



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 MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 11, 2020, wherein the Landlord sought monetary compensation from the Tenants for unpaid rent, cleaning and repairs to the rental unit, authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on September 10, 2020. Only the Landlord's property Manager, M.I., called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 1:51 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that M.I. and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. M.I. testified that she served the Tenants with the Notice of Hearing and the Application on May 12, 2020 by email.

At the time the Landlord served the Tenants, and by Director's Order dated March 30, 2020, notice of a hearing was able to be served by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

M.I. confirmed that they regularly communicated by email with the Tenants during their tenancy; copies of such communication were provided in evidence before me. As such,

I find that the Tenants were deemed served with Notice of this participatory hearing May 15, 2020, three days after the email was sent.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by M.I. and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

M.I. testified that the tenancy began May 1, 2018; at the time the tenancy ended monthly rent was \$2,152.00. M.I. confirmed that the Tenants paid a security deposit in the amount of \$1,050.00.

M.I. stated that at the time the tenancy ended the sum of \$2,152.00 was outstanding for rent for the month of June 2020. M.I. further confirmed that at the time of the hearing only \$1,278.50 was outstanding.

The Landlord also sought compensation for \$50.00 for N.S.F. charges and late fees for April and \$25.00 for a late charge for May 2020 for a total of \$75.00.

The Landlord also sought the cost to remove the Tenant's garbage at \$178.50.

The Landlord also sought compensation for the cost to paint the unit in the amount \$761.25. M.I. confirmed that the rental unit was painted just prior to the tenancy beginning. She stated that the walls were very dirty and smelled, likely due to smoking, such that the walls needed to be painted.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's representative's testimony that the Tenant failed to pay rent when due such that at the time of the hearing the sum of \$1,278.50 was owing. I therefore grant the Landlord compensation for this amount.

I also find the Landlord is entitled to the amounts claimed for N.S.F. and late charges in the amount of \$75.00.

I accept the Landlord's undisputed testimony that the Tenant left garbage in the rental unit such that the Landlord incurred the cost of removal. I also accept the Landlord's testimony that the rental unit required repainting due to the Tenant smoking in the rental unit. The Landlord is therefore entitled to recover the cost of garbage removal and painting as claimed.

Having been substantially successful in the Application, the Landlord is entitled to recover the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is entitled to compensation in the amount of **\$2,394.50** for the following:

Unpaid rent	\$1,278.50
N.S.F. and late charges for April and May 2020	\$75.00
Garbage removal	\$178.50
Painting	\$762.25

Filing fee	\$100.00
TOTAL AWARDED	\$2,394.50

Pursuant to section 38 and 72 of the *Act* the Landlord is entitled to retain the Tenant's \$1,050.00 security deposit towards the amounts awarded and is granted a Monetary Order in the amount of **\$1,344.50**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: September 14, 2020

Residential Tenancy Branch