



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 31, 2020 (the “Application”). The Landlord applied for compensation for damage to the rental unit, to recover unpaid rent, to keep the security or pet damage deposit and reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. Nobody appeared for the Tenant. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and evidence were sent by registered mail to the Tenant’s forwarding address. The Agent confirmed the Tenant provided the forwarding address in a letter which was submitted. The Landlord submitted the customer receipt for the package with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package was sent April 06, 2020 and delivered April 07, 2020.

Based on the undisputed testimony of the Agent, customer receipt and Canada Post website information, I find the Tenant was served in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I am satisfied the package was delivered and received April 07, 2020. Further, pursuant to section 90(a) of the *Act*, the Tenant would be deemed to have received the package April 11, 2020. Regardless, I find the package was served in enough time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security or pet damage deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Glass replacement	\$238.10
2	March rent	\$1,319.00
3	Filing fee	\$100.00
	TOTAL	\$1,657.10

A written tenancy agreement was submitted as evidence. It named a different landlord. The Agent testified that the landlord's name changed during the tenancy which is also reflected in the documents submitted. The tenancy started August 01, 2013 and was for a fixed term ending July 31, 2014. It then became a month-to-month tenancy. Rent was due by the first day of each month. The Agent testified that rent was \$1,269.00 at the end of the tenancy. The Tenant paid a \$547.50 security deposit. The agreement was signed for the Landlord and by the Tenant.

The Landlord submitted a Pet Agreement showing the Tenant paid a \$547.50 pet damage deposit.

The Agent testified that the tenancy ended March 20, 2020. The Agent testified that the Tenant gave notice ending the tenancy and did not pay March rent. The Agent testified that the Landlord sought an Order of Possession. The Agent testified that the Tenant vacated the rental unit March 20, 2020.

The Agent testified that the Tenant provided a forwarding address in the letter dated February 29, 2020 in evidence.

The Landlord had submitted a Monetary Order issued on File Number 1 as well as the corresponding decision. The decision shows the Monetary Order was issued for March rent and the \$100.00 filing fee. The decision and Monetary Order were issued April 01, 2020.

The Agent confirmed the Landlord is seeking to keep the security deposit towards the Monetary Order issued on File Number 1.

The Agent testified as follows in relation to March rent. The Tenant did not have authority to withhold it, the Tenant could not afford it. The Monetary Order was served on the Tenant. The Tenant has not paid any of the Monetary Order. The Landlord has not yet sought to enforce the Monetary Order in Small Claims Court.

The Agent testified that the Tenant did not agree in writing to the Landlord keeping the security deposit.

A Condition Inspection Report (the "CIR") was submitted and the Agent confirmed it is accurate. The Agent did not know if a copy of the CIR was given to the Tenant on move-in. The Agent testified that a copy of the move-out CIR was given to the Tenant in person the day of the inspection.

In relation to the glass replacement, the Agent testified as follows. A window in the rental unit was broken at the end of the tenancy which is shown on the CIR. The Tenant agreed the window was broken. A glass company attended and provided an estimate for repair which was \$238.00.

The Landlord submitted photos of the broken window and a quote to repair the window.

Analysis

The Agent did not mention a pet damage deposit during the hearing. The Application shows the Landlord is seeking to keep the security or pet damage deposit. The Application outlines both the security and pet damage deposit amounts. I understand from the Application that the Landlord is seeking to keep both the security and pet damage deposits and have addressed both below.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the CIR, I am satisfied the Tenant participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage and the Landlord is seeking to keep the security and pet damage deposits towards a Monetary Order.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant provided a forwarding address to the Landlord in a letter February 29, 2020.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant vacated the rental unit March 20, 2020.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security and pet damage deposits or claim against them within 15 days of the later of the end of the tenancy or the date the Landlord received the Tenant’s forwarding address. I find the Landlord had until April 06, 2020 to repay the deposits or claim against them. I note that the timeline is extended because the 15th day fell on a weekend when the RTB was closed. The Application was filed March 31, 2020, within time. I find the Landlord complied with section 38(1) of the *Act* in relation to timelines.

However, as stated in Policy Guideline 31, the Landlord was only allowed to claim against the pet damage deposit for pet damage. The Landlord was not allowed to hold the pet damage deposit and claim against it for unpaid rent or non-pet related damage.

I note section 38(3) of the *Act* which states:

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

Here, the tenancy ended March 20, 2020. The decision and Monetary Order on File Number 1 was not issued until April 01, 2020, after the end of the tenancy. Therefore, section 38(3) of the *Act* does not apply.

I find the Landlord has only claimed for unpaid rent and non-pet related damage. Therefore, the Landlord was required to return the pet damage deposit to the Tenant within 15 days of March 20, 2020. The Landlord was not allowed to claim against the pet damage deposit for March rent and a broken window.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the pet damage deposit. Therefore, pursuant to section 38(6) of the *Act*, the Landlord must pay the Tenant double the pet damage deposit.

In relation to March rent, the Landlord has been issued a Monetary Order for March rent. I cannot re-consider this issue. However, the Landlord is seeking to keep the security and pet damage deposits towards the Monetary Order. Pursuant to sections 38(4)(b) and 72(2) of the *Act*, I order that the Landlord can keep the security and pet damage deposits towards the Monetary Order in the amount of \$1,369.00.

In relation to the window damage, section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

I am satisfied based on the undisputed testimony of the Agent, CIR and photos that the tenant broke a window in the rental unit which remained broken at the end of the tenancy. Based on the photos, I am satisfied the broken window was beyond reasonable wear and tear. I find the Tenant breached section 37 of the *Act*. I am satisfied given the nature of the damage that the Landlord had to have the damage repaired. I am satisfied based on the quote that this cost \$238.10. I find this amount reasonable given the nature of the damage. I award the Landlord this amount.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, I consider the Landlord to hold \$1,642.50 in deposits given the Landlord holds the security and pet damage deposits and given the pet damage deposit has been doubled as explained above. The Landlord is entitled to keep \$1,369.00 of this towards the Monetary Order issued on File Number 1. The Landlord cannot now enforce the Monetary Order issued on File Number 1 as it has been paid through this decision. The Landlord is entitled to a further \$338.10 as compensation for the broken window and reimbursement for the filing fee. The Landlord can keep the remaining \$273.50 of the deposits towards this pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$64.60 pursuant to section 67 of the *Act*.

Conclusion

I consider the Landlord to hold \$1,642.50 in deposits given the Landlord holds the security and pet damage deposits and given the pet damage deposit has been doubled. The Landlord is entitled to keep \$1,369.00 of this towards the Monetary Order issued on File Number 1. The Landlord cannot now enforce the Monetary Order issued on File Number 1 as it has been paid through this decision. The Landlord is entitled to a further \$338.10 as compensation for the broken window and reimbursement for the filing fee. The Landlord can keep the remaining \$273.50 of the deposits towards this. The Landlord is issued a Monetary Order for the remaining \$64.60. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it 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 *Act*.

Dated: August 27, 2020

Residential Tenancy Branch