



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, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied for return of the security deposit. The landlord applied for authorization to retain a portion of the security deposit for cleaning and damage. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The parties requested that their decisions be sent to them by email and the decisions are to be sent to the parties at the email addresses provided to me by the parties during the hearing.

Issue(s) to be Decided

1. Has the landlord established an entitlement to make deductions from the security deposit for the amounts claimed?
2. Is the tenant entitled to return of the security deposit?

Background and Evidence

The tenancy started on November 1, 2015 and the tenant paid a security deposit of \$725.00. The tenancy was set to end on April 30, 2017. The parties participated in a move-out inspection together on April 29, 2017 and the landlord prepared an inspection report. The tenant did not agree with the landlord's assessment of the rental unit at the end of the tenancy and did not sign the move-out inspection or authorize any deductions from the security deposit.

On April 29, 2017 the tenant filed his Application for Dispute Resolution seeking return of the security deposit. In the details of dispute, the tenant submitted that the landlord sought to make deductions of \$250.00 for painting and \$40.00 for cleaning from the security deposit to which the tenant was not agreeable. The tenant's evidence included several photographs of walls in an effort to point out the condition of the paint at the start and end of the tenancy as well as photographs of the fridge and stove.

The tenant testified that he did not know how or when he provided a forwarding address to the landlord. The landlord stated that it came by way of an email on May 1, 2017. The tenant doubted that he sent it by email but was unable to provide any clear testimony as to how and when a forwarding address was given to the landlord. I noted that the move-out inspection report does not have a forwarding address for the tenant in the space provided. In the absence of any evidence from the tenant I informed the parties that I would accept the landlord's testimony that the forwarding address was provided on May 1, 2017. A landlord has 15 days after receiving a forwarding address, or the date the tenancy ends, to file a claim against the security deposit. The tenant filed sooner than 15 days and I found his Application for Dispute Resolution to be premature. Accordingly, I dismissed the tenant's Application for Dispute Resolution. Rather than dismiss the tenant's application with leave, since the landlord has filed an Application for Dispute Resolution to claim against the security deposit I informed the parties that I would deal with disposition of the security deposit as part of the landlord's application to retain part of it.

On May 5, 2017 the landlord sent the tenant a refund cheque of \$435.00 and filed its Application for Dispute Resolution on May 10, 2017 seeking authorization to retain \$290.00 of the tenant's security deposit. In the details of dispute the claim is broken down as being \$40.00 for cleaning and \$250.00 for painting. Both parties confirmed during the hearing that the \$435.00 refund cheque was not cashed by the tenant. At the end of August 2017 the landlord sent the landlord's evidence package to the tenant. The evidence package included a security deposit refund statement showing a deduction of \$40.00 for cleaning and \$250.00 for painting with the amount of the refund owed to the tenant as being \$435.00. The landlord provided a copy of the refund cheque sent to the tenant including the cheque stub that indicates a deduction of \$40.00 for cleaning and \$250.00 for painting. The landlord provided a document entitled "Purchase Order" for painting of the unit at a cost of \$551.25. The landlord also provided three photographs that were faxed to the Residential Tenancy Branch. The photographs were nearly impossible to decipher. The landlord stated that they were two photographs of a fridge and one of an oven.

During the hearing, the landlord withdrew the request to recover painting costs from the tenant but sought to amend the application to seek \$250.00 from the tenant for cleaning the unit. In support of the landlord's claim, the landlord pointed to the three photographs and to the "Purchase Order" for painting the unit described above. The landlord pointed out that at the bottom of the Purchase Order is a hand-written notation at the bottom that says: "no painting charges – just for cleaning \$250.00 \$40 x 6.5 hrs."

I noted that the landlord had not provided a receipt, invoice, or other documentary evidence to demonstrate the cost to clean the unit. The landlord testified that no such documentation was provided as the landlord does not have such evidence; however, the landlord stated that the cleaner was in the unit for 6.5 hours and the landlord pays \$40.00 per hour for cleaning. The landlord provided changing testimony that the cleaner is an employee of the landlord and an employee of a contracted cleaning company.

I dismissed the landlord's claim for cleaning for reasons provided in the analysis without seeking a response from the tenant.

Analysis

Section 59 of the Act requires that a party making an Application for Dispute Resolution against must provide full particulars of the dispute. This requirement is in keeping with the principles of natural justice and serves to put the other party on notice as to the nature of the claims against so as to provide the other party the opportunity to prepare a response or defence. The landlord's Application for Dispute Resolution; security deposit refund statement; and security deposit refund cheque stub all indicate that the landlord was seeking \$40.00 from the tenant for cleaning and \$250.00 for painting. Understandably, the tenant was prepared to dispute the much larger painting claim as evidence by all of the photographs of the walls. Yet, after receiving the tenant's evidence that deals primarily with the landlord's claim to recover painting costs, the landlord withdrew the painting claim and sought to change the cleaning claim to \$250.00.

In order to amend an Application for Dispute Resolution, the applicant must complete an Amendment to an Application for Dispute Resolution and serve it to the other party in accordance with the Rules of Procedure, including separation from any evidence served at the same time. The landlord did not prepare or serve the tenant with an Amendment and provided no prior indication that the landlord would be seeking to increase the cleaning claim to \$250.00 except for a hand-written notation on the Purchase Order for

painting that was on the 26th page of evidence. Therefore, I declined to amend the landlord's cleaning claim.

The landlord had sought \$40.00 for cleaning charges by way of the Application for Dispute Resolution, which I did consider but ultimately dismissed for the reasons provided below.

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. If a tenant fails to meet this obligation the landlord may recover the damages or loss incurred as a result.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The tenant had already indicated to the landlord at the move-out inspection and by way of his own Application for Dispute Resolution that he did not agree with the landlord's request for deductions, including cleaning. Accordingly, the landlord has the burden to demonstrate that the landlord is entitled to recover the amount claimed for cleaning. I found the landlord's submissions unreliable as they were inconsistent and unsupported. Landlord did not provide a receipt or invoice or other documentation to demonstrate the amount paid to the cleaner or the cost involved. I find the hand written notation on the bottom of the Purchase Order for painting to be insufficient proof the rental unit required cleaning to bring it to a reasonably clean condition. The landlord's oral testimony was that the oven and the fridge were dirty; yet, the security deposit refund statement indicates it was the stove that needed cleaning. Further the photographs provided to me by the landlord were unclear after being faxed to me and I do not see evidence of unclean appliances in those photographs. In contrast the tenant's photographs were mailed and included clear colour photographs of the fridge, freezer and stove. Therefore, I dismiss the landlord's claim for \$40.00 in cleaning.

As both applications were dismissed, I make no award for recovery of the filing fee to either party.

Since the landlord continues to hold the security deposit and the landlord's request to retain a portion of the security deposit has been dismissed, in keeping with Residential Tenancy Branch Policy Guideline 17: *Security Deposits and Set-off*, I order the landlord to refund the full amount of the security deposit to the tenant without further delay. To ensure payment is made, I provide the tenant with a Monetary Order in the amount of \$725.00. During the hearing, I informed the parties that the tenant is at liberty to cash the partial refund cheque he already has in his possession and if he is successful the landlord need only send the balance remaining of \$290.00 to the tenant. Should the refund cheque no longer be negotiable the tenant may use the Monetary Order to ensure the full amount is ultimately refunded to him.

Conclusion

The tenant's Application for Dispute Resolution and the landlord's Application for Dispute Resolution were dismissed. Since the landlord continues to hold the security deposit and has not been authorized to make any deductions I provide the tenant with a Monetary Order to ensure the security deposit of \$725.00 is refunded to him.

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: October 03, 2017

Residential Tenancy Branch