



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL
 MNSD, RPP, FFT

Introduction

This teleconference hearing was scheduled in response to cross-applications under the *Residential Tenancy Act* (the “Act”). The Landlord applied for monetary compensation for damages against the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenant applied for a Monetary Order for the return of the security deposit, for the return of personal property and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing, as was the Tenant and an advocate for the Tenant (the “Tenant”). The parties confirmed that the Notice of Dispute Resolution Proceeding documents and copies of their evidence were served to the other party as required.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Tenant’s application named an agent for the Landlord as the respondent, instead of the business name of the Landlord. The agent originally named attended the hearing and confirmed that he was an agent for the company. Therefore, the respondent name on the Tenant’s application was amended to the business name as stated on the

Landlord's application. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Is the Landlord entitled to retain the security deposit towards compensation owed for damages?

Is the Tenant entitled to the return of the security deposit?

Should the Landlord be ordered to return the Tenant's personal property?

Should either party be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in April 1, 2017 and ended on May 23, 2018. Monthly rent was \$1,400.00 per month and a security deposit of \$700.00 was paid at the outset of the tenancy. The Landlord is still in possession of the full security deposit amount.

The Landlord testified that during the tenancy the Tenant had a dog residing on the property. As the dog was not present at the beginning of the tenancy and the Tenant did not advise them about the dog, a pet damage deposit was not obtained.

The Landlord noted a clause in the tenancy agreement which states the following: 'An inspection of the Premises, for the presence of fleas must be completed by a professional pest control company, at the sole cost of the Tenant, upon the earlier of the pet or the Tenant vacating the Premises.'

The Landlord testified that a move-out inspection report was completed with the Tenant on May 23, 2018. The report was submitted into evidence and notes \$150.00 required for touch-up painting and \$200.00 for the flea inspection.

The Landlord clarified that \$200.00 was the estimate in case fleas were found and further treatment was needed, but the actual cost for the inspection was \$70.88, as noted on an invoice submitted into evidence.

The Tenant testified that she never denied having a dog in the rental unit, but when she went to talk to the property manager to sign a pet agreement, the property manager did not follow through, so an agreement was never signed.

The Tenant provided testimony that an agreement to have a flea inspection as part of the tenancy agreement cannot be upheld and that she should not be responsible for the cost of the inspection.

The Landlord also claimed compensation in the amount of \$137.75 for the cost of paint to paint the walls in the rental unit. The Landlord testified that there were also costs associated with their handyman completing the painting, but they are not claiming for these. The Landlord submitted a receipt for the purchase of paint, dated May 31, 2018.

Both parties submitted photos of the walls in the rental unit. The Landlord's photos show before and after the work was completed by their handyman.

The Tenant testified that she repaired nail and screw holes in the walls and painted over the patched holes. She stated that she was advised as to the paint colour from the Landlord.

The Landlord stated that the colour was incorrect as the paint was from a different company, while the Tenant testified that the difference in appearance was due to new paint versus paint that was over one year old.

The parties agreed that they participated in the move-out inspection together on May 23, 2018. However, the Tenant stated that the inspection was rushed and she was not walked slowly through each area of the home to note any damage. An audio recording of the move-out inspection was submitted into evidence.

The Tenant stated on the inspection report that she did not agree to the charges for painting or the flea inspection. The parties agreed that the Tenant's forwarding address was provided in writing on the move-out inspection report on May 23, 2018.

The Tenant has also claimed for the return of \$100.00, which was provided to the Landlord at the start of the tenancy as a deposit for two entry fobs provided to her. The

Landlord stated that the fobs were returned to them at the end of the tenancy and the \$100.00 was being dealt with as part of the whole security deposit amount.

As the Tenant also applied for the return of personal property, when asked to clarify, the Tenant stated that this was not regarding personal property, but instead was a claim for \$200.00 of compensation due to stress and harassment.

The Tenant testified that the property management of the building was continually harassing and intimidating. They denied her continual access to the elevator at the time she was moving out which caused additional stress and cost more money as it increased the time it took to move out of the rental unit. The Tenant stated that stress was also caused by the manner in which the Landlord dealt with showing the rental unit for re-rental prior to her moving out.

The Tenant submitted into evidence the audio recording of the move-out inspection with the Landlord. In a letter submitted into evidence by the Tenant, the Tenant noted that the Landlords were abusive towards her during the move-out inspection, which is part of the reason she is requesting \$200.00 in compensation for stress and harassment.

The Tenant has also applied for \$25.00 compensation for the recovery of the costs of registered mail, a USB and paper. A receipt for registered mail was submitted into evidence in the amount of \$13.76.

Analysis

I refer to Section 38(1) of the *Act*, which states that a landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address is provided to return the security deposit or claim against it.

As the tenancy ended on the same day the Tenants provided her forwarding address in writing, May 23, 2018, I find that the Landlord had 15 days from this date to return the deposit or file a claim against it.

As the Landlord applied for Dispute Resolution on May 30, 2018, I find that they applied within the 15 days allowable. As such, I determine that Section 38(6) of the *Act* does not apply and the Tenant is not entitled to double the security deposit.

Although the request for flea inspection and the painting was noted on the move-out inspection report, I find that the Tenant did not agree in writing to the Landlord

withholding any amount from her security deposit. The Tenant stated on the report that she was not in agreement and testified to such during the hearing.

The parties agreed that the Tenant had a dog in the rental unit. The tenancy agreement addendum notes that should a tenant have a pet on the property, that a mandatory flea inspection is required at the tenant's cost. The tenancy agreement was signed by the Landlord and Tenant on March 5, 2017.

I note that in accordance with Section 20(e) of the *Act*, a landlord must not require that all or part of a deposit is kept at the end of the tenancy. However, I find that the pet clause in the tenancy agreement was an agreement between the parties regarding having a pet on the property and was not connected to automatically keeping all or part of a deposit.

As the Tenant did not conduct the flea inspection on her own, the Landlord undertook having a professional company complete the inspection. Although they estimated on the move-out inspection a cost of \$200.00, they are claiming the actual costs of \$70.88 as stated on the invoice for completion of the service.

As the Tenant and Landlord both signed the tenancy agreement outlining this requirement for the flea inspection, and I do not find this clause of the tenancy agreement unreasonable, I find that the Landlord is entitled to compensation in the amount of \$70.88.

The Landlord also claimed for \$137.75 for the cost of paint to re-paint walls in the unit that the Tenant had repaired holes and painted. I note that as stated in the *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises*, a tenant is not responsible for the cost of repairing nail holes in the rental unit, but may be responsible for holes caused by damage through negligent or deliberate actions.

I find insufficient evidence before me that the holes in the wall were through damage caused by the Tenant or that they were beyond nail holes from hanging items on the wall. Nail holes due to hanging photos and other such items would be considered reasonable wear and tear. In accordance with Section 32(4) of the *Act*, a tenant is not responsible for repairing damage caused by reasonable wear and tear.

However, the Tenant attempted to repair and paint over the holes and obtained the paint number from a list provided by the Landlord. While the Landlord stated that the

difference in paint colour may have come from the different companies that provided the paint, I find that the Landlord did not specify to the Tenant the exact company for a matching paint colour.

As such, despite being reasonable wear and tear, I find that the Tenant attempted to repair the nail holes in the wall to the best of her ability with the paint colour as provided by the Landlord. Therefore, the Tenant is not responsible for the costs of re-painting the walls and I decline to award the Landlord any compensation for the cost of paint.

As for the Tenant's claim for registered mail and other costs associated with the hearing process, I find that she is not entitled to compensation for these expenses. These are not costs that are compensable and instead are costs that may be incurred by both parties through the Dispute Resolution process.

The Tenant has claimed for the return of the \$100.00 deposit for two entry fobs. The Landlord was in agreement that the \$100.00 was accepted as a deposit and that the fobs were returned by the Tenant. As such, I find that the Tenant is entitled to the return of the \$100.00 deposit.

The Tenant has also claimed \$200.00 for harassment, however applied for this through a request for the return of personal property. Although the Tenant did not apply through the correct request on the application form, I find that she explained her claim on the application enough that the Landlord should have understood what her claim was, regardless of how it was categorized through the application.

However, I find insufficient evidence to establish that the Tenant experienced harassment from the Landlord or that the loss can be valued at \$200.00. The audio recording of the move-out inspection does not indicate harassment on the part of the Landlord and I find insufficient evidence regarding the use of the elevator at move-out or the additional moving costs that incurred as a result.

I understand that there were likely disagreements between both parties and that the relationship between the parties had deteriorated throughout the tenancy. However, due to the conflicting testimony of the parties and in the absence of sufficient evidence from the Tenant to prove that harassment occurred, I decline to award any compensation for this claim.

As both parties filed an Application for Dispute Resolution and were partially successful in their claims, I find that the filing fees offset each other. Therefore, neither party will be awarded the recovery of the filing fee.

A Monetary Order will be awarded to the Tenant in the amount outlined below.

Monetary Order Calculations

Return of security deposit	\$700.00
<i>Less flea inspection</i>	<i>(\$70.88)</i>
Return of fob deposit	\$100.00
Total owing to Tenant	\$729.12

Conclusion

Pursuant to Section 67 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$729.12** for the return of the security deposit after deductions are made, as well as for the return of a deposit paid for fobs. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: August 16, 2018

Residential Tenancy Branch