



Dispute Resolution Services

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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 **FFL MNDL-S**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

Both of the tenants attended the hearing, represented by co-tenant, EM ("tenant"). The landlord attended the hearing represented by property manager, JS ("landlord"). As both parties were present, service of documents was confirmed. The tenants confirmed receipt of the landlord's Application for Dispute Resolution Proceedings Package and the parties acknowledged the exchange of evidence. Although the tenant advised she received the landlord's evidence a day late, she was prepared to deal with the matters of the application.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord provided the following testimony. The rental unit is a brand new condominium, never having been occupied before the commencement of this tenancy. All the fixtures in the rental unit were new and rental unit did not have any pre-existing damage from previous tenancies.

The fixed one year tenancy began on April 1, 2017, becoming month to month at the end of the fixed term. Rent was set at \$1,400.00 per month payable on the first day of each month. At the commencement of the tenancy, a condition inspection report was conducted and both parties participated. A copy of the condition inspection report was submitted as evidence. A security deposit of \$700.00; a \$700.00 pet damage deposit; and a \$125.00 key fob deposit was collected at the commencement of the tenancy.

A copy of the tenancy agreement was provided as evidence. Attached to the tenancy agreement are additional terms signed by each of the tenants which states at part 5 under the heading of Pets:

...

An inspection of the premises for the presence of fleas must be completed by a professional pest control company, at the sole cost of the tenant, upon the earlier of the pet or the tenant vacating the premises...

The landlord testified that the tenants sought to end the tenancy in the middle of the month. A copy of a text message from the building manger dated May 13th was provided as evidence. In the message, the manager acknowledges receipt of the tenant's notice to end tenancy seeking to end the tenancy effective June 14th. He also advises the landlord requires a tenancy to end at the end of the month, or June 30th. The landlord testified that the tenants were experiencing difficulty in paying rent for the entire month of June and that is why they sought to end the tenancy for the middle of the month.

On June 14th, the parties conducted a condition inspection report upon move-out. The move out date is listed as June 30th as the landlord confirms the tenancy ended on that date. The landlord notes that the spot on the form where the tenant provides a forwarding address was left blank and he was not provided with it until July 17th by email.

The landlord notes the following on the condition inspection report: Kitchen marked off as good condition with the exception of Walls & trim: left blank, no indication of good or

poor. Same for the bathroom, floors and walls left unchecked, the rest marked as good condition. Bedroom, all good condition, the walls and trim left unchecked. A notation is made on the form indicating flea inspection 200. The landlord testified this signifies a charge to the tenants for a flea inspection pursuant to the addendum to the tenancy agreement.

The landlord testified the condition of the unit when the tenants left was much worse than normal wear and tear. He describes 'extensive wall damage' requiring painting, mudding, sanding and repainting for 5 walls in the unit. Photographs depicting gouges to the walls, multiple nail holes, torn drywall paper, smears and scratches were provided as evidence by the landlord. The landlord also provided photographs of bent and distorted aluminum mini-blinds caused by the tenants. The landlord provided invoices from the handyman to repair and paint the damaged walls as well as the material cost to replace the blinds. The invoice total comes to \$433.82. The landlord also provided an invoice from a pest control company who was hired to inspect for flea activity. The pest control company charged \$105.00 for the service, including tax.

The tenant testified they provided the landlord with a forwarding address when the advised the building manager in writing on May 15th that they wanted to cancel the parking effective June 30th. This letter is the same one referred to in the confirmation of receiving the tenant's notice to end tenancy text message dated May 14th from the building manager. The landlord disputes he was ever provided with the letter supplied by the tenant as evidence in this hearing.

The tenant denies there was extensive damage done to the unit during the tenancy and provided photographs taken during the condition inspection report walkthrough as evidence. The tenant testified she and the building manager had a conversation regarding the blinds being askew and that the tenant would bend the slats back into place before she left. She disputes they were damaged.

The tenant provided further text messages from the building manager dated May 14th where he reminds the tenants that despite receiving notices to cancel parking and locker for the 15th, agreements must end at the end of the month. The tenant testified this email exchange is proof that a forwarding address was provided, however no forwarding address is mentioned in the text message exchange.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay

compensation to the other party. 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.

Section 21 of the Residential Tenancy Regulations states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The parties agree that the condition of the unit at the commencement of the tenancy was brand-new. The condition inspection report reflects this. Where the report fails, however, is noting any damage done to the walls when the tenants moved out. The spots where the landlord should indicate damage to the walls is left blank. If damage to the walls is discovered when inspecting the unit in the presence of the tenant, the landlord is required to advise the tenant of the damage by noting it on the report. In reading the report, it would appear there is no damage. It is only upon close inspection of the report can it be determined that spots were left unchecked and in doing so, the condition of the walls upon move out is ambiguous.

Despite this, the landlord has provided compelling evidence by means of photographs to show the tenants did damage to the walls by drilling anchor holes in the drywall, hammering nail holes to hang artwork and further damaged the drywall by removing the paper of the drywall. Despite the omission of damage to the walls noted in the condition inspection report, I am satisfied the tenants damaged the walls beyond normal wear and tear and are liable to compensate the landlord for the damage.

Residential Tenancy Branch Policy Guideline PG-1 [landlord and tenant – responsibility for residential premises] states the following:

Nail Holes - 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. 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.

The invoice provided to repair and repaint the unit is reasonable. I award the landlord \$225.00 for labour and \$118.00 for materials for this work, plus \$17.15 GST totalling **\$360.15** pursuant to section 67 of the *Act*.

I also find the blinds were damaged by the tenants during the tenancy, based on the photographs provided as evidence by the landlord. The damage was extensive enough that the blinds required replacement. I award the landlord \$35.08 for each of the blinds that were replaced for a total of **\$70.16**.

The tenant signed the addendum to the tenancy agreement agreeing to have the unit inspected by a professional pest control company at the conclusion of the tenancy or be prepared to be charged for the inspection by the landlord. As they signed the tenancy agreement agreeing to this term, they are required to pay this fee, and I award the landlord **\$105.00** pursuant to section 67 of the *Act*.

The tenants argue that they provided the landlord with their forwarding address when they supplied the building manager with the notice to cancel parking. This note, provided as evidence, is dated May 15th. The tenants supplied a text message from the building manager dated a day previous, on May 14th, acknowledging he received the alleged notice, however neither party make mention of the forwarding address. As the building manager acknowledges receiving the notice to cancel parking a day before the tenant says he provided it, the credibility of the note is in doubt. I find the evidence leads me to believe the forwarding address was not provided until the email from the tenant dated July 17th was drafted.

The landlord filed for dispute resolution on July 17th seeking to retain the security deposit. I find the landlord complied with section 38 of the *Act* by filing the application within 15 days of receiving the tenant's forwarding address. Pursuant to section 72 of the *Act*, the landlord is entitled to retain a portion of the security deposit in satisfaction of the monetary order made against the tenants.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Item	Amount
Repair and repaint walls	\$360.15
Replace damaged blinds	\$70.16
Pest Inspection	\$105.00
Filing fee	\$100.00
Less security deposit	(\$700.00)
Less pet damage deposit	(\$700.00)
Less key fob deposit	(\$125.00)
Total	(\$889.69)

The landlord is to return the tenants' security deposit, pet damage deposit and key fob deposit in the amount of \$989.69, after deductions.

Conclusion

The tenants are entitled to a monetary order in the amount of **\$989.69**.

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: November 2, 2019

Residential Tenancy Branch