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

For the Landlord: MNDL-S, FFL
For the Tenant: MNSD, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- $525.00 compensation for damage caused by the tenant, their pets or guests to the unit, site or property – holding the pet or security deposit; and
- recovery of the $100.00 Application filing fee.

The Tenant filed a claim for:

- the return of double the $525.00 security deposit for a total of $1,050.00; and
- recovery of the $100.00 Application filing fee.

The Tenant and his mother, C.G. ("Witness"), the Landlord's Agent (the "Agent"), a property manager, K.M., and a senior property manager, J.S., ("Agents") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

At the onset of the hearing, we reviewed service of the applications and documentary evidence between the Parties, the Agent said that the Landlord only received the Tenant's notice of hearing document, but no evidence was attached. The Tenant acknowledged that he uploaded his evidence to the RTB database, but that he had not served it on the Landlord. The Parties agreed that the Landlord served the Tenant with their application for dispute resolution and their documentary evidence via registered mail. The Agent provided the Canada Post registered mail tracking number in the hearing and the Tenant indicated that he had received this package.

As a result, I advised the Parties in the hearing that it would be administratively unfair of me to consider the Tenant's evidence, since the Landlord did not have notice of the Tenant's case without seeing the Tenant's evidence prior to the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy ran from April 3, 2018 to April 30, 2019, with a monthly rent of $1,050.00, due on the first of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $525.00, and no pet deposit.

The Tenant said that he provided the Landlord with his forwarding address by taping it to the door of the building manager`s office on May 17, 2019. The Parties agreed that they conducted a move-in inspection of the condition of the rental unit on April 3, 2018, and a move-out inspection of it on April 30, 2019. The Tenant signed the move-in condition inspection report ("CIR"), but he did not sign the move-out CIR. The Parties agreed that the tenancy ended when the Tenant moved out on April 30, 2019. The Landlord submitted a copy of the CIR into evidence.

LANDLORD'S CLAIMS

The Agent submitted a copy of the tenancy agreement for this tenancy, which the Tenant acknowledged having signed and initialed throughout. The Agent pointed to the Addendum of Additional terms, including clause 11, which states the following:

> 11. Upon Vacating:
>
> The Tenant shall, at his/her own expense, 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 or you will be charged.

The Tenant acknowledged that he initialed beside this term and signed the bottom of the Addendum saying, "I, [Tenant], as Tenant, agree to all of the additional terms contained herein."

The Landlord submitted a Monetary Order Worksheet containing the following:

	Receipt/Estimate From	For	Amount
1	[Local carpet cleaning company]	Carpet cleaning	$94.50
2	[Local laundry company]	Drape cleaning	$115.00
3	[Landlord]	Building manager cleaning	$160.00
4	[Landlord]	Handyman repairs	$160.00
		Total monetary claim	$525.00

1. Carpet Cleaning

The Tenant said that he did not believe that the carpets were cleaned before he moved into the rental unit. He said the rental unit smelled of nicotine. "I could even smell it in the carpets." The Witness said that she could not visit her son, because of the smell of nicotine in the rental unit.

The Agent said that the Tenant signed the CIR on move in and did not make any of these things known at that stage. The Landlord submitted a receipt dated April 30, 2019, for the carpet cleaning that said the address of the rental unit and "1 bedr Apt Carpet Cleaned 90.00, 4.50 GST."

2. Drapery Cleaning

In the hearing, the Tenant said:

> I don't think it was done when I moved in or after words. They painted the drapes. To get all the drapes done elsewhere – they would have been done for $80, including tax.

The Tenant and his Witness said that they checked with "numerous dry cleaners" about having the drapes cleaned; however, they were told that the dry cleaners would not do them, because the paint on the drapes could negatively affect their equipment. The Tenant said that he has "a hard time believing those curtains were dry cleaned."

The Agent said that the Tenant should have got it in writing that he checked with dry cleaners and was unable to find one to do the work. He said "we did have them done." The Agent submitted a receipt from a local laundry company dated April 30, 2019, with the rental unit address, saying: "1 bedroom. Dry cleaning & sewing 115.00"

The Agent said: "We're upfront with every tenant that moves in. Freshly dry cleaned drapes, freshly cleaned carpets. If the tenant doesn't do that, we turn it over - that's our protocol. At the end of the day, they should have done it."

3. Rental Unit Cleaning

The Landlord submitted an invoice for cleaning the rental unit address on April 30, 2019. It itemized the cleaning to have taken four hours at $40.00 per hour for a total of $160.00, plus $14.39 GST. The invoice also said:

> Cleaning of kitchen, bathroom and bedrooms.
> Appliances needed substantial cleaning.

4. Handyman Repairs

The Landlord submitted an invoice dated April 30, 2019, for the rental unit address, stating that the "handyman hours" consisted of four hours total at $40.00 for $160.00, plus $14.39 in GST for a total of $174.39.
The following additional information was included in the invoice:

> Mud and sand various holes in the walls. Touch paint on various walls, cabinets, and closet doors.

I asked the Agent how they can patch doors and he said it can be done. The Witness disagreed, saying that these doors are hollow and that it is not like patching drywall.

The Landlord submitted photographs labelled “Damages (Pictures)” which were very close up and with limited context. One scuff mark on a wall was near an electrical outlet, which indicated that it was smaller than an electrical outlet cover. There were three photos of something dark grey that had a scratches or dirt smears on it, but it was not clear what the subject was. There were three photographs of holes in the wall, which could have been the same hole, and again, without context, it was not possible to determine how many or how large the hole(s) were. There was one photograph of a dirty filter, but no evidence before me of from where this was removed. I could not tell what the subject matter or purpose was of the few other photographs.

TENANT’S CLAIMS

The Tenant has claimed for double the return of the $525.00 security deposit, and recovery of the $100.00 Application filing fee. The evidence before me is that the Landlord currently holds the Tenant’s security deposit and filed an application for dispute resolution on May 13, 2019.

Analysis

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

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant’s pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher

standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

[emphasis added]

Landlord's Claims

The Landlord submitted a copy of the CIR, with notes about the move-in and move-out inspections that were done. The Tenant did not sign the move-out condition inspection report; the Landlord's representative, the building manager, G.R., signed both. The CIR says that the only thing in "poor" condition at the end of the tenancy was the carpet in the living and dining room; however, the CIR says this carpet was in the same condition at the end of the tenancy, as it was a the beginning of the tenancy, which tells me that the Tenant was not responsible for the damage noted in the CIR. Further, the CIR states that the stove, fridge and cupboards were in poor condition at the beginning of the tenancy and in good condition at the end of the tenancy.

I also note that the Tenant's forwarding address is written on the CIR, which was dated April 30, 2019. I find it is more likely than not that the Tenant forgot that he provided his forwarding address to the Landlord during the move-out inspection, in addition to having posted it on the building manager's door on May 17, 2019.
Based on the evidence before me, I find that the Agents did not comment on the condition of the rental unit from firsthand knowledge - that it was the resident manager who conducted the condition inspections with the Tenant. There is no evidence before me that any of the Agents were present during the inspections or had any direct knowledge of the condition of the rental unit at the start or end of the tenancy.

Based on the condition of the rental unit as set out on the CIR, as well as the Landlord's photographs with little or no context, I find that any damage in the rental unit from this tenancy was ordinary wear and tear.

As noted above, the Agent said it is their "protocol" to provided freshly dry cleaned drapes and freshly cleaned carpets to every tenant who moves in. I find on a balance of probabilities that this protocol operates, whether the rental unit needs these services or not. However, as set out in PG #16, "It is up to the party claiming compensation to provide evidence to establish that compensation is due."

1. **Carpet Cleaning**

The CIR states that there was a burn mark on the carpets, which were in "poor" condition at the start and the end of the tenancy. This indicates to me that the Tenant was not responsible for any damage or soiling of the carpets, as they were in the same condition at the end of the tenancy, as at the beginning. Accordingly, I dismiss the Landlord's claim in this regard without leave to reapply.

2. **Drapery Cleaning**

I note that the CIR states that the drapes in both the living room and the bedroom were in "poor" condition at the start of the tenancy but in "good" condition "upon vacating". This indicates to me that the Tenant was not responsible for any damage to the draperies. To the contrary, the CIR indicates that the Tenant managed to improve the condition of the drapes. As a result, I dismiss the Landlord's claim in this regard without leave to reapply.

3. **Cleaning**

Given the condition of the rental unit as set out in the CIR, I find that the Tenant left it in better condition than he found it. According to the resident manager who signed the CIR at the start and the end of the tenancy, I find that the rental unit did not need the extensive cleaning that the Agents suggested it did. I find from their testimony that the four hours of cleaning was "protocol", rather than necessary or based on the actual condition of this rental unit at the end of the tenancy.

4. **Handyman Repairs**

As noted above, the Landlord's photographs of the damage to the rental unit are not in any context and not identified. The Agents said that the damage included repairing holes in doors, but I did not find any photographs of any holes in doors in their evidence.

This is consistent with the move-out CIR, which does not indicate any damage having been done to any doors. This raises questions in my mind about the reasonableness of the "handyman repairs" set out in the invoice. I have found that the Tenant caused normal wear and tear to the rental unit; accordingly, I dismiss the Landlord's claim in this matter without leave to reapply.

TENANT'S CLAIMS

The Tenant provided his forwarding address on April 30, 2019, and the tenancy ended on April 30, 2019. Section 38(1) of the Act states the following:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlords were required to return the $525.00 security deposit within fifteen days after April 30, 2019, namely by May 15, 2019, or to apply for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The Landlord's evidence is that they are holding the Tenant's security deposit and claiming against it, further to having applied for dispute resolution on May 13, 2019 – within the 15 days set out in section 38(1).

I, therefore, find the Landlord complied with their obligations under Section 38(1) of the Act. Accordingly, the Tenant is not eligible for recovery of double the return of the security deposit, pursuant to section 38(6)(b) of the Act. I grant the Tenant the return of his $525.00 security deposit from the Landlord. There is no interest payable on the security deposit.

I dismissed the Landlord's application wholly without leave to reapply. The Tenant was partially successful in his application and the Landlord was not, so I award the Tenant recovery of the $100.00 filing fee, for a total award of $625.00 from the Landlord.

Conclusion

The Landlord did not provide sufficient evidence to establish that the Tenant was responsible for any damage in the rental unit beyond ordinary wear and tear. The Landlord's application is dismissed wholly without leave to reapply.

Given the timeline of the end of the tenancy and the Landlord's application for dispute resolution, the Tenant is not eligible for recovery of double the security deposit. However, I find that the Landlord must now return the Tenant's security deposit in the amount of $525.00. I have also awarded the Tenant with recovery of the $100.00 Application filing fee, for a total monetary award of $625.00.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **$625.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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 23, 2019

Residential Tenancy Branch