



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 MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) seeking a Monetary Order for damage to the premises, authorization to retain the security deposit, and reimbursement of the filing fee.

Both parties attended the hearing. The tenant was represented by an advocate SF. Both parties were given a full opportunity to be heard, present evidence, call witnesses and submit documents.

The tenant acknowledged receipt of the landlord's Notice of Hearing and supporting documents. I find the tenant is served with these documents under Section 89 of the *Act*.

Issues to be Decided

Is the landlord entitled to:

- A Monetary Order for loss or damage pursuant to Section 67;
- Authorization to retain the security deposit pursuant to Section 38; and
- Reimbursement of the filing fee pursuant to Section 72.

Background and Evidence

The parties agreed they entered into a written fixed term residential tenancy agreement from February 1, 2017 to January 31, 2018 at a monthly rent of \$1,700.00 payable in advance. The tenant provided a security deposit of \$850.00 which is still held by the landlord. The tenant did not authorize the landlord to retain any amount of the deposit.

The landlord stated an inspection was conducted upon both move-in (signed by both parties) and move-out. The tenant refused to sign the move-out inspection as he disagreed with the determination that painting and cleaning were needed.

The landlord testified the tenant owes utilities in the amount of \$57.28 and submitted a copy of an invoice in this amount. The tenant agreed he owed this amount to the landlord.

The landlord claims a monetary order for reimbursement of the following expenses:

Painting	\$448.00
Cleaning	\$250.00
Total Expenses Claimed by Landlord	\$698.00

The landlord submitted invoices in support of the claim for reimbursement of painting and cleaning costs.

The landlord testified the unit had been freshly painted before the tenant moved in. The landlord report seeing smoking materials, namely a shisha, on the tenant's deck and smelling smoke similar to cigarette smoke in the apartment during the tenancy. The landlord testified the unit smelled of smoke when the tenant moved out and as a result the landlord had to clean and paint the walls of the apartment to make it suitable for occupation by the next tenant.

The tenant denies that he smoked in the premises or on the deck as the landlord states.

The tenant also claims he cleaned the apartment adequately when he left the unit and the pictures submitted by the landlord showing the kitchen in need of cleaning are inaccurate.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of damage or loss and order a party to pay compensation to the other. 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 it resulted 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 to verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a monetary award.

Section 37(2) of the *Act* states, “when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear,”

After listening to the testimony of the parties and viewing the evidence, I accept the landlord’s evidence the tenant did not leave the premises reasonably clean. I find the landlord has proven the unit smelled of smoke and I believe the landlord when she testified she saw a smoking device, namely the shisha, on the tenant’s deck during the tenancy and smelled the smoke in the unit herself. Based on this finding, the landlord took reasonable and necessary steps to remove the smell by painting the apartment. I find the landlord is entitled to a Monetary Order in the amount claimed for painting.

I accept the landlord’s evidence which is supported by photographs that the unit needed cleaning when the tenant left. Based on this finding, the landlord took reasonable and necessary steps to have the apartment cleaned. I find the landlord is entitled to a Monetary Order in the amount claimed for cleaning.

As the landlord is successful in this application, the landlord is entitled to reimbursement of the filing fee.

The landlord is therefore awarded a Monetary Order in the amount of \$855.28.

In accordance with the offsetting provisions of Section 72 of the *Act*, I allow the landlord to retain \$850.00 of the tenants’ security deposit in partial satisfaction of the monetary award issued in the landlord’s favour.

The summary of my award is as follows:

Utilities outstanding	\$57.28
Painting and cleaning	\$698.00
Filing Fee	\$100.00
Less Security Deposit	(\$850.00)
Security Deposit Balance	\$5.28

No Monetary Order is necessary to grant after the application of the security deposit to the monetary awards.

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 19, 2018

Residential Tenancy Branch