



Dispute Resolution Services

Page: 1

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, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental 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;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed that the tenants served the landlord with their notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties confirmed that there are no issues and that they are ready to proceed with the hearing. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served.

The hearing was adjourned due to extensive discussions and poor communication from the participants. The landlord was cautioned to have an interpreter or another English speaking agent of landlord attend to conduct the hearing. Both parties were cautioned that no further evidence would be allowed or accepted.

On November 8, 2016 at 10:30am the hearing was reconvened via conference call where the landlord's agents (the landlord) both attended the hearing via conference call. The tenants did not attend. After waiting 5 minutes past the start of the scheduled hearing time, the hearing was commenced in the absence of the tenants.

At 13 minutes past the scheduled time the conference call hearing was concluded. The landlord was notified that as the tenants failed to attend the scheduled hearing that the tenants' application was dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties present, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

This tenancy began on May 16, 2012 on a fixed term tenancy ending on May 31, 2013 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 2, 2012.

The landlord seeks a monetary claim of \$957.75 which consists of:

\$106.00	Carpet Cleaning Costs
\$120.00	Cleaning Costs
\$431.75	Re-painting the rental unit
\$100.00	Folding Door Replacement
\$100.00	Master Bedroom Door Replacement

The landlord provided undisputed affirmed testimony that the tenants vacated the rental unit leaving it dirty and damaged. The landlord stated that the tenants had abused the

rental unit stating that the carpet required two deep cleanings, but was only seeking compensation for 1 treatment. The landlord stated that the tenants had left holes in the drywall, folding doors, and the master bedroom door requiring repair of the wall and replacement of the doors.

The landlord has provided copies of the paid invoices/receipts for the cleaning, painting, repairs and door replacements and 12 photographs of the damage caused by the tenants.

The landlord also states that the tenants had agreed to deductions of \$957.75 and to forfeit the \$575.00 security deposit as shown on the completed condition inspection report for the move-out dated July 2, 2015.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the tenants vacated the rental unit leaving it dirty and damaged requiring in excess of the \$957.75 in cleaning, repairs of the holes and replacement of the doors. The landlord has provided 12 undisputed photographs, copies of invoices/receipts, a completed condition inspection report for the move-in and the move-out. The landlord also relies upon the signed agreement of both tenants acknowledging the “deductions” and the tenants’ agreement to forfeit the security deposit. On this basis, I find that the landlord has established a claim for the \$957.75.

The landlord applied to keep the tenants’ security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$482.75.

$(\$957.75 - \$575.00 = \$382.75 + \$100.00 = \$482.75)$

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order 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: November 8, 2016

Residential Tenancy Branch