



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, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord's agent (the landlord) withdraw their application for a Monetary Order for unpaid rent or utilities and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The landlord confirmed receipt of the tenants' evidence; however, the tenants testified that not all of the landlord's evidence has been received.

Procedural Matter: In considering Rule 3.5, 3.7 and 3.14, the landlord in this case, must submit their evidence so that it is received by the other party not less than 14 days prior

to the hearing and the evidence must be legible. The landlord's agent was unable to confirm that the tenants were sent the entire evidence package as another agent had been dealing with this application. In considering whether to accept the landlord's evidence, I find that the landlord has not shown that they served the tenants their entire package of evidence; however, I accept the tenants did receive a portion of the landlord's evidence, which is copy of the inspection reports. It must also be noted here that the copy of the inspection reports provided for this hearing to both the Residential Tenancy Branch and the tenants is almost illegible. I have therefore excluded the landlord's evidence pursuant to s. 3.17 of the Rules of Procedure.

Preliminary Issues

The parties advised me there was an error in the last name of one of the tenants. The parties did not raise any objections to the error being corrected and the tenant's legal last name has now been amended on the Style of Cause.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on January 01, 2013 for a fixed term ending on December 31, 2013, thereafter reverting to a month to month tenancy. The tenancy ended on June 30, 2015. Rent for this unit was \$995.00 per month due on the 1st of each month. The tenants paid a security deposit of \$497.50 in December, 2012.

The landlord testified that the tenants failed to clean the carpets at the end of the tenancy. Although the tenants did leave the carpets in a good condition; as the tenants had a pet in the unit they are required to shampoo or steam clean the carpets. The landlord seeks to recover \$99.75 for professional carpet cleaning.

The landlord testified that the tenants did a lot of touch up filling in the unit from holes from picture hooks. The tenants own photographic evidence shows this. The landlord did not know when the unit was last repainted but the unit had to be repainted at the end of this tenancy due to the filler left on the walls. The landlord seeks to recover \$175.00 for painting and a further \$61.25 for 25 percent cost of painting materials.

The landlord requested an Order to keep part of the tenants' security deposit in satisfaction of their application. The landlord also seeks to recover the filing fee of \$50.00.

The tenants disputed the landlord's claim. The tenants testified that they were not given the opportunity to shampoo the carpets themselves. They had until 1.00 p.m. on June 30, 2015 to clean the carpets. They had already moved their belongings out of the unit and had returned early on the morning of June 30, 2015 with a carpet cleaning machine and solution to do the carpets. When they arrived the landlord had already entered their unit and was having the carpets cleaned. The move out inspection was then completed after the landlord had cleaned the carpets.

The tenants testified that they are responsible for filling any holes made by picture hooks. They also filled some existing picture hook holes let from previous tenants. The amount of picture nail holes was not excessive and the landlord had not given the tenants any instruction at the start of the tenancy about what type of picture hooks to use. As the landlord cannot confirm when the unit was last repainted; repainting of the interior of a unit on a regular basis is the landlord's responsibility.

The tenants seek an Order to recover their security deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for carpet cleaning; the tenants still have legal possession of a rental unit until 1.00 p.m. on the day they vacate the unit. If the landlord entered the unit prior to that and started to clean the carpets then the landlord entered the unit without proper notice and prevented the tenants from exercising their right to ensure the carpets are steam cleaned or shampooed. I must therefore find the landlord must bear the cost of carpet cleaning as they prevented the tenants doing this work and mitigating any loss. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's claim for painting and supplies, I refer the parties to the Residential Tenancy Policy Guidelines #1 which clarifies the responsibilities of the landlord and tenants regarding maintenance, cleaning, and repairs of residential property. This guidelines states, in part, that most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

The tenants testified that the landlord did not provide any rules or instructions about hanging pictures in the unit and the tenants did not actually have to fill any holes caused by picture hooks. The tenants did however fill these holes and expected that the landlord would then paint the unit. The guideline goes on to state that the landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

There is insufficient evidence before me showing when the unit was last repainted and the useful life guideline of interior paint is four years. Without any corroborating evidence to show when the unit was last repainted I find the tenants have not caused any deliberate damage but have rather helped the landlord by filling picture holes ready for painting. This section of the landlord's claim is dismissed.

As the landlord's application has no merit I find the landlord's request to keep part of the security deposit is dismissed. The landlord must also bear the cost of filing their own application.

I Order the security deposit of **\$497.50** be returned to the tenants pursuant to s. 38(6)(b) of the *Act*.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$497.50**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order 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: December 24, 2015

Residential Tenancy Branch

