Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIA BRITISH COLUMBIA,
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of $3,872.00 for unpaid rent or utilities, for damages to the unit, site or property, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlord AG (agent), the owner of the corporate landlord company JJ (owner), and tenants EH and JN (tenants) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires. The hearing lasted a total of 76 minutes.

Although a witness WH (witness) was introduced at the start of the hearing, the witness did not testify during the hearing.

Although the tenants testified that they did not receive the landlord's documentary evidence, the agent testified that both tenants were served by registered mail and provided two registered mail tracking numbers in evidence, which have been identified as 1 and 2 on the style of cause for ease of reference. According to the parties, the address provided to the landlord by the tenants was their written forwarding address. Both packages were mailed on November 22, 2019 and were eventually returned to the landlords and marked as "unclaimed." The tenants stated that they don't live at the address they provided to the landlords as their written forwarding address. The parties were advised that the decision to provide an address where the tenants were not residing was a decision the tenants made and not the fault of the landlords and that the

tenants are deemed served as of November 27, 2019, pursuant to section 90 of the Act, which is five days after the documents were sent by registered mail. The tenants submitted no documentary evidence for my consideration. Given the above, I find the tenants were sufficiently served in accordance with the Act, and the hearing proceeded as a result.

Preliminary and Procedural Matter

The landlord confirmed their email address and the tenant confirmed that they do not have email. The parties confirmed their understanding that the decision would be emailed to the landlord and sent by regular mail to the tenants. Any applicable orders will be emailed to the landlord for service on the tenants.

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

A copy of a tenancy agreement was submitted in evidence. A month to month tenancy began on March 4, 2016. Monthly rent was $800.00 per month before an employment credit of $400.00 was applied to the monthly rent. Rent was due on the first day of each month. The tenant paid a security deposit of $400.00, which the landlord continues to hold.

The landlord's monetary claim for $3,872.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of September 2019 rent	$800.00
2. Carpet replacement	$2,412.00
3. Cleaning	$300.00
4. Painting	$260.00
5. Filing fee	$100.00
TOTAL	**$3,872.00**

Regarding item 1, the landlord has claimed $800.00 for loss of rent for September 2019. Landlord testified that they could not immediately re-rent the rental unit due to the condition of the rental unit left by the tenant. The landlord presented an email from the tenants dated August 7, 2019, which indicates that JN was offered a job on the east coast and so they were providing their two-week notice and will not be returning and that the keys were left in the mail slot. The landlord stated that a minimum of one-month written notice was required under the Act and are seeking loss of September 2019 rent as a result. The landlord testified that the rental unit was eventually advertised on September 4, 2019 and that six ads on a popular website were submitted in evidence as proof. The landlord stated that they could not advertise the rental unit soon due to the carpet needing replacement and the cleaning that was required.

An incoming Condition Inspection Report (CIR) was completed at the start of the tenancy and was submitted in evidence. The tenants confirmed that they moved out their belongings on August 6, 2019 and that the keys were left in the mail slot the next day, August 7, 2019. The landlord stated that although a new tenant was not found until October or November of 2019, that the landlord is not claiming for either of those months and only is claiming for loss of September 2019 rent. Based on the above, the landlord stated that an outgoing CIR could not be completed as the tenants had already vacated.

The tenant’s response to this item were that painting was done and that the carpets were in bad shape when they moved in and that a walkthrough was not done at the end of the tenancy. The tenants claim they assigned their mother-in-law to complete a move-out inspection, which the landlord denied. The tenants failed to provide any documentary evidence to support that such an arrangement was made with the landlord.

Regarding item 2, the landlord has claimed $2,412.00 for the cost to replace the carpets in the rental unit. Regarding the age of the carpets, at first, they were described as a couple years old. The carpets were later described as being four or five years old in 2016, at the start of the tenancy. The owner testified that in 2015 the carpets were replaced and was basing that timeframe on their memory. There were no receipts submitted to support when the carpets had been previously replaced. The agent stated that the rental unit was all carpet except for the kitchen, bathroom and hot water tank room. The incoming CIR indicates that there was stains in all rooms and rippling in three rooms. The landlord confirmed there were no before photos of the carpets submitted. The landlord submitted a quote for $3,840.23 dated August 14, 2019 and confirmed that they are claiming less to account for wear and tear.

In the after photos, there was many small items on the carpets and staining throughout. The carpets clearly had not been vacuumed or cleaned at the end of the tenancy. The agent stated that removal of the carpet is not being charged for but was necessary due to the severe urine smell from a cat in the rental unit. The landlord stated that although there were no pets permitted, the tenants obviously had a cat due to the severe cat urine smell after they vacated. The tenants' response to this item was that the carpets were rippled when they moved in.

Regarding item 3, the landlord has claimed $300.00 to clean the rental unit. The agent stated that the amount of $300.00 is comprise of 10 hours at $30.00 per hour. The agent stated that fridge was dirty, and the cabinets had not been cleaned. The landlord submitted an email dated September 11, 2019 and the email was presented during the hearing. In that email it indicates that 7 hours were for cleaning, and 2.5 hours were to cut down bi-fold doors, rehang all doors, install a smoke alarm and vacuum carpets and mop the floors.

The tenants' response to this item was that they painted the suite and that the tenants claim to have cleaned the fridge, cabinets and stove. The photo evidence shows a dirty fridge and a dirty cabinet with a shelf that was not level. There is no photo of the stove.

Regarding item 4, the landlord has claimed $260.00 to partially repaint the rental unit. The agent and owner did not have a record of how old the interior paint was at the start or end of the tenancy. The agent stated the paint was in good condition at the start of the tenancy. The incoming CIR indicates nail holes in several rooms and marks on the walls. The owner testified that they paint the rental unit as needed before all tenancies to ensure it is in proper, nice condition. The landlord referred to the email described earlier above, which indicates that the caretaker, W (caretaker) wrote:

> "…wash all walls fill hole sand refill holes sand again then paint 260.00."

The tenants' response to this item was that the paint was find when they vacated and that a repaint was done prior to the tenants vacating. A witness for the tenants, WH, was called as a witness; however, due to a Telus issue, the Telus operator did not answer my request during the hearing to connect the witness after a 15-minute wait for Telus operator assistance.

Analysis

Based on the documentary evidence presented, the testimony of the parties 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 the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 - The landlord has claimed $800.00 for loss of rent for September 2019. Based on the photo evidence, I am satisfied that the landlord could not immediately re-rent the rental unit due to the condition of the rental unit left by the tenant. I find the rental unit was left very dirty and that the carpets were in bad shape with staining throughout. I also find the tenants breached section 45(1) of the Act, which applies and states:

> **Tenant's notice**
>
> **45**(1)**A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that**
>
> (a)**is not earlier than one month after the date the landlord receives the notice**, and
>
> (b)**is the day before the day in the month**, or in the other period on which the tenancy is based, **that rent is payable under the tenancy agreement.**
>
> [Emphasis added]

I find the tenants failed to provide proper notice to vacate, which is one month. As tenant provided an email dated August 7, 2019 and rent was due on the first day of each month, I find the earliest the tenants could have vacated the rental unit, without owing rent, would have been September 30, 2019. Therefore, I find that due to the tenants breaching section 45(1) of the Act, that the tenants owe **$800.00** for loss of September 2019 rent as claimed. I grant the landlord that amount as a result.

Item 2 - The landlord has claimed $2,412.00 for the cost to replace the carpets in the rental unit. I find the testimony of the agent and owner to be contradictory and of no weight as a result. At first the carpets were alleged to be a couple years old and then later 5.5 to 6.5 years old based on the start of the tenancy date being March 4, 2016.

Furthermore, I also find that the incoming CIR does not support that the carpets were a couple years old as they are marked as stained and rippled throughout the rental unit. Therefore, given that RTB Policy Guideline 40 – Useful Life of Building Elements (Policy Guideline 40) states that the useful life of carpets is 10 years, I am not satisfied that that the landlord has provided sufficient evidence to support that the carpets were not 10 years old. I find that based on the incoming CIR, that the carpets are just as likely to be 10 years old as 6.5 years old and that there were no receipts or before photos for my consideration. In other words, at the very least, if the landlord is seeking replacement cost for carpets including depreciation, I would expect the landlord to have an installation receipt or before photos, neither or which were submitted. I also find the incoming CIR supports that the carpets were stained and rippled, which is consistent with what they looked like in the photos taken after the tenancy ended. Therefore, I dismiss this item due to contradictory and insufficient evidence, without leave to reapply.

Item 3 - The landlord has claimed $300.00 to clean the rental unit. The agent stated that the amount of $300.00 is comprised of 10 hours at $30.00 per hour. I find the tenants' testimony contradicts the photo evidence, which shows a dirty fridge and a dirty cabinet and dirty carpets at the end of the tenancy. I also note that the landlord provided an email that states 9.5 hours of cleaning and not 10 hours. Therefore, I award **$285.00** for cleaning costs, which is 9.5 hours at $30.00 per hour. I dismiss the other $15.00 cleaning amount claimed due to insufficient evidence, without leave to reapply. I find that the landlord failed to meet part three of the test for damages or loss described above for the remaining $15.00 portion claimed. I also find the tenants breached section 37 of the Act by failing to leave the rental unit reasonably clean.

Item 4 - The landlord has claimed $260.00 to partially repaint the rental unit. RTB Policy Guideline 40 lists the useful life of interior paint as 4 years. As the agent and owner did

not have a record of how old the interior paint was, I find this portion of their claim must fail due to insufficient evidence. I find the landlord have not met the burden of proof as a result and accordingly, this item is dismissed without leave to reapply.

As the landlord's claim was partially successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of $**1,185.00**, comprised as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Loss of September 2019 rent	$800.00
2. Carpet replacement	dismissed
3. Cleaning	$285.00
4. Painting	dismissed
5. Filing fee	$100.00
TOTAL	**$1,185.00**

Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenants' security deposit of $400.00, which has accrued $0.00 in interest in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of **$785.00**.

Conclusion

The landlord's claim is partially successful.

The landlord has established a total monetary claim of $1,185.00. The landlord has been authorized to retain the tenants' full security deposit of $400.00, which has accrued $0.00 in interest, in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of $785.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the landlord and sent by regular mail to the tenants. The monetary order will be emailed to the landlord only for service on the tenants.

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: April 29, 2020

Residential Tenancy Branch