



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, MNR, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 their filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) stated that the tenants were both served with the notice of hearing package evidence via Canada Post Registered Mail on August 26, 2016 at the same address provided by the tenant, A.L. The tenant, A.L. (the tenants) confirmed that she had received the landlord's notice of hearing package as claimed, but that the tenant, M.L. is her estranged husband and that they are no longer together. The tenant, A.L. clarified that she no longer has any contact with the tenant, M.L. The tenants did not submit any documentary evidence. I find based upon the undisputed affirmed evidence of both parties that both parties have been sufficiently served as per section 90 of the Act.

At the outset of the hearing the landlord had originally disclosed that no documentary evidence was submitted, but halfway through the hearing the landlord stated that she had made an error and clarified that a documentary evidence package was submitted to the Residential Tenancy Branch via facsimile and that a set was also served to the tenants in the initial notice of hearing package. The tenant, A.L. confirmed that documentary evidence was provided by the landlord. The landlord claimed that she had a fax confirmation sheet to show that the documentary evidence was sent by the

landlord and received by the Residential Tenancy Branch. As such, the landlord was given an opportunity to re-submit the missing documentary evidence in support of the application for dispute and a copy of the fax confirmation sheet via facsimile to the Residential Tenancy Branch by 4:00pm on February 24, 2017 where if received will be considered as evidence for the hearing.

On February 24, 2017 at 2:29pm a 5 page documentary evidence package was received from the landlord in compliance with the direction provided. Received were:

- copy of the ExPressPost Tracking label with the last 4 digits of 1232 and a fax confirmation sheet showing that 1 page was faxed to the RTB on August 26, 2016.
- copy of the ExPressPost Tracking label with the last 4 digits of 1232 and a fax confirmation sheet showing that 2 page was faxed to the RTB on August 26, 2016.

A review of the 5 page documentary evidence provided no relevant evidence regarding the landlord's monetary claim. This evidence would have been relevant to the service of the notice of hearing package served to the tenants on August 26, 2016, but had been confirmed as served by the tenant, A.L.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for unpaid rent, for money owed or compensation for damage or loss 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, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that there was a signed tenancy agreement in which the tenancy began on August 1, 2015 on a fixed term tenancy ending on July 31, 2016. A monthly rent of \$1,550.00 was payable on the 1st day of each month and that a \$775.00 security deposit was paid on July 23, 2015.

The landlord seeks a monetary claim of \$1,225.00 which consists of:

\$300.00 Unpaid Rent, pro-rated for 6 days (August 1-6, 2016)

\$500.00	Cleaning and materials
\$275.00	Painting and materials
\$150.00	Removal of Child Tractor (Toy)

Both parties agreed that the tenant, A.L. had vacated the rental unit prior to the end of July 2016 and that the tenant, M.L. was still occupying the rental unit until it was discovered abandoned on August 6, 2016 by the landlord.

The landlord claims that on August 6, 2016 when possession was returned to the landlord that the tenant had left it dirty and damaged.

The tenant, A.L. stated that she could not comment on the condition of the rental unit at the end of the tenancy as she had already vacated the rental unit and was no longer in contact with the tenant, M.L.

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 ended the tenancy and returned possession by over holding the rental unit on August 6, 2016. As such, I find that the landlord has established the loss of the pro-rated rent of \$300.00 for 6 days.

I find that the landlord's claims for cleaning and material of \$500.00, painting and materials of \$275.00 and removal of a child tractor of \$150.00 has not been established. Although the landlord has provided undisputed affirmed testimony that the tenants left the rental unit dirty, in need of painting and had a child tractor at the rental premises, the landlord has not provided sufficient evidence of an actual amount required for these claims and instead relies strictly upon her direct testimony. During the hearing the landlord had indicated that documentary evidence had been submitted in support of the

application and that there was proof that these documents had been submitted. The tenant confirmed that documentary evidence was submitted. The landlord had been provided an opportunity to provide this documentary evidence in support of the monetary claim, but instead submitted copies of proof of service of the notice of hearing package in the form of copies of the Canada Post XpressPost Tracking labels. As no supporting evidence was provided for the monetary claims the landlord's remaining monetary claims are dismissed without leave to reapply.

The landlord has established a monetary claim of \$300.00. Having only been partially successful in the claim, I grant the landlord a partial recovery of the filing fee for \$50.00.

In offsetting this claim, I authorize the landlord to retain \$350.00 from the currently held \$775.00 security deposit. The landlord must return the remaining \$425.00 to the tenants.

Conclusion

The landlord has established a monetary claim of \$350.00.
The tenants are granted a monetary order for \$425.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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: March 6, 2017

Residential Tenancy Branch

