Dispute Resolution Services

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, FFL

Introduction

On January 6, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.V. attended the hearing as an agent for the Landlord, and both Tenants attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

She advised that a Notice of Hearing package was served to each Tenant by registered mail on January 8, 2021, and the Tenants confirmed that they received these packages. She also advised that the Landlord's evidence was served to the Tenants by registered mail on April 19, 2021 and the Tenants confirmed that they received this evidence. Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenants were sufficiently served the Landlord's Notice of Hearing and evidence packages. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

The Tenants confirmed that they did not submit any evidence for consideration on this file.

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 these debts?
- 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 October 5, 2019 and ended on December 28, 2020 when the Tenants gave up vacant possession of the rental unit. Rent was established at $1,650.00 per month and was due on the first day of each month. A security deposit of $825.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that a move-in inspection was conducted on October 4, 2019. As well, they agreed that a move-out inspection was conducted on December 28, 2020, a date suggested by the Tenants as they were ready to leave. Tenant A.M. advised that Tenant E.M. attended the move-out inspection, but she did not sign the report as L.V. had already completed it. A copy of the move-in and move-out inspection report was submitted as documentary evidence by the Landlord.

The Tenants advised that their forwarding address in writing was provided during the move-out inspection on December 28, 2020, and L.V. confirmed that she received this address on that date. She stated that the Landlord returned $203.30 to the Tenants shortly after December 28, 2020 by cheque, but the Landlord did not have any written consent from the Tenants to retain any amount of the deposit. The Tenants advised that they never received a return of any amount of their deposit.

L.V. advised that the Landlord is seeking compensation in the amount of **$96.00** for the cost of cleaning the rental unit as the Tenants did not return the rental unit in a re-rentable state at the end of the tenancy. She referenced pictures submitted to demonstrate the lack of cleanliness of the rental unit at the end of the tenancy. As well, she provided an invoice to support the cost of cleaning the rental unit to return it to a re-rentable state.

Tenant A.M. advised that the stove was old and the inside of it was cleaned. He stated that the paint would come off the closet door when attempts were made to clean it. He agreed that there were some deficiencies in the cleanliness of the bathroom, and he stated that he was advised by L.V. on December 27, 2020 that only the floors required further cleaning. He submitted that they were “doing everything to move fast”, that the rental unit “wasn’t too dirty”, and that they left it “pretty clean”. He confirmed that they proposed December 28, 2020 as the date for the move-out inspection. E.M. did not make any submissions with respect to this specific claim by the Landlord.

L.V. advised that the Landlord is seeking compensation in the amount of **$185.00** for the cost of disposing of furniture that the Tenants left behind, despite her informing them prior to move out that they were responsible for removing all of their belongings from the property. She submitted pictures of a sofa, a mattress, and some other refuse that were piled up outside the building. It is her belief that these items were the Tenants as she saw them in the rental unit. As well, she stated that two other residents of the building confirmed that these items belonged to the Tenants. She provided a copy of a receipt of the cost to remove and dispose of these items.

A.M. advised that they had observed other residents of the building leave refuse beside the building, so it was their belief that this was permitted. He acknowledged that they left their sofa outside; however, they denied that the other items noted were theirs.

Finally, L.V. advised that the Landlord is seeking compensation in the amount of **$236.25** for the cost of repainting the rental unit as the Tenants left marks and holes in the walls at the end of the tenancy. She referenced pictures submitted to demonstrate the condition of the walls at the end of the tenancy and she cited an invoice to support the cost of the repair.

A.M. advised that one picture showed only a small mark and that the two pictures that showed the most extensive damage were from a shelf that was installed by the previous tenant. He stated that this shelf was in the rental unit at the start of the tenancy and that

the Landlord authorized him to remove it if they did not want the shelf there anymore. Thus, the previous tenant was responsible for the holes left behind.

L.V. did not know about any shelf and she attempted to describe the deficiencies in each of the pictures provided.

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 in accordance with the *Act*.

While the parties provided contradictory testimony with respect to whether a move-out inspection report was conducted by L.V. with E.M., the consistent and undisputed evidence is that both parties were present at the move-out inspection and that E.M. did not agree with what L.V. documented on the report. Regardless, as it appears as if both parties were in attendance for the move-in and move-out inspections, and as these reports were completed during these inspections, I am satisfied that the Landlord has not extinguished the right to claim against the deposit. Therefore, I find that the Landlord is still entitled to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' 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 consistent and undisputed evidence before me, the Landlord received the Tenants' forwarding address in writing on December 28, 2020. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposit on January 6, 2021. As the Landlord made this Application within 15 days of receiving the Tenants' forwarding address in writing, and as the Landlord did not extinguish the right to claim against the deposit, I am satisfied that the Landlord has complied with the *Act*. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

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." Furthermore, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to the Landlord's claim for compensation in the amount of $96.00 for the cost of cleaning the rental unit, when weighing the evidence before me, I have the Landlord's pictures depicting the deficiencies in the rental unit and evidence of the cost to bring the unit back to a rentable state. I also have A.M. acknowledging that the cleanliness of the bathroom was less than adequate. Moreover, I have A.M. stating that they were "doing everything to move fast", that the rental unit "wasn't too dirty", and that they left it "pretty clean". In my view, I find that these statements indicate that the Tenants' intention was to vacate the rental unit expediently, and this supports the

likelihood that their priority was not focussed on ensuring the cleanliness of the rental unit.

I also find it curious that A.M. was not present during the move-out inspection, but he made all of the submissions during the hearing. It is not clear to me why E.M. did not make any submissions during the hearing with respect to the condition of the rental unit if she was present at the move-out inspection and was dissatisfied with the noted condition. Based on this and my doubts above, I prefer the Landlord's evidence on the whole. As a result, I am satisfied that the Tenants did not satisfactorily clean the rental unit at the end of the tenancy, and I grant the Landlord a monetary award in the amount of **$96.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of $185.00 for the cost of disposing of furniture that the Tenants left behind, the consistent and undisputed evidence is that the Tenants abandoned their sofa outside the building instead of disposing of this themselves in an appropriate manner. I do not accept their claims of ignorance that they believed that it was permitted to leave their property behind for the Landlord to deal with. This causes me to doubt further the credibility of their submissions. As such, I am satisfied that the Tenants were definitely responsible for disposal of the sofa, and more likely than not responsible for the balance as well. Consequently, I grant the Landlord a monetary award in the amount of **$185.00** to satisfy this claim.

Finally, with respect to the Landlord's claim for compensation in the amount of $236.25 for the cost of repainting the rental unit, when reviewing the Landlord's pictures, I find that only a few depict anything that might be considered damage. The two pictures of most significance appear to show an outline of what would look like a shelf, which is consistent with the Tenants' testimony. Given that L.V. submitted that the rental unit was painted prior to the tenancy, and as these pictures reveal a different coloured paint underneath, I find this supports the Tenants' claims that there was likely a shelf installed by the previous tenant. As such, I am not satisfied that the Tenants should be responsible for repainting this area. However, when reviewing the other pictures, I am satisfied that there are some minor deficiencies that are beyond ordinary wear and tear. As such, I grant the Landlord a nominal monetary award in the amount of **$50.00** to rectify this issue.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover 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 the security deposit in

satisfaction of these claims. 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	$96.00
Refuse disposal	$185.00
Wall repair and painting	$50.00
Filing fee	$100.00
Security deposit	-$825.00
TOTAL MONETARY AWARD	**$394.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$394.00** 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.

As a note, as L.V. advised that $203.30 has already been returned to the Tenants, if this cheque has been cashed by the Tenants, then this amount will be deducted from the Monetary Order and will not be enforceable.

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: May 11, 2021

Residential Tenancy Branch