



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, MNDCL-S, FFL

Introduction

On September 9, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

J.N. attended the hearing as an agent for the Landlord. Both Tenants attended the hearing as well. All in attendance provided a solemn affirmation.

J.N. advised that a Notice of Hearing package was served to each Tenant by registered mail on September 15, 2020, and the Tenants confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that each Tenant has been sufficiently served the Notice of Hearing packages.

She also advised that the Landlord’s evidence was served to the Tenants by registered mail on December 4, 2020. Tenant J.F. could only confirm that some of the Landlord’s evidence was served to them, and during the hearing it was apparent that a majority of the evidence that was submitted to the Residential Tenancy Branch was not before them. In addition, during the hearing, J.N. referred to evidence that she claimed was submitted to the Residential Tenancy Branch; however, this evidence was not before me. Furthermore, it should be noted that a file that was uploaded by the Landlord had “receipt” in the title but the document in that file was a proof of service document. Moreover, the Landlord mistakenly submitted two monetary order worksheets with varying amounts.

Based on the above, it is evident to me that the Landlord may have experienced difficulties either submitting and/or organizing their evidence and submissions properly. As such, I am not satisfied, on a balance of probabilities, that all of the Landlord's evidence was sufficiently served on the Tenants. As a result, I have excluded the Landlord's evidence and will not consider it when rendering this Decision.

The Tenants advised that they did not serve their evidence to the Landlord. As this evidence was not served to the Landlord pursuant to Rule 3.15 of the Rules of Procedure, the Tenants' evidence will be excluded and not considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 15, 2018 and ended on August 31, 2020 when the Tenants give up vacant possession of the rental unit. Rent was established at \$1,819.00 per month and was due on the first day of each month. A security deposit of \$887.50 was also paid.

They also agreed that a move-in inspection report was conducted on July 15, 2018 and that a move-out inspection report was conducted on August 31, 2020.

Tenant E.D. advised that she did not agree with the deficiencies that J.N. noted on the move-out inspection report, and she stated that portions of this report were already pre-filled or were crossed out. She stated that J.N. advised her that her only options were to

sign the report and agree to the conditions noted, or not to sign the report at all. She stated that she attempted to take a picture of the report but J.N. would not allow her to. After the tenancy concluded, she attempted to contact the Landlord directly in an effort to sign the report. She did not make any submissions with respect to whether her not being able to sign the report related to the Landlord extinguishing their right to claim against the deposit pursuant to Section 36 of the *Act*.

J.N. advised that she noted that \$245.00 would be the cost of the deductions for the deficiencies in the state of the rental unit. She stated that the Tenant would not sign the report agreeing to these deductions, but simply took a picture of the report.

They also agreed that the Tenants provided their forwarding address by mail to the Landlord on September 3, 2020 and that the Landlord is still holding the entire deposit.

J.N. advised that the Landlord is seeking compensation in the amount of **\$175.00** for cost of replacing broken living room blinds. She stated that these could not be repaired and had to be replaced entirely. She was not sure how old the blinds were. Pictures of the broken blinds were not submitted to support this damage. While she claimed that an invoice was submitted to corroborate the cost of replacing these blinds, an invoice could not be found for this.

E.D. confirmed that one clip was broken on the blinds; however, the blinds were still functional. In addition, she stated that pricing for these blinds was never provided to them.

J.F. advised that the move-in inspection report indicated that new blinds and rollers were required anyways. However, J.N. stated that the rollers noted on this report were actually for the door and not the living room blinds.

J.N. also advised that the Landlord is seeking compensation in the amount of **\$70.00** for the cost of cleaning the rental unit and returning it to a re-rentable state. She stated that the oven was not cleaned properly, that the screens for the hood vent were still oily and clearly not cleaned, that the sink was still dirty, and that the balcony was not swept or cleaned. She stated that the cleaning took approximately 1.5 hours and that it cost \$70.00 to rectify all of these deficiencies. Again, an invoice for this work was not submitted.

E.D. advised that they cleaned the rental unit pursuant to the guideline that was provided to them. While they referred to photos that were submitted, as these were not served to the Landlord, these could not be considered.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As all parties agreed that a move-in and move-out inspection report was conducted with the Tenants, despite the move-out inspection not being signed, I find that the Landlord did not extinguish the right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants’ forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address on or around September 3, 2020. As the tenancy ended on August 31, 2020, I find that September 3, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord made this Application to claim against the deposit on September 9, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframe, and as the Landlord did not extinguish the right to claim against the deposit, I am satisfied that the doubling provisions do not apply to the security deposit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for compensation in the amount of \$175.00 for cost of replacing the broken living room blinds, I find it important to note that there was insufficient evidence submitted to demonstrate how old the blinds were, to corroborate that the blinds were damaged at the end of the tenancy, and to support the cost of new blinds. As such, I am not satisfied that the Landlord has established a basis for this claim. Consequently, I dismiss it in its entirety.

With respect to the Landlord's claim for compensation in the amount of \$70.00 for the cost of cleaning the rental unit and returning it to a re-rentable state at the end of the tenancy, there was a dispute between the parties regarding the cleanliness of the oven and the balcony. However, there was no direct testimony from the Tenants regarding the claims about the sink and the hood vent not being cleaned. As a result, I am satisfied that the Landlord should be granted a monetary award commensurate with cleaning these areas. Consequently, I grant the Landlord a monetary award in the amount of **\$35.00** to remedy this claim.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Cleaning	-\$35.00
Partial recovery of filing fee	-\$50.00
Security deposit	\$887.50
TOTAL MONETARY AWARD	\$802.50

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$802.50** 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: December 19, 2020

Residential Tenancy Branch