



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 MND MNDC MNR 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 and for damage to the unit 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Each party submitted documentary evidence including photographs. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit? Is the landlord entitled to retain all or a portion of the tenant's security deposit?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on July 15, 2010 and continued until March 31, 2016 when the tenant vacated the rental unit. The tenant paid \$1470.00 due on the 1st of each month and provided a \$735.00 security deposit prior to the outset of the tenancy (on June 18, 2010). The landlord applied to retain \$261.00 of the tenant's security deposit for \$140.00 in carpet cleaning, \$96.00 in general cleaning and \$25.00 in rental payment late fee.

The landlord testified that the tenant gave proper notice to end the tenancy. The tenant provided his forwarding address to the landlord in writing with his notice to end tenancy, over 1 month prior to his move-out date. She testified that the landlord and tenant both attended for a condition inspection at move-out. She submitted a copy of the condition inspection report from move-in and move-out. She referred to the move out report indicating her notations that she intended to deduct for cleaning, carpet shampooing, and a rental payment late fee. She testified that she did not know why the tenant would not agree to this deduction.

The tenant believes that no deductions to his security deposit are appropriate. He testified that, prior to move-out, he hired a carpet cleaner. He testified that the rental unit was cleaned but for a thorough cleaning of the walls. With respect to the walls, the tenant testified that; the walls required painting; that the landlord had told him they were painting when he moved out; and that he accepted this fact since he had lived in the rental unit for over 5 years.

The tenant testified that his rent was never late and he did not owe a late rent payment fee. The landlord was unable to provide evidence to support the claim that the tenant owed a late payment fee, indicating that she did not know what month or year the fee originated from.

The tenant also referred to the move out condition inspection report in his submissions. He pointed to the move-in report and noted that each room of the house where carpet was listed indicated, "old, spots".

Analysis

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, whichever is later to either return the security in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. In this case, the landlord was informed of the tenant's forwarding address prior to the end of the tenancy. Therefore, the landlord filed an application regarding the security deposit within the required timeline.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." The tenant testified that he did not agree to allow the landlord to retain any portion of his security deposit. He attended this dispute resolution hearing to prevent the retention of any portion of his deposit. Further, he wrote on the "security deposit refund" form as well as the landlord's condition inspection sheet that he did not agree to the retention of any portion of his deposit. The tenant provided undisputed testimony that, while he initially indicated he would agree to his security deposit being reduced for carpet cleaning, he ultimately disagreed with any reduction in the return of his security deposit. I find that section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The landlord applied to retain \$261.00 of the tenant's security deposit for \$140.00 in carpet cleaning, \$96.00 in general cleaning and \$25.00 in rental payment late fee. In applying to retain a security deposit, the landlord bears the burden of proof to 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 (the landlord, in this case) must then provide evidence that can verify the actual monetary amount of the loss or damage.

In considering the testimony of both parties and making a decision, I rely on the documentary and photographic evidence supplied by both parties. I rely on the move in and move out condition inspection reports as the best evidence of the condition of the rental unit at the end of the tenancy. The condition inspection report for move-in submitted by the landlord indicates that the carpets in the entrance, living room, bedrooms are described as “old, spots”. At move-out, the report indicates “not clean or needs to be clean”. However, the photographic evidence submitted by both the landlord and the tenant show carpets that appear relatively clean.

I note that, in accordance with section 37 of the Act, “when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...” I find that the photographic evidence submitted by the parties shows a rental unit left reasonably clean and undamaged. Furthermore, I note that Residential Tenancy Policy Guideline No. 40 addresses the useful life of carpets and walls within a rental unit,

When applied to damage(s) caused by a tenant, ... the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.

The tenant resided in the rental unit for over 5 years. Policy Guideline No. 40 refers to a useful life of walls/paint at 4 years. Therefore, the landlord would be required or advised to paint the unit at the end of this tenancy regardless of marks left by the tenant. Based on these provisions of the Policy Guideline and my finding that the tenant has left his rental unit reasonably clean, I find that the landlord is not entitled to recover the cost of the rental unit cleaning. As the landlord supplied no objection or contradiction to the tenant’s assertion that the carpets were old with spots at move-in and that he undertook carpet cleaning to the standard required by the Act, I find that the landlord is not entitled to recover the cost of carpet cleaning. As the landlord submitted insufficient evidence of a late payment fee, I find that the landlord is not entitled to recover \$25.00 for a late rental payment fee.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord’s application to retain all or part of the security deposit, or

- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of a portion of the security deposit in partial satisfaction of his monetary claim. Because the claim has been dismissed in its entirety without leave to reapply, it is appropriate that I order the return of the tenant's security deposit with any interest applicable. There is no interest payable for this time period. Therefore, as \$474.00 was previously returned to the tenant by the landlord, the tenant is entitled to the return of the remainder of his deposit: \$261.00.

As the landlord has been unsuccessful in this application, the landlord is not entitled to recover the filing fee for this application.

Conclusion

I dismiss the landlord's claim in its entirety.

I order the return of the tenant's security deposit in full. I grant the tenant a monetary order in the amount of \$261.00. This order may be registered in the Small Claims Court and enforced 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: August 24, 2016

Residential Tenancy Branch

