Dispute Resolution Services

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 MND, MNSD, FF

Introduction

This hearing was convened in response to an application made May 11, 2018 by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant asked to have her application joined for this hearing. The Tenant applied on May 22, 2018 for return of the security deposit pursuant to section 38 of the Act. This application has been scheduled to be heard on a future date. The Landlord consents to the Tenant's application being joined at this hearing.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure provides that applications may be joined and heard and the same hearing where, inter alia, the same facts will have to be considered, the same landlord is named in both application, and the applications pertain to the same rental unit. Given that the Parties and rental unit are the same, as the same facts will be considered in relation to either the retention or the

return of the security deposit, and considering the Landlord's consent I find that the Tenant's application may be joined for expediency.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?
Is the Tenant entitled to return of the security deposit?

Background and Evidence

The tenancy started on April 1, 2017 and ended on April 30, 2018. Rent of $1,062.50 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $531.25 as a security deposit and $531.25 as a pet deposit. The Parties mutually conducted a move-in inspection with a condition report completed and copied to the Tenant. The Parties mutually conducted a move-out inspection with the condition report completed and copied to the Tenant. The Tenant did not agree with the move-out report. The Tenant provided her forwarding address on April 30, 2018.

The Landlord states that the tenancy agreement addendum requires the Tenant to obtain a pest inspection for fleas at the end of the tenancy and that the Tenant failed to have this completed. The Landlord states that they had the inspection done and claims $200.00. The Landlord provides an invoice dated May 31, 2018 for $135.00 and confirms that there is no indication on the invoice of the rental unit inspected. The Landlord states that the inspection was done on that date as the unit was still empty and an inspection was required for another unit at the same time. The Landlord states that the amount allocated to the Tenant from the costs set out on the invoice amounts to $78.75 and that the remaining amount is for the Landlords time involved with obtaining and scheduling the inspection. The Tenant states that her pet did not have fleas and that her pet was on flea medication for the entire tenancy. The Tenant states that her pet still does not have fleas. The Tenant states that the requirement for a flea inspection is contrary to the Act that only requires leaving a unit reasonably clean, that there is nothing in the RTB policy that indicates routine flea inspections as part of the

area to be cleaned, and that this is a higher standard than required by the Act. The Landlord confirms that no fleas were found by the inspection.

The Landlord states that the Tenant left the walls in the unit with damage requiring paint touch-ups. The Landlord provides photos and claims $150.000. No invoice was provided. The Landlord states that the work was done by an employed and salaried handyman and his time was covered by his salary. The Landlord states that costs were also incurred for paint supplies. The Landlord confirms that no receipt for paint supply costs was provided as evidence for this hearing/ the Tenant states that there were only simple scuffs left that did not require paint and that the Tenant was refused the opportunity to wipe those scuffs off the walls wither at the time of the move-out inspection or later. The Landlord states that they were not prepared to come back to the unit to allow repairs as this should have been done by the end of the tenancy. The Landlord states that he did not hear any offers to make repairs.

The Landlord did not provide a monetary order worksheet.

Analysis

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if, inter alia, the term is inconsistent with this Act or the regulations, or the term is unconscionable. Section 37(2)(a) of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The requirement in the tenancy agreement to conduct a pest inspection where a tenant has a pet regardless of whether the pet has or even can carry fleas or any other pests is arbitrary. The Landlord gave no evidence of any rational basis for such a term and the Tenant gave evidence of the pet having flea treatments throughout the tenancy. The irrationality is also supported by the Landlord's evidence that no fleas were found in their inspection. This requirement can therefore only be seen as an arbitrary pre-emptive measure against possible damages. I also consider that, in the circumstances where a pet is being treated for fleas and carries no

fleas, an arbitrary inspection at the end of the tenancy as part of the obligations for a tenant to leave a unit without damage is a higher standard than required by the Act. For these reasons I find that the requirement for a pest inspection is both inconsistent with the Act and is unconscionable in the circumstances. I dismiss the claim for reimbursement of the cost for the inspection. As there is nothing in the Act that provides for a landlord to obtain compensation for a landlord carrying out its duties and obligations, I dismiss the claim for the Landlord's time in scheduling and having the inspection conducted.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed and that costs for the damage or loss have been incurred.

The photos do not show any distinct marks or damage to the walls. There is no evidence of any costs being incurred or paid out. There is no evidence of any wage or time allocation of the employee in making the repairs. I found the Tenant's evidence of being refused an opportunity to remedy the marks on the walls persuasive given the Landlord's evidence of not wanting to return for any repair. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant failed to leave the unit unclean or undamaged or that the Landlord incurred the costs claimed or that the Landlord took reasonable steps to mitigate the costs being claimed. I therefore dismiss the claim for painting.

As the Landlord has not been successful with its claim for damages to the unit I decline to award recovery of the filing fee and in effect the Landlord's application is dismissed.

As the Landlord still holds the Tenant's security and pet deposits I order the Landlord to return the combined security and pet deposit plus zero interest of **$1,062.50** to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **$1,062.50**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: November 07, 2018

Residential Tenancy Branch