



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, for damages to the unit, site or property, for authorization to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee.

An agent for the named landlord company (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and first documentary evidence package were served on each tenant by registered mail on February 24, 2016 to each tenant separately to the tenants' forwarding address provided in writing by the tenants on the outgoing condition inspection report. The agent provided two registered mail tracking numbers which have been referenced as 1 and 2 on the cover page of this Decision for ease of reference. The agent stated that both packages were marked as "unclaimed" and were returned to sender.

The agent also testified that a second evidence package was served on the tenants by registered mail to both tenants on September 21, 2016 and that the registered mail packages; one for each tenant, were refused by both tenants. Two additional registered mail tracking numbers were submitted in evidence which have been included as 3 and 4 on the cover page of this Decision.

The online registered mail tracking website supports the evidence as provided by the agent. In addition, Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I find the tenants were deemed with registered mail packages 1 and 2 on February 29, 2016 which is five days after they were mailed. I find that registered mail packages 3 and 4 were deemed served on September 26, 2016, which is five days after they were mailed. I note that refusal or neglect to pick up a registered mail package is not a ground for a Review Consideration under the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 1, 2015 and was scheduled to revert to a month to month tenancy after July 31, 2016. Monthly rent of \$680.00 was due on the first day of each month during the tenancy. The tenants paid a security deposit of \$340.00 at the start of the tenancy which the landlord continues to hold. The tenants vacated the rental unit on December 30, 2015 without serving the landlord with any formal written notice.

The agent explained during the hearing that a portion of their monetary claim was reduced as actual costs were less than what were initially claimed which I find does not prejudice the tenants. As a result, the landlord's reduced monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Carpet cleaning	\$94.50
2. Drape cleaning	\$58.71
3. Paint	\$50.00
4. Suite cleaning	\$50.00
5. Loss of January 2016 rent	\$680.00
TOTAL	\$933.21

Regarding item 1, the agent presented a copy of the condition inspection report in evidence which indicates that the floors and carpets were described as either “not cleaned” or “dirty”. Also submitted in evidence was an invoice in the amount of \$94.50 for carpet cleaning from a carpet cleaning company. The agent confirmed that the carpets were not cleaned before the tenants vacated the rental unit which is why the landlord incurred the expense of carpet cleaning.

Regarding item 2, the agent presented an invoice in the amount of \$58.91 for drape cleaning from a cleaning company. The agent stated that the tenants failed to clean the drapes at the end of the tenancy. The condition inspection report supports the testimony of the agent.

Regarding item 3, the agent testified that the paint was new in the rental unit at the start of the tenancy and that even though their receipt was for a higher amount of paint, they are only charging the tenant \$50.00 to repair the paint damage in the suite after the tenants vacated the rental unit. The condition inspection report indicates there were “scuffs” on the walls and trim and that “touch ups” were required to repair the damage.

Regarding item 4, the landlord has claimed \$50.00 for suite cleaning comprised of two hours at \$25.00 per hour. The agent submitted a document in evidence which supports that two hours of cleaning were required to clean the rental unit. Furthermore, the condition inspection report indicates that most of the rental unit was either “not cleaned” or “dirty”.

Regarding item 5, the agent testified that the tenants breached a fixed term tenancy by vacating on December 30, 2015 even though the fixed term was to expire on July 31, 2016. The agent also stated that the landlord suffered a loss of rent for the month of January 2016 as a result of the tenants breaching the fixed term tenancy and that the tenants also failed to provide written notice they were vacating early/breaching their fixed term tenancy.

Analysis

Based on the landlord’s undisputed documentary evidence and undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants were deemed served with the Notice of Hearing, Application and both documentary evidence packages for each tenant, and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord’s

application is fully successful as I find the evidence supports the landlord's claim and I find that all amounts claimed are reasonable. I also find the tenants breached section 45 of the *Act* which states in part:

Section 45 of the *Act* states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[my emphasis added]

The tenants breached section 45 of the *Act* by vacating the rental unit on December 30, 2015 even though the fixed term did not end until July 31, 2016. I also note that the tenants failed to provide written notice which prevents a landlord from attempting to re-rent the unit as a landlord is unable to rely on a verbal notice from tenants. Section 37 of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

Based on the above, I find the tenants breached section 37 of the *Act* by failing to leave the rental unit in a reasonably clean condition and that the damage caused to the rental unit was not reasonable wear and tear under the *Act*.

Given the above, I find the landlord has proven their claim for items 1-5 inclusive and are entitled to a monetary amount of \$933.21. As the landlord's application was successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. Therefore, the landlord's total monetary claim is **\$1,033.21**. The landlord continues to hold the tenants' security deposit of \$340.00 which has not accrued any interest to date.

I authorize the landlord to retain the tenants' full security deposit of \$340.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$693.21**

Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain the tenants' full security deposit of \$340.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$693.21. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 17, 2016

Residential Tenancy Branch