



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for compensation for damages, compensation for unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant. The Landlord was affirmed to be truthful in his testimony and stated that the Tenant was served with the Notice of Dispute Resolution Proceeding package and a copy of the Landlords’ evidence by registered mail. The Landlord provided the registered mail tracking number which is included on the front page of this decision.

Entering the tracking number on the Canada Post website confirms that it was sent on May 15, 2019 and delivered and signed for by the Tenant on May 17, 2019. Therefore, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

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

Issues to be Decided

Is the Landlord entitled to compensation for damages?

Is the Landlord entitled to compensation for unpaid rent?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

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

Background and Evidence

The Landlord provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement submitted into evidence. The tenancy started on December 1, 2016 and was for a fixed term of one year after which the tenancy continued on a month-to-month basis. Monthly rent at the end of the tenancy was \$1,325.00, due on the first day of each month. A security deposit of \$615.00 and a pet damage deposit of \$200.00 was paid at the start of the tenancy and of which the Landlord is still in possession of.

The Landlord testified that the Tenant moved out on April 30, 2019 without any prior notice. He stated that the Tenant left a note in the office with the keys and his forwarding address. The Landlord noted that he tried multiple times to reach the Tenant to schedule a move-out inspection and despite leaving several voicemails, he never heard back. The Landlord stated that due to this they used the move-out inspection conducted by the property manager on April 30, 2019 once notification had been received that the tenancy had ended.

The Landlord submitted a copy of the move-in and move-out inspection reports. The move-in inspection was completed on December 1, 2016 and signed by the Landlord and Tenant. The move-out report was completed on April 30, 2019 and was signed by the Landlord only. The move-in inspection notes that the unit was in good condition while the move-out inspection notes "poor" condition throughout the rental unit.

The Landlord stated that as they were unable to reach the Tenant following the Tenant moving out, the Tenant did not agree to any deductions from the deposits. The Landlord filed the Application for Dispute Resolution on May 10, 2019.

The Landlord is seeking compensation in the amount of \$2,486.00 which includes unpaid rent, cleaning, repairs, painting and a flea inspection.

Regarding the claim for unpaid rent, the Landlord is seeking \$1,325.00 for unpaid rent for May 2019. The Landlord stated that as they did not receive notice that the Tenant was moving out until he moved on April 30, 2019, they were unable to advertise to find someone for May 1, 2019. The Landlord submitted that they advertised the rental unit beginning on May 3, 2019 for the same monthly rent paid by the Tenant. However, he stated that they were unable to find a new tenant until June 1, 2019.

The Landlord is also seeking \$600.00 for repair work and painting. He stated that the rental unit was in poor condition with holes and marks all over the walls and painting required throughout the unit. He noted that the rental unit had been painted prior to the Tenant moving in. The Landlord submitted into evidence an invoice for repairs and painting dated May 1, 2019 in the amount of \$652.14. The Landlord confirmed that they are seeking \$600.00 of this amount from the Tenant. The Landlord also submitted photos of the rental unit that were taken at the end of the tenancy.

Regarding cleaning costs, the Landlord is seeking \$320.00 for general cleaning of the rental unit and \$189.00 for cleaning of the carpet and drapes. The Landlord submitted an invoice for cleaning dated May 3, 2019 in the amount of \$334.39 for 8 hours of cleaning. The Landlord confirmed that they were seeking \$320.00 of this bill from the Tenant. The Landlord also referenced the photos submitted which show various areas of the rental unit that required cleaning.

As for the cleaning of the carpet and drapes, the Landlord referenced a section of the tenancy agreement addendum which states the following:

The Tenant undertakes at his/her own expense, to have the supplied drapes dry-cleaned within the last month of tenancy, and to have the carpets professionally steam cleaned immediately, prior to vacating the Premises. Receipts must be submitted for this cleaning or you will be charged.

Included in the Landlord's evidence was an invoice dated April 29, 2019 for steam cleaning drapes and carpets in two rental units in the amount of \$378.00. The Landlord confirmed that the cost for the Tenant's unit was half of this in the amount of \$189.00.

The Landlord is also seeking reimbursement for a flea inspection in the rental unit in the amount of \$52.50. They submitted an invoice dated May 2, 2019 in the amount of

\$52.50. The Landlord also referenced a section of the tenancy agreement addendum which states in part the following:

A mandatory Professional Flea Inspection must be completed upon vacating the rental unit. You will be required to provide a copy of the Flea Inspection Report from the Professional Pest Control Company, clearly stating that the unit either has fleas or does not have fleas. If the report states that there are fleas in the unit, you will be required to treat the unit for fleas by a Professional Pest Control Company, and provide a proper invoice for this flea treatment.

The invoice dated May 2, 2019 states that there is no evidence of fleas at the time of the report.

Analysis

As the Landlord has applied for compensation, I refer to Section 7 of the Act which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss provides further clarification for determining if compensation is due through a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Regarding the Landlord's claim for unpaid rent, I accept the testimony of the Landlord that the Tenant did not provide notice to end the tenancy. As such, I find that the Tenant was not in compliance with Section 45 of the *Act* in which a tenant must provide at least one month written notice to end the tenancy. Therefore, as the Tenant did not end the tenancy in accordance with the *Act*, I find that the Tenant owed rent as due on May 1, 2019 in accordance with Section 26 of the *Act* and as per the tenancy agreement.

I also accept the testimony of the Landlord that they took reasonable steps to minimize potential losses by advertising the rental unit as of May 3, 2019. However, as the Landlord was unable to find a new tenant until June 1, 2019, I find that the Landlord experienced a loss of rent for May 2019. As such, I find that the Tenant owed rent as of May 1, 2019 and must compensate the Landlord for this loss in the amount of \$1,325.00.

I also accept the testimony of the Landlord that they attempted to connect with the Tenant to complete the move-out inspection and as were unable to, used a move-out inspection conducted with the Landlord only on April 30, 2019. Therefore, I find that the Landlord was within their rights under the *Act* to conduct the move-out inspection without the Tenant and find the move-out inspection to be reliable evidence as to the condition of the rental unit at the end of the tenancy. I also find the photos submitted into evidence to establish areas throughout the rental unit that required cleaning and areas on the walls that required repairs and painting.

As stated in Section 37 of the *Act*, a tenant must leave the rental unit reasonably clean and undamaged at the end of the tenancy with the exception of reasonable wear and tear. Based on the undisputed testimony of the Landlord, the move-out inspection and the photos, I find that the Tenant was not in compliance with this Section of the *Act* regarding the repair work and painting required throughout the unit. I find that the Landlord established the value of the loss through the submission of the invoice and that the amount charged is reasonable and a portion of the actual cost. Therefore, I award the Landlord \$600.00 for painting and repairs, as claimed.

Regarding the claim for carpet and drapery cleaning, I also find that the Landlord has met the four-part test and established their claim for carpet and drape cleaning. I find it reasonable that the Tenant would be excepted to cover the costs of this cleaning following a tenancy of more than a year and find that the Tenant was in breach of the *Act* and the tenancy agreement addendum by not having this cleaning completed. Therefore, I award the Landlord \$189.00 for cleaning of the carpet and drapes. I also

note that while the invoice was dated April 29, 2019 that this may have been an error or in relation to the cleaning conducted in the second rental unit noted on the invoice.

I also find that the Landlord has met the burden of proof in relation to the claim for cleaning and find that both the move-out inspection and photos submitted establish that significant cleaning was needed in the rental unit. As such, I find that the Tenant was in breach of Section 37 of the *Act* and should compensate the Landlord for the loss. I find the amount claimed to be reasonable and therefore award the Landlord cleaning costs in the amount of \$320.00.

Regarding the flea inspection, I find this requirement stated in the tenancy agreement addendum and therefore find that the Tenant was in breach of the tenancy agreement by not completing this. I find that Landlord has met the burden of proof regarding this claim and therefore award \$52.50 for the cost of flea inspection.

As for the security deposit and pet damage deposit, Section 38(1) of the *Act* states that a landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address is provided in writing to return the deposit or file a claim against it. As the tenancy ended on April 30, 2019 and the forwarding address was provided on the same day, I find the Landlord was in compliance with the *Act* through their application filed on May 10, 2019. Therefore, the Landlord may retain the deposits towards compensation owed and does not owe the Tenant double the deposits pursuant to Section 38(6) of the *Act*.

As the Landlord was successful with their application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount outlined below:

| | |
|--------------------------------|-------------------|
| May 2019 rent | \$1,325.00 |
| Repairs and painting | \$600.00 |
| Carpet/drapery cleaning | \$189.00 |
| General cleaning | \$320.00 |
| Flea inspection | \$52.50 |
| Filing fee | \$100.00 |
| <i>Less security deposit</i> | <i>(\$615.00)</i> |
| <i>Less pet damage deposit</i> | <i>(\$200.00)</i> |
| Total owing to Landlord | \$1,771.50 |

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,771.50** as outlined above. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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 21, 2019

Residential Tenancy Branch