



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 MNDL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant, property manager N.T. and property manager G.B. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant was served with the landlord's application for dispute resolution via registered mail. I find that the tenant was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2011 and ended on December 31, 2019. A security deposit of \$537.50 and a pet damage deposit of \$200.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord applied for dispute resolution on January 13, 2020, 13 days after this tenancy ended.

Both parties agree that a joint move in condition inspection was completed on June 1, 2011. The move in condition inspection report was signed by both parties and was entered into evidence. Both parties agree that a joint move out inspection occurred on December 31, 2019; however, the tenant testified that he did not sign the move out condition inspection report because he did not agree with its contents. The move out condition inspection report signed by the landlord was entered into evidence.

Property manager N.T. testified that the following damages arose from this tenancy:

Item	Amount
Pest control inspection	\$105.00
Cleaning	\$420.00
Maintenance	\$1,134.00
Carpet replacement	\$3,020.06
Total	\$4,679.06

Pest control inspection

Property manager N.T. testified that term five of the tenancy agreement addendum states:

No pets will be permitted on the property without prior written permission from the Landlord. A Pet Damage Deposit in the amount of \$200 will be required, prior to

any pet entering the premises. A mandatory Professional Flea Inspection must be completed upon vacating the 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 tenancy agreement and addendum were entered into evidence. The tenant initialed term five of the addendum.

Property manager N.T. testified that the tenant did not provide the landlord with a flea inspection report at the end of the tenancy, so the landlord incurred an expense of \$105.00 for commissioning a flea inspection report. A receipt for same was entered into evidence.

The tenant testified that his cat died five years before he moved out and that after the cat died, he had the subject rental property fumigated. The tenant testified that the fumigation was completed by a professional, but the professional did it for free as a personal favour, so the tenant did not have a written record of the fumigation. The tenant testified that since he had the subject rental property fumigated after his cat died, he should not have to pay for a flea inspection report.

Cleaning

The landlord testified that the subject rental property was left very dirty at the end of the tenancy and that it took 10 hours to clean. The landlord is seeking to be reimbursed at a rate of \$40.00 per hour plus \$20.00 GST. A receipt for \$420.00 was entered into evidence. The landlord entered into evidence 21 photographs of the subject rental property. The pictures show a very dirty property.

The tenant testified that the landlord snuck into the subject rental property on December 25, 2019, Christmas Day, and took photographs of the subject rental property before he moved out and before he had an opportunity to clean the subject rental property. The tenant testified that he left the subject rental property in clean condition and entered into evidence pictures of him steam cleaning the carpets.

Property manager N.T. testified that he personally took the photographs entered into evidence on January 1, 2020. No furniture can be seen in any of the photographs entered into evidence by the landlord.

Maintenance

Property manager N.T. testified that the landlord's handyman spent eight hours per day for three days for a total of 24 hours repairing the subject rental property. Property manager N.T. testified that the handyman completed the following repairs:

- Filled holes in the walls;
- Sanded the walls;
- Painted the three bedroom unit; and
- Repaired the bathroom vanity.

Property manager N.T. testified that there was major damage to the window sill and drywall beneath the window from water ingress and that black mold was growing on the wall. A receipt for 24 "handyman hours" with no further breakdown, totalling \$1,134.00 was entered into evidence. Property manager N.T. testified that approximately 16 of the "handyman hours" were for painting the subject rental property.

The tenant testified that the window started leaking five to six year ago and that he verbally reported it to a representative of the landlord at that time but the landlord did not do anything. The tenant testified that the subject rental property is very old and that the vanity was made of particle board and was falling apart due to age. The tenant testified that it is not his responsibility to pay for repairs the landlord is required to make.

Property manager N.T. testified that the landlord never received a complaint from the tenant about the window in the master bedroom and that the landlord takes mold issues very seriously and would have taken action had a complaint been made.

Carpet replacement

Property manager N.T. testified that the carpets and linoleum were in good condition when the tenant moved in and stained and damaged beyond repair when the tenant moved out. The condition inspection reports state that the carpets were in good condition when the tenant moved in and poor condition when the tenant moved out. Property manager N.T. testified that he did not know how old the carpets and linoleum were when the tenant moved out.

The landlord entered into evidence a receipt for new carpet in the amount of \$3,020.06.

The tenant testified that the carpets and linoleum were approximately 40 years old when he moved out and that he is not responsible for providing the landlord with brand new carpet/linoleum.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Pest control inspection

I find that the term five of the tenancy agreement addendum, which was initialed by the tenant, clearly states that the tenant is required to have a flea inspection report commissioned and provided to the landlord at the end of the tenancy, if the tenant had pets(s). I find that the tenant did not comply with this term. I find that the landlord suffered a loss in the amount of \$105.00 as result of the tenant's breach of the tenancy agreement. I find that the landlord has proved the quantum of its loss by providing a receipt for the flea inspection.

I find that the tenant failed to prove that the subject rental property was fumigated after the cat died. I find that even if the subject rental property was fumigated during the tenancy, the tenant was still required, at the end of the tenancy, to have a flea inspection report commissioned, in accordance with the tenancy agreement.

I find that the landlord acted reasonably in hiring the flea inspection company, thereby mitigating its damages. I find that the tenant is required to pay the landlord \$105.00, the cost of the flea inspection.

Cleaning

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I accept property manager N.T.'s testimony that the photographs of the subject rental property entered into evidence by the landlord were taken by himself on January 1, 2020. I find that the tenant has not provided any evidence to substantiate his claim that the landlord broke into the subject rental property and took photographs prior to him moving out. I find that the tenant's testimony lacks an air of reality and I therefore accept property manager N.T.'s testimony over that of the tenant. While I accept the tenant's testimony that he shampooed the carpets at the subject rental property, I find that the rest of the subject rental property was not cleaned in accordance with section 37(2)(a) of the *Act*.

I find that the landlord suffered a loss in the amount of \$420.00 as result of the tenant's breach of section 37(2)(a) of the *Act*. I find that the landlord has proved the quantum of its loss by providing a receipt for the cleaning. No viable mitigation issues were raised. I

therefore find that the tenant is responsible for the cost of cleaning in the amount of \$420.00.

Maintenance

Residential Tenancy Policy Guideline #40 sets out the useful life of building elements to be used when calculating damages owed to a party. Different elements have different useful lives. A landlord who suffers a loss due to the actions of the tenant is not entitled to recover the entire cost of replacing an item as the landlord retained some benefit of the item up until it was damaged. The landlord is entitled to damages based on what useful life the item should have had left after the tenant(s) vacated.

The landlord's receipt for the "maintenance" does not break down the cost of each item that was repaired, but presents a comprehensive sum for all work listed. Since the receipt does not break down the cost of each item, I am not able to calculate what useful life they may have had left as that would require a specific sum for each item to be provided. I find that without knowing the cost of each item, I am not able to calculate useful life and so cannot calculate damages owed to the landlord. I find that the landlord has not met his burden of proof as to the quantification of his damages.

I also note that a large percentage of the cost of the maintenance or handyman fee was for re-painting the subject rental property. Residential Tenancy Branch Policy Guide #40 states that the useful life for interior paint is four years, as this tenancy was for 8.5 years, the useful life of the paint had expired, and the landlord is not entitled to recover any money for painting.

Based on my above findings, I dismiss the landlord's claim for maintenance/handyman fees.

Carpet replacement

The tenant testified that the carpet/linoleum in the subject rental property was approximately 40 years old. Property manager N.T. testified that he did not know the age of the carpets/linoleum. Given that this tenancy was 8.5 years in duration, I find, on a balance of probabilities, that the carpets/linoleum were more than 10 years old when the tenant moved out.

Residential Tenancy Branch Policy Guide #40 states that the useful life for carpets is 10

years. Residential Tenancy Branch Policy Guide #40 states:

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer.

I find that the useful life for linoleum is also 10 years.

I find that the useful life of the carpet and linoleum had expired when the tenant moved out. The landlord is therefore not entitled to recover the replacement cost from the tenant.

Security Deposit and Filing Fee

As the landlord was successful in its monetary claim, I find that it is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 38 of the *Act* states that 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.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$625.00 from the tenant's deposits. I Order the landlord to return the remainder of the tenant's deposits (\$112.50) to the tenant.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Security deposit	\$537.50
Pet damage deposit	\$200.00
Flea inspection	-\$105.00
Cleaning	-\$420.00
Filing Fee	-\$100.00
TOTAL	\$112.50

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: June 08, 2020

Residential Tenancy Branch