



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Associa British Columbia, Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an application by the landlord under the Residential Tenancy Act (the *Act*) for the following:

- A monetary order for damage or compensation under Section 67;
- Authorization to retain the security deposit pursuant to Section 72; and
- Reimbursement of the filing fee under Section 72.

The landlord appeared by its agent and representative AG (“the landlord”). The landlord was given the opportunity to submit affirmed testimony as well as present oral and written evidence.

The tenants did not appear although I left the teleconference hearing connection open until 1:45 PM to enable them to call in for the hearing scheduled for 1:30 PM. I confirmed the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called in to this teleconference.

The landlord testified the tenants were served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on December 27, 2017 and I find the tenants are deemed to have received these documents under Section 90 five days later on January 2, 2018. The landlord provided the Canada Post tracking

numbers in support of service. I find the tenants were served as required by Section 89 of the *Act*.

Issues to be Decided

Is the landlord entitled to the following:

- A monetary order for damage or compensation pursuant to Section 67;
- Authorization to retain the security deposit pursuant to Section 72; and
- Reimbursement of the filing fee pursuant to Section 72.

Background and Evidence

The landlord provided affirmed testimony as follows:

- The parties entered into a residential tenancy agreement starting December 15, 2011 for rent of \$925.00 a month payable on the first day of each month.
- At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$460.00 which remains with the landlord.
- The tenancy ended on November 30, 2017.
- On December 14, 2017, the landlord applied to retain the security deposit as compensation for damages caused by the tenant.
- The landlord testified the condition of the premises was as follows at the end of the tenancy:
 - Smoke residue was on the walls requiring cleaning and repainting;
 - Animal urine had soaked into the carpet requiring it to be professionally cleaned twice;
 - The tenant failed to leave the premises reasonably clean requiring the landlord to incur cleaning costs.

The landlord submitted a condition inspection report completed on moving in (signed by the tenants) and moving out (not signed by the tenants). The tenants failed to appear for two scheduled appointments to conduct the inspection on moving out.

The tenants have not agreed the landlord may retain any portion of the security deposit.

The landlord testified to incurring the following expenses for which substantiating invoices were submitted. The landlord seeks a monetary order as follows:

Cleaning	\$66.00
Carpet cleaning	\$150.00
Walls – cleaning and painting	\$462.00
Total Claimed by Landlord	\$678.00

Analysis

Security Deposit

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with the regulations is the best evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 35(2) of the *Act* requires the landlord to offer the tenant at least two opportunities for the inspection.

In reviewing the documents and hearing the landlord's uncontradicted evidence, I find the landlord has complied with Section 35(2) of the *Act* by offering the tenants at least two opportunities for the move-out inspection.

Section 36 of the *Act* states that the right of a tenant to the return of a security deposit is extinguished if the tenant has not participated in two opportunities for inspection provided by the landlord. I accept the landlord's uncontradicted testimony the tenants failed to attend for the inspection on move-out as required. I therefore find the tenants' right to the return of the security deposit is extinguished.

Damages

Section 67 of the *Act* establishes if damage or loss results from a tenancy, an Arbitrator may determine the amount 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 that 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.

Cleaning

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 landlord and viewing the evidence, including the receipt for cleaning expenses, I accept the landlord’s evidence and find the tenants did not leave the premises reasonably clean.

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, \$66.00.

Carpets

After listening to the testimony of the landlord and viewing the evidence, including the receipt for carpet cleaning expenses, I accept the landlord’s evidence the tenants did not leave the carpets reasonably clean.

Based on this finding, the landlord took reasonable and necessary steps to have the carpets cleaned. I find the landlord is entitled to a Monetary Order in the amount claimed for carpet cleaning, \$150.00.

Painting

No evidence was submitted when the unit was last painted. Based on the landlord's testimony, I find it is reasonable to assume the premises were painted in 2011 at the beginning of the tenancy.

Residential Tenancy Policy Guideline 40: Useful Life of Building Elements contains a table stating the useful life of interior paint is 4 years. The landlord is therefore not entitled to reimbursement for the painting expense.

In this case, the invoice for painting includes cleaning efforts to remove smoke residue from the walls. I find the landlord is entitled to these cleaning costs. While the invoice does not specifically attribute a portion of the expense to cleaning, I find it reasonable that half the invoice relates to the cleaning. I accordingly find the landlord is entitled to half the amount claimed for painting and cleaning (\$462.00), being \$231.00.

Filing Fee and Set-Off

I find the landlord is entitled to reimbursement of the filing fee and a set-off of the security deposit pursuant to Section 72.

Summary of Award

I find the landlord is entitled to a monetary award as follows:

Cleaning	\$66.00
Carpet cleaning	\$150.00
Painting (1/2 of \$462.00)	\$231.00
Filing fee	\$100.00
(Security Deposit Set-Off)	(\$460.00)
Monetary Order	\$87.00

Conclusion

The landlord is entitled to a Monetary Order in the amount of \$87.00. This Order must be served on the tenants. If the tenants fail to comply with this Order, the landlord may file the Order in the Provincial Court (Small Claims) to be 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: July 18, 2018

Residential Tenancy Branch