Dispute Resolution Services

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 MNDL-S, MNRL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authority to retain the tenants' security deposit, pursuant to section 38; and
- repayment of the filing fee, pursuant to section 72.

Resident manager Z.B. (the "landlord") testified that she served the tenants separate notice of dispute resolution packages by registered mail on May 10, 2018. The landlord provided the Canada Post Tracking Numbers to confirm these registered mailings. The tenants confirmed receipt of the dispute resolution packages. I find that the tenants were deemed served with these packages on May 15, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act.*

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to repayment of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2015 and ended on April 30, 2018. A move in condition inspection report was completed by both parties on July 1, 2015 and the tenants received a copy. Monthly rent in the amount of $2,773.00 was payable on the first day of each month. A security deposit of $1,300.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. On April 9, 2018, the tenants gave the landlord notice to end their periodic tenancy effective April 30, 2018. When the tenants moved out, they did not return the two door fobs that they were provided with at the beginning of the tenancy.

The landlord submitted into evidence a security deposit refund form (the "security deposit form") signed by tenant A.O. listing the following deductions from the tenants' security deposit:

Item	**Amount**
Rent for May	$2,773.00
Carpet cleaning	$340.00
Cleaning	$960.00
Painting	$971.25
2 fobs	$100.00
Garbage pick up	$150.00
TOTAL	**$5,294.25**

The tenants testified that on the day they moved out, April 30, 2018, the landlord was very busy as she had several other tenants moving out on the same date. The tenants further testified that the landlord had them sign the security deposit refund form which only had a $100.00 deduction for two fobs, and that the rest of the form was blank when they signed it.
The landlord testified that at the time tenant A.O. signed the security deposit form, the only deductions listed were rent in the amount of $2,773.00 and the cost of two fobs in the amount of $100.00. The landlord testified that she filled in the rest of the form later, when she knew what the other costs to clean up the unit were.

The tenants testified that the landlord did not do a joint move out inspection report with them and did not provide them with a move out inspection report completed by the landlord. The tenants further testified that they were originally supposed to do the move out inspection report together on April 30, 2018 but the landlord was too busy that day and did not provide another day to the tenants to complete the report. The tenants testified that neither of them signed a move out condition inspection report.

The landlord testified that it was the tenants who did not have time to stay and complete the move out condition inspection report and so she had tenant A.O. sign a blank move out condition inspection report which she completed alone after the tenants left. This move out

condition inspection report was entered into evidence. The landlord testified that she did not offer the tenants another opportunity to do the move out inspection with her.

The landlord further testified that two or three days after completing the move out inspection report she emailed it to the tenants. The tenants testified that they never received a copy of the move out inspection report. The landlord did not submit a copy of this email into evidence.

The landlord testified that she started advertising the rental unit for rent on April 9, 2018, the same day she received notice to end tenancy from the tenants. The landlord testified that she advertised on the landlord's website, as well as craigslist, and Kijiji and that she renewed theses advertisements daily. The landlord did not submit any advertisements into evidence. The landlord said that it was difficult to find renters for the rental property because the property was very dirty and the tenants were in the process of moving so there were boxes everywhere. The landlord testified that she was able to rent the unit for June 1, 2018.

The landlord testified that the doors and walls of the rental unit were covered in scrapes, scuffs and stickers; photographs depicting same were submitted into evidence. The landlord testified that the unit was in need of re-painting before new tenants could move in. The landlord testified that the unit in question was previously re-painted in June of 2015. The landlord submitted into evidence a detailed purchase order for painting the unit in the sum of $971.25.
The landlord testified that the rental unit was left in a filthy condition, and that none of the unit was cleaned or vacuumed. Photographs of the unit and carpets were entered into evidence. In support of the landlord's claim for reimbursement for cleaning and carpet cleaning, the landlord submitted into evidence a hand-written bill from a cleaning lady dated April 30, 2018. The receipt stated that she cleaned the rental property for 24 hours, at $40.00 per hour for a total of $960.00 and that she cleaned the carpets for $340.00. The total bill was $1,300.00. The serial number on the bottom of the bill was #2.

The landlord testified that the tenants did not return two fobs at the end of their tenancy. In support of the landlord's claim for reimbursement for the cost of the fob replacement, the landlord submitted into evidence a hand-written bill which she testified she wrote out from the apartment complex, dated April 30, 2018. The receipt stated that the cost of two fobs was $50.00 each for a total of $100.00. The serial number on the bottom of the bill was #3.

The landlord testified that garbage requiring removal was left in the rental unit. In support of the landlord's claim for reimbursement for the cost of garbage pickup, the landlord submitted into evidence a hand-written receipt which she testified she received from the person hired to remove the garbage. The receipt was dated April 30, 2018. The receipt stated that the cost of garbage pickup was $150.00. The serial number on the bottom of the bill was #4.

The three bills described above with serial numbers #2, #3, and #4 were from an identical "fill in the blank" bills/ receipt book. The handwriting on all three bills were identical. When the landlord was asked to explain the similarity, she testified that the cleaning lady and the garbage removal

person must have had the same bill/receipt book that she did. The landlord maintained that she only filled in the fob bill/receipt.

The tenants argued that the above listed bills with serial numbers #2, #3, and #4 were fabricated and testified that the cleaning and garbage removal charges are all exaggerated.

Analysis

Monetary Claim for May 2018 Rent

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

This issue is expanded upon in Policy Guideline #5 which explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

In this case, contrary to section 45 of the *Act,* less than one month's written notice was provided to the landlord to end the tenancy. The landlord testified that she started advertising the rental unit immediately and posted advertisements on the landlord's website, as well as craigslist, and Kijiji and that she renewed theses advertisements daily. I find that the landlord has made reasonable efforts to find a new tenant to move in on the date following the date that the notice took legal effect, that being June 1, 2018. The tenants are therefore liable for May 2018's rent in the amount of $2,773.00.

Monetary Claim for Painting

The landlord testified that the rental unit was last painted in June 2015, three years ago. In support of the landlord's contention that the rental property required painting at the end of the tenancy in question, the landlord submitted into evidence photographs of the walls containing numerous scuffs, scrapes and dingy patches. The landlord also submitted into evidence a detailed purchase order in the sum of $971.25. I accept the landlord's testimony that the rental property required re-painting, due to the condition it was left in by the tenants.

Policy Guideline 40 states that the useful life of interior painting is four years; therefore, at the time the tenants vacated the rental property there was only one year of useful life left on the interior paint. The tenants are therefore only responsible for ¼ of the cost of re-painting as per the below calculation:

$971.25/4 = $242.81

Monetary Claim for Cleaning, Garbage Removal and Fobs

Policy Guideline 16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss

In this case, as proof of her loss for fobs, cleaning/carpet cleaning, and garbage removal, the landlord submitted into evidence three sequential, identical receipts, written in the same handwriting. The landlord maintained that she only drafted the receipt for the fobs and that the other service providers must have had the same receipt book.

I find that the three receipts in question are unreliable as it is highly unlikely that all three bills would be identical. Another inconsistency is that all three receipts have the same date, April 30, 2018 which is the last day of the tenancy. If the cleaning lady had spent 24 hours cleaning the rental unit at 8 hours per day, it would have taken her three days to clean and so the receipt would not have been for earlier than May 3, 2018. It is also suspect that the cleaning lady's total fee equals the tenants' security deposit. In addition, upon reviewing the photographic evidence of the unit provided by the landlord, I find that 24 hours of cleaning is un-necessary and unjustified.

I find that due to the un-reliable nature of the receipts for cleaning/carpet cleaning, garbage removal and fob fee, the landlord has not sufficiently proved the value of the damage or loss and so it not entitled to a monetary order for these items. However, since the tenant testified that she agreed in writing to have $100.00 deducted from her security deposit for the unreturned fobs, I find that the landlord is entitled to the $100.00 charge for fobs.

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 35 of the *Act* states that at the end of a tenancy the landlord must offer the tenant at least 2 opportunities to conduct the move out condition inspection. Section 17 of the regulations to the Act require the landlord to provide the second opportunity in writing.

Regardless of whether or not the tenant signed the move out inspection report, the landlord admitted that she did not conduct a move out inspection with the tenants, and did not provide two opportunities to complete the inspection, with the second opportunity in writing. I find that the landlord did not comply with section 35 of the *Act.*

Section 36 of the *Act* states that if the landlord does not provide the tenants with two opportunities to complete the move out inspection, the right of the landlord to claim against the security deposit for damage to the residential property is extinguished.

Pursuant to section 36 of the *Act*, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

Security Deposit Doubling Provision

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.
In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, he is not entitled to claim against it due to the extinguishment provisions in section 36 of the *Act.* I find that the tenants are entitled to receive double the value of $1,200.00, which is the security deposit of $1,300.00 minus $100.00 in deductions that the tenants agreed the landlord could retain, totalling $2,400.00. Although the tenants did not apply to obtain a return of double the deposit, they did not specifically waive their right to it. Accordingly, I must consider the doubling provision as per Residential Tenancy Policy Guideline 17.

Conclusion

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of $1,300.00 in part satisfaction of her monetary claim for unpaid rent against the tenant.

As the landlord was successful in her application, I find that she is entitled to recover the filing fee for this application.

I issue a monetary Order to the landlord under the following terms:

Item	**Amount**
May 2018 rent	$2,773.00
Painting	$242.81
Two fobs	$100.00
Filing Fee	$100.00
Less doubled security deposit	- $2,400.00
TOTAL	**$815.81**

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this 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: June 20, 2018

Residential Tenancy Branch