



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent, damage to the unit or other loss pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:49 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord and the property manager both attended the hearing and were given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord testified that he served the tenant with an Application for Dispute Resolution by registered mail on December 30, 2014. He testified that his company had located a new address in a different community for the tenant even though the tenant did not provide a forwarding address on vacating the rental unit. The landlord testified that they used a collection agency to locate the tenant's address. He testified that the information in directories for this new community indicated someone with the same last name as the tenant resides at that address. He testified that, to the best of his knowledge, the package was not returned. The landlord submitted Canada Post receipts and tracking information. He checked online package tracking during the hearing and testified that the package had been picked up at the post office. Based on the evidence presented and pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the landlord's Application for Dispute Resolution package on January 4, 2015, 5 days after its registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage to the unit or other loss? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2014 and was scheduled for a fixed term of one year ending May 31, 2015. He testified that the tenant paid a half month's rent at the start of his tenancy as an incentive offered by the landlord. This incentive was based on the signing and the completion of a one year fixed term tenancy. The landlord did not provide a copy of the tenancy agreement or any other documents related to the move-in incentive. The landlord testified that the rental amount was \$1100.00 payable on the first of each month. He testified that he continues to hold a security deposit in the amount of \$550.00 paid by the tenant on June 1, 2014. The landlord testified that the tenant provided verbal notice to end the tenancy at the end of November. The testimony of the landlord was that tenant vacated the rental unit before the end of December 2014.

The landlord provided digital evidence that provided photographs documenting the condition of the rental unit at move-in and move-out. The landlord testified that, when the tenant vacated the unit, he told the landlord he could keep the security deposit. According to the testimony of the landlord, the tenant provided no forwarding address to the landlord and still had not done so as of the date of this hearing.

The landlord provided sworn and undisputed testimony that the tenant left the rental unit unclean and damaged. He testified that there were cigarette butts and cigarette burns in the carpet. He said that many of the walls and doors were damaged, with holes. He testified that the fireplace door was damaged and that ashes had not been removed for some time. He testified that the smoke detector was missing and that a kitchen light switch was broken. The photographs provided supported the landlord's testimony.

While the landlord's application originally indicated an amount of \$1649.20, the landlord testified at hearing that he sought a monetary order of \$1149.20 as follows;

Item	Amount
Carpet Cleaning	\$99.75
Cleaning labour and materials	96.00
Bathroom door repair	33.45
General unit repairs	320.00
Move-in incentive	550.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1149.20

The landlord also applied to retain the tenant's security deposit in the amount of \$550.00.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has proven, with oral and documentary evidence including photographs, that there was damage at the end of this tenancy. The landlord has shown that the rental unit was damaged during the course of this tenancy. It is therefore a reasonable conclusion that the tenant or others permitted on the property by the tenant damaged the rental unit. The landlord has also provided testimony with regard to the financial costs that were incurred as a result of this tenancy. However, the landlord did not submit receipts that document the monetary costs to the landlord in this matter.

The landlord provided evidence of the damage to the carpets but did not provide documentary evidence to support his claim of \$99.75 for carpet cleaning. I find the landlord supported his claim that the carpets were dirty and damaged with photographic evidence. The landlord testified that the rental unit was not large but that it required extensive cleaning. I find that the landlord's request for \$99.75 is a reasonable cost for carpet cleaning.

The landlord testified that at least 9 hours were spent cleaning and clearing the rental unit. The cost for cleaning sought is based on \$10.00 per hour plus tax for cleaning the unit. Based on the landlord's testimony and based on the photographic illustration of refuse and general mess to the unit, I find that the landlord has provided a reasonable cost for cleaning at \$96.00.

Photographic evidence submitted by the landlord also provided undisputed proof of the damage to the rental unit. This damage included damage to a variety of doors and walls. The landlord provided specific testimony with respect to the cost of the bathroom door repair and referred to the photographs in support of his costs of \$320.00 for general repair of damage throughout the unit. These repairs included filling several holes the size of a cantaloupe in the walls and doors as well as minor damage to windows and fixtures. I find that these costs of \$320.00 and \$33.45 are also reasonable in the circumstances.

The landlord testified that the tenant had been provided an initial one month rent reduction of \$550.00 as incentive to sign a 1 year fixed term lease agreement. The landlord submitted that, while the tenant broke the 1 year fixed term lease at the halfway point in the tenancy, the landlord was not seeking further compensation for violating the lease terms. However, the landlord sought to recover the \$550.00 incentive amount. The landlord provided testimony that the tenant agreed to the terms of the first month's rent incentive but the landlord did not provide a copy of that agreement. He testified that the tenant was aware that breaking the terms of the lease would require repayment of that initial rent reduction amount however the landlord provided insufficient written evidence to support his testimony. I find that the landlord is not entitled to reimbursement for this amount.

With respect to the landlord's application to retain the tenant's security deposit, section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution to retain the deposit. With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the evidence is that the tenant did not provide a forwarding address in writing. Therefore the landlord's obligations to return it had not yet been triggered.

The landlord has proven that there is damage and loss to the landlord's rental unit such that retention of the security deposit is appropriate. The landlord seeks to retain the deposit in partial satisfaction of the claim for repair to damage to the rental unit and

cleaning costs. I therefore find the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award issued to the landlord.

Having been successful in this application, I find further that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to obtain a monetary award for losses and damage arising out of this tenancy, to recover the filing and to retain the security deposit:

Item	Amount
Carpet Cleaning	\$99.75
Cleaning labour and materials	96.00
Bathroom door repair	33.45
General unit repairs	320.00
Less Security Deposit	-550.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$49.20

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that 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 *Residential Tenancy Act*.

Dated: April 2, 2015

Residential Tenancy Branch

