the ceiling) 2. Some of the baseboard areas to be touch up painted 4. Two of door stopper to be replaced 5. The bedroom door hole to be fixed and*

repainted 6. The dinning light to be purchased and installed 7. Other small areas to be fixed (wall crack, count top corner, sink corner, not include the floor) The claiming amount is based on the professional assessor.

The landlord submitted photographic evidence to support their claim, as well as a move-in and move-out condition inspection report (Report), a "repairing quote", and a "repair invoice".

The landlord submitted that they were not able to conduct a move-out inspection, as the police were called. The next, incoming tenants were present for the tenants' move-out inspection, and they helped point out issues with the rental unit.

The landlord claimed the rental unit was brand new when the tenants moved in and they were the first occupants. At the end of the tenancy, the entire rental unit needed to be repainted. The invoice shows the details of the claim for repairs and it was paid on April 12, 2023.

During their testimony, HR would not answer the question of whether the next tenants contributed to remarks made on the move-out report.

In response, the tenant testified as follows: Their dad was present for the inspection as well as the next tenants. They were not able to conduct the inspection because the new tenants kept interrupting. The landlord threatened her dad and the police were called. For these reasons, the move-out inspection report was not signed. The police had the new tenants and the landlord leave the unit because the landlord threatened their dad and advised the tenants to video record the rental unit. The 2 police officers are visible in the video filed in evidence. They acknowledge that they installed a tv set in the wall with a bracket, but offered to have it repaired at their own cost, but the landlord refused. During the final inspection they asked the landlord when they would be given their security deposit back, and the landlord said they will never get it back.

The tenant testified they called the contractor listed on the estimate, who confirmed they did not do the work on the rental unit.

As to their own application, they stated that they provided their written forwarding address to the landlord on March 31, 2023, in an email. Following that, they send a demand letter with their written forwarding address to both the landlord's agent, HL, and the owner, by registered mail. Copies of the registered mail envelopes were filed in evidence along with the demand letters.

Analysis

Landlord's application –

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The landlord in the matter before me bears the burden of proof to prove all four parts of the above-noted test for damages or loss, or the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The Act requires the landlord and tenant to inspect the rental unit together and, in this case, the landlord chose to have the incoming tenants also attend the inspection. I find this violates the Act in that it was more than the landlord and tenant inspecting the rental unit. I find it unreasonable for the landlord to have the next tenants attend, and because the landlord would not answer as to whether the next tenants caused remarks to be

made to the Report, I conclude that the new tenants contributed to these tenants' move-out Report. I also find it reasonable to conclude that the new tenants would have competing interests with the vacating tenants, as they would want a rental unit in move-in condition. However, that is not the outgoing tenants' obligation under the Act as outlined above.

For these reasons, I place no weight on the move-out condition inspection Report.

I further place no weight on the claimed invoice for work done. The document the landlord claimed was an invoice was a near duplicate of the quote, and the "invoice" was still titled "Renovation Quote". The invoice for each item of work used the words, "to be" done, not work that was done. Further, the landlord provided no evidence that they paid the amount listed on the renovation quote. This language was also used by the landlord in their own application as noted above.

When I review the landlord's photographs taken at close range, I find there were some minor deficiencies on some areas, but in other photographs, I was unable to determine to what damage the landlord referred. The landlord also did not provide photographs of the entire rental premises to show the rental unit was left in its totality undamaged, except for reasonable wear and tear.

I have reviewed the tenants' video evidence, and find the rental unit was left very clean. The only item that would be allocated to the tenants, from my view, is the bracket in the wall. However, I find the tenant's testimony on this point to be consistent and convincing, that they offered to have someone repair the wall and the landlord declined. I have reached this conclusion based on the agent's demeanor and conduct at the hearing, and refusal to answer certain questions, along with the agent's choice to have the next tenants attend the move-out inspection. I find this shows the landlord failed to mitigate their claim for wall repair for having the brackets removed, if it was removed at all.

Due to the above reasons, which includes the landlord's failure to provide evidence they incurred a loss by paying for any repair or work on the rental unit, I find the landlord submitted insufficient evidence to support any part of their claim.

As a result, I dismiss the landlord's application, without leave to reapply, which includes the request to recover the filing fee.

To date, the tenants' security deposit of $950 has accumulated interest of $14.57.

As I have dismissed the landlord's application, I ORDER the landlord to return the tenants' security deposit of $950, along with the interest of $14.57, immediately.

Tenant's application –

As the tenants were successful with their application, I award the tenants recovery of the filing fee of $100.

For the reasons above, I grant the tenants a monetary order pursuant to sections 67 and 72 of the Act for the amount $1064.57, which is comprised of the tenants' security deposit of $950, interest of $14.57, and the filing fee of $100.

Should the landlord fail to pay the tenants this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed for the reasons cited above.

The landlord is ordered to return the tenants' security deposit and interest of $964.57 immediately and the tenants are granted a monetary order.

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

Dated: October 16, 2023

Residential Tenancy Branch