



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 FFL MNDL

Introduction

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

- A monetary order for compensation pursuant to section 67;
- An order to retain the security deposit pursuant to section 72;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The agent AT appeared for the landlord (“the landlord”). The landlord was given the opportunity to present affirmed testimony and submit written evidence.

The tenant did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional 15 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code for the tenant had been provided.

The landlord testified the tenant was served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on March 20, 2018 and deemed received by the tenant five days later under section 90, on March 25, 2018. In support of service, the landlord provided the Canada Post tracking number referenced on the first page of the decision. Pursuant to sections 89 and 90, I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution on March 25, 2018.

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified the parties entered into a month-to-month tenancy agreement beginning January 27, 2014 ending on February 28, 2018. Rent was \$1,762.00 a month payable on the first of the month.

A copy of the tenancy agreement was submitted as evidence.

At the beginning of the tenancy, the tenant paid a security deposit of \$825.00. On March 13, 2018, the landlord returned part of the security deposit to the tenant in the amount of \$583.50. The landlord retained \$241.50 as compensation for damages.

The landlord testified the tenant agreed to a deduction of \$39.00 for fireplace/chimney inspection but the tenant did not agree to the deduction of the balance of the damage claimed by the landlord in the amount of \$202.50, being comprised of \$150.00 claimed for painting and \$52.50 claimed for paint.

A document entitled "Security Deposit Refund" dated February 28, 2018 signed by the tenant was submitted by the landlord. This form contains a calculation of the damages claimed by the landlord as follows:

ITEM	AMOUNT
Security Deposit	\$825.00
Painting - labour	(\$150.00)
Painting Materials	(\$52.50)
Fireplace, chimney inspection	(\$39.00)
Amount of security deposit retained	\$583.50

The document contains two handwritten notes from the landlord as follows:

- “Tenant agreed with charges for fireplace”, and
- “Resident disagree with painting charges, will apply to RTB”.

The landlord brought an application on March 15, 2018 for dispute resolution within 15 days of the end of the tenancy.

The landlord testified that a condition inspection took place on moving in on January 14, 2017. The condition inspection report was signed by both parties.

The landlord testified that a condition inspection took place on moving out on February 28, 2018. The report notes damage to the walls during the tenancy. The condition inspection report states as follows with respect to the walls, “Patches/holes”.

The tenant wrote the following on the moving out report:

I don't feel it is my responsibility to pay for the walls to be painted after 4 years of tenancy.

The tenant refused to sign the condition inspection report on moving out. Accordingly, the report was signed by the landlord only. A copy of the condition report on moving in and moving out was submitted as evidence.

The landlord testified she personally observed the damage mentioned in the condition inspection report on moving out. She stated that throughout the unit were many holes on the walls, larger than pinholes, made by screws or nails. These holes had to be filled and painted prior to the unit being occupied by the next tenant.

The landlord submitted photographs of the walls in the unit showing white areas where the filling had taken place in approximately 20 – 30 small holes.

The landlord testified she does not claim for the cost of repainting the unit, but merely for the estimate of time and cost in filling and painting the holes. The landlord has estimated these costs as set out above. The landlord submitted invoices of the total cost of the labour and paint and claimed 35% of the invoice costs from the tenant. The landlord stated that in her opinion this represented a fair proportioning of the costs between repair of damage caused the tenant, for which she claimed compensation, and painting the unit, for which the landlord is not claiming compensation.

The landlord clarified the tenant had agreed on moving out to the deduction of the routine cost of fireplace and chimney maintenance of \$39.00 as indicated on the Security Deposit Refund form.

The tenant provided her forwarding address in writing on the condition inspection report, a copy of which was submitted as evidence.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

The landlord seeks a monetary order for \$241.50, the balance of the security deposit.

The landlord's evidence for compensation is supported by the agent's testimony, invoices, photographs and the condition inspection report on moving in and moving out.

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find the tenant consented to part of the security deposit being withheld by the landlord in the amount of \$39.00 for the fireplace inspection.

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.

While the tenant did not sign the condition inspection report on moving out, she acknowledged on the report the existence of the holes at the time she vacated the unit. These holes were not present in the condition inspection report on moving in. In the absence of any contrary evidence, I accept the landlord's testimony supported by the condition inspection report, that the tenant caused the damage described. I also find the landlord has incurred the expenses claimed. I therefore find on a balance of probabilities that the landlord has met the burden of proof and is entitled to a monetary order in the amount claimed.

I find the landlord is entitled to a monetary order as claimed in the amount of \$241.50.

I authorize the landlord to retain the security deposit in the amount of \$241.50 to apply to the monetary order pursuant to section 72.

As the landlord has been successful in this application, I grant the landlord reimbursement of the filing fee of \$100.00 pursuant to section 72.

Accordingly, I award the landlord a monetary order of \$100.00 calculated as follows:

ITEM	AMOUNT
Award to landlord for compensation for damage	\$241.50
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$241.50)
Monetary Order	\$100.00

Conclusion

I grant the landlord a monetary order in the amount of **\$100.00**. This order must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Order in the Provincial Court (Small Claims) and 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: October 16, 2018

Residential Tenancy Branch