



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER ISLAND APT PROPERTIES LTD. PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDLS, MNDCLS, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the landlord under the *Residential Tenancy Act* (“Act”) for a monetary order for damage to the unit, site or property, for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to retain the tenants’ security deposit, and to recover the cost of the filing fee.

An agent for the landlord VS (“agent”) and the tenants attended the teleconference hearing. The parties were affirmed and the hearing process was explained to the parties. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Preliminary and Procedural Matters

Neither party raised any concerns regarding the service of documentary evidence or the opportunity the parties had to review that evidence prior to the hearing.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to the parties and that any applicable order would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a written tenancy agreement exists between the parties. The copy of the tenancy agreement could not be opened as the document submitted in evidence shows a "corrupted" error and could not be viewed as a result. The parties agreed that a fixed-term tenancy began on September 1, 2017 and was scheduled to end on August 31, 2018. There is no dispute that the tenants provided their notice to end tenancy on July 1, 2018, which was effective July 31, 2018 and was late as a result which I will address later.

The Monetary Order Worksheet submitted in evidence was not completed in full by the landlord and is missing the monetary breakdown of the landlord's monetary claim. Instead, the landlord wrote in the "Details of Dispute" section of their application the following in support of the \$654.00 amount claimed:

The curtain pull cord has been broken from the wall and must be replaced.
Cost to replace is \$144.00.

The toilet lid has been cracked. I have one in-stock and I'm asking just \$50.00 to replace.

Cleaning fee for 7 hour of cleaning @ \$30.00/hour = \$210.00

Missing 2 mailbox keys and 2 bicycle tags – replacement cost is \$25.00 each
x 4 = \$100.00

Dry cleaning of all window covering – fee for a 2 bedroom suite is \$150.00

At the outset of the hearing, the agent clarified that they were reducing their monetary claim from \$654.00 as claimed to \$579.00 as they were able to lower the claim related to the keys/bike tags by \$50.00. The tenants stated that they understood the reduction of the monetary claim and I advised the parties that a reduction in the monetary claim does not prejudice the tenants. For ease of reference, I have added item numbers to the above-noted items as they were presented during the hearing by the agent.

The parties agreed that an incoming Condition Inspection Report ("CIR") was completed at the start of the tenancy, although the tenants stated that they did not receive a copy of the incoming CIR. Regarding the outgoing CIR, the agent first stated that no move-out inspection was scheduled and later changed their testimony that a text was sent to the tenants, which the tenants confirmed they had received and stated that they were

unable to attend. The landlord failed to provide evidence that the landlord provided the tenants with a Final Opportunity to Schedule a Move-Out Inspection under section 35 of the *Act*. Section 35 of the *Act* states that the landlord must offer the tenants at least 2 opportunities, as prescribed, for the inspection. Instead, the landlord completed the outgoing inspection without the tenants being present.

Regarding item 1, the landlord has claimed \$210.00 for suite cleaning. The parties agreed that the tenants have already paid the liquidated damages for vacating the rental unit earlier than the end of the fixed-term tenancy end date and as a result, the liquidated damages is not part of the claim before me. The agent referred to an invoice, which states that 7 hours of cleaning at \$30.00 per hour for a total of \$210.00 was required to clean the rental unit. The agent also stated that the actual total for cleaning was higher at 9 or 10 hours, only 7 hours is being claimed against the tenants. In addition, the agent stated that the painter did not charge for his time spent cleaning first before he could begin painting.

In support of this portion of the landlord's claim the agent referred to a bathroom vanity photo, which the parties agreed showed a pen and a tampon and dust inside the bathroom vanity cabinet. The landlord did not submit before photos for comparison.

The agent also referred to a photo of a stove element which was taken very close up. The agent appeared to be unprepared to direct my attention to the photo evidence during the hearing. The agent also referred to a thermostat, which was taken very close up which the agent stated showed some dust. In addition, the agent referred to a kitchen floor photo, which showed some dust in the photo near the dishwasher. In response to item 1, the tenants stated that they cleaned the rental unit before they vacated.

Regarding item 2, the landlord has claimed \$50.00 for keys that the agent stated were not returned to the landlord. The tenants stated that the keys were returned to the landlord by mail. As the landlord failed to submit a copy of the tenancy agreement addendum to support that a key deposit was requested and paid, this item was dismissed due to insufficient evidence, without leave to reapply.

Regarding item 3, the landlord has claimed \$144.00 to replace a broken curtain rod pull cord that was pulled off the wall. The agent referred to photo evidence, which the tenant did not dispute in terms of the pull cord mount being pulled off the wall. The tenants stated that the cord still worked, which the agent disputed. The agent also stated that while the total amount was higher than \$144.00, the agent submitted a previous invoice

for a similar pull cord mount versus the higher invoice for the pull cord mount repair being claimed. As there was no dispute that the pull cord mount had pulled away from the wall, this portion of the landlord's claim was granted during the hearing, which I will address later below in terms of the test for damages or loss.

Regarding item 4, the landlord has claimed \$50.00 for replace a cracked toilet lid that the tenants stated was cracked already when they moved into the rental unit. The incoming CIR states the toilet was in "good" condition; however, the agent stated that he was not sure how he arrived at the amount claimed as "he had one in stock". The tenants deny that they caused the crack in the toilet lid.

Regarding item 5, the landlord has claimed \$150.00 to clean the drapery in the rental unit which is the amount listed on the landlords' cleaning checklist. Due to the landlord failing to provide an invoice for the amount claimed; however, I dismiss this item due to insufficient evidence, without leave to reapply, which I will address further in this decision.

The agent confirmed that the landlord continues to hold the tenants' security deposit of \$840.00. The agent confirmed that the tenants provided their written forwarding address to the landlord on July 31, 2018. The landlord filed this application, claiming towards the tenants' security deposit on August 7, 2018.

Analysis

Based on the documentary evidence before me and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or loss that was incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, I afford the outgoing CIR no weight as I find the landlord has provided insufficient evidence that the tenants were provided 2 opportunities to attend an outgoing inspection as required by section 35(2) of the *Act*. I caution the landlord to comply with section 35 of the *Act* in the future as a result.

Item 1 - The landlord has claimed \$210.00 for suite cleaning. Although the agent referred to an invoice which states that 7 hours of cleaning at \$30.00 per hour for a total of \$210.00 was required to clean the rental unit, I find that the photo evidence does not support that it would take 7 hours to clean the rental unit to a reasonably clean condition. Section 37 of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

37 (1) 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.

[Emphasis added]

I find the items in the bathroom cabinet to be minor and would not take more than 5-10 minutes to clean. In addition, I find the stove element photo and the thermostat photo to support a reasonably clean stove element and thermostat and that the landlord's version of clean is at a higher standard than what the *Act* allows for as "reasonably

clean". I do agree that there was dust left behind in the rental unit, which the dishwasher photo clearly shows. Therefore, I grant the landlord two hours of cleaning at \$30.00 per hour for a total of **\$60.00** and I dismiss the remainder of item 1 due to insufficient evidence, without leave to reapply. In other words, I find the landlord has only met the burden of proof in support of two hours of cleaning and not seven as claimed.

I caution the tenants to comply with section 37 of the *Act* in the future.

Item 2 - The landlord has claimed \$50.00 for keys that the agent stated were not returned to the landlord. The tenants stated that the keys were returned to the landlord by mail. I dismiss this item due to insufficient evidence, without leave to reapply, as I find the landlord failed to provide a copy of the tenancy agreement addendum to support that the landlord requested and received key deposits in accordance with the *Act*. I find the landlord has failed to meet all four parts of the test for damages or loss for this item.

Item 3 - The landlord has claimed \$144.00 to replace a broken curtain rod pull cord that was pulled off the wall. I find the photo evidence to be compelling and I find the tenants breached section 37 of the *Act* by admitting that the pull cord separated from the wall and I have no documentary evidence from the tenants to support that they advised the landlord of this during the hearing. Therefore, I find the landlord has met the burden of proof and that the tenants owe the landlord **\$144.00** as claimed for this item.

Item 4 - The landlord has claimed \$50.00 for replace a cracked toilet lid that the tenants stated was cracked already when they moved into the rental unit. As the landlord was unable to tell me how he arrived at the amount of \$50.00 being claimed for this item, I find the landlord has failed to meet part three of the test for damages or loss for this portion of the landlord's claim. Therefore, this item is dismissed due to insufficient evidence, without leave to reapply.

Item 5 - The landlord has claimed \$150.00 to clean the drapery in the rental unit which is the amount listed on the landlords' cleaning checklist. This item was dismissed during the hearing without leave to reapply, due to insufficient evidence as I find the landlord failed to provide an invoice or other supporting document that the landlord suffered a loss of \$150.00 for drapery cleaning. I find a "cleaning checklist" does not support the amount without a supporting document that the landlord actually paid that amount to someone who completed the drapery cleaning. In other words, I find the landlord has

failed to provide sufficient evidence that the landlord suffered a loss of \$150.00 for drapery cleaning.

I caution the tenants to comply with section 37 of the *Act* in the future.

As the landlord's application had merit, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee.

As the landlord applied on August 7, 2018 for dispute resolution after having received the tenants' written forwarding address on July 31, 2018, I find the landlord complied with section 38 of the *Act*.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$304.00** comprised of \$60.00 for item 1, \$144.00 for item 3, plus \$100.00 for the recovery of the cost of the filing fee. Pursuant to section 38 of the *Act*, **I authorize** the landlord to retain **\$304.00** of the tenants' security deposit of **\$840.00** in full satisfaction of the landlord's monetary claim.

I grant the tenants a monetary order for the security deposit balance owing by the landlord to the tenants under section 67 of the *Act* in the amount of **\$536.00**. Should the landlord fail to immediately return the amount of \$536.00 to the tenants, the tenants must serve the landlord with the monetary order.

Conclusion

The landlord's claim is partially successful as described above.

The landlord has established a total monetary claim in the amount of \$304.00 comprised of \$60.00 for item 1, \$144.00 for item 3, plus \$100.00 for the recovery of the cost of the filing fee. The landlord has been authorized to retain \$304.00 of the tenants' security deposit of \$840.00 in full satisfaction of the landlord's monetary claim.

The tenants have been granted a monetary order for their security deposit balance owing by the landlord to the tenants under section 67 of the *Act* in the amount of \$536.00. Should the landlord fail to immediately pay the tenants \$536.00, this order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Both parties have been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 19, 2018

Residential Tenancy Branch