



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order for cleaning and repairs in the amount of \$224.25 and to retain the security deposit. The Landlord also requests an order for payment of the filing fee.

The Landlord’s agent and both Tenants appeared for the scheduled hearing. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Landlord entitled to a monetary order for cleaning and repairs, pursuant to section 67 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to retain the security deposit, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began September 1, 2016 as a fixed term tenancy for one year; it reverted to a month-to-month tenancy thereafter. Rent was \$1,200.00 per month initially and \$1,244.00 per month by the time the tenancy ended, which was payable on the 1st of each month. A \$600.00 security deposit was paid. The tenancy ended March 31, 2018.

The Landlord states that there was a Condition Inspection Report at the start and end of the tenancy; the final report indicates that "unit needs to be painted" and that there were nail marks noted in the living room, kitchen and bedroom; no photographs were provided and the Tenants did not sign in agreement of the move-out report. A forwarding address was provided in writing to the Landlord the time the report was prepared.

The Landlord explained that unless a tenancy is extremely short in length, they always paint the walls as a matter of policy. She states that new renters expect the walls to be completely painted and not merely have holes patched. The Landlord is claiming \$100.00 for painting and \$35.00 for materials, which represents about half the actual cost incurred. In addition, the Landlord is claiming carpet cleaning of \$89.25.

The Tenants state that they knew they were to be charged for the carpet cleaning and do not dispute that claim. However, they ask that the balance of their security deposit be returned as they are not liable for painting the walls, which were freshly painted in 2016 when they moved in.

The Tenant stated that he had purchased patching material to cover the small nail holes and when he returned from work on March 29, 2018, he discovered that someone had been in the rental unit (without permission) and had done patching and prepping to paint the walls. The Landlord had indicated to him that new renters were arriving on the 1st and they wanted to get a head-start on the painting, which they would require.

The Landlord admits that they had painters prepare the walls prematurely and that due to a miscommunication, had understood that the Tenants had already vacated. She indicated that because there were some nail holes, the walls needed painting in any event.

Analysis

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Applicant bears the burden of proving their claim, on a balance of probabilities.

The Tenants do not dispute the carpet cleaning charge of \$89.25, which shall be awarded to the Landlord.

With respect to the painting, the Landlord has not satisfied me that the walls needed to be completely painted to satisfy the Tenants' legal requirements under section 37 of the Act, which states:

37. Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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**, and*

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. {bolding added}

Even if the Landlord had satisfied me that the walls required painting, this need should have been considered at the *end* of the tenancy with both parties present, and not during the month when the Tenants had paid to occupy the rental unit and were to be allowed *until* the end of the month to do any cleaning and/or repairs prior to a move-out inspection.

Policy Guideline 1 of the Residential Tenancy Branch states the following:

“Nail Holes:

1. *Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, **it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.***
2. *The tenant must pay for repairing walls where there are an **excessive number of nail holes, or large nails, or screws or tape** have been used and left wall damage.*
3. *The tenant is responsible for all deliberate or negligent damage to the walls.*

PAINTING

*The **landlord is responsible for painting the interior of the rental unit** at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. **The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible**” {bolding added}*

Given the evidence before me and the policy guidelines concerning the responsibility of a landlord to paint the rental unit, I find that the Landlord’s claim for \$135.00 to paint the rental unit must be dismissed.

Under section 38 of the Act, a Landlord must return a security deposit or file an Application within 15 days from the end of the tenancy or receipt of the Tenants’ forwarding address, whichever is later.

I accept the undisputed evidence that the Tenants provided the Landlords with their forwarding address in writing at the end of the tenancy on March 31, 2018. Therefore, the Landlord would have had 15 days from March 31, 2018 onwards, to deal properly with the Tenants’ security deposit pursuant to the Act. The Landlord filed this Application on April 6, 2018 and therefore, the security deposit is held in trust pending the outcome of this hearing.

I find that the Landlord has had limited success with its claim and I am not inclined to award the \$100.00 filing fee to the Landlord. The Landlord shall retain \$89.25 of the security deposit for carpet cleaning expenses and the balance of **\$510.75** shall be returned to the Tenants at an address to be provided by them.

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord

fails to make payment. Copies of this order are attached to the Tenants' copy of this Decision.

Conclusion

The Landlord shall pay forthwith to the Tenants the sum of \$510.75.

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 22, 2018

Residential Tenancy Branch