



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 MNR, MNDC, MNSD, FF

Introduction

On February 1, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent and damage, and to keep a security deposit.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) and the Tenant attended the hearing. The Tenant was assisted by legal counsel.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover a loss of rent?
- Is the Landlord entitled to a monetary order for damage?
- Can the Landlord keep the security deposit and pet damage deposit in full or partial satisfaction of the claims?

Background and Evidence

The Landlord and Tenant provided affirmed testimony that the tenancy began on November 1, 2019 as a one-year fixed term tenancy. Rent in the amount of \$1,140.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$570.00 and a pet damage deposit of \$570.00. The Landlord and Tenant testified that the tenancy ended on January 18, 2021. The Landlord and Tenant provided a copy of the tenancy agreement.

Loss of Rent

The Landlord is seeking compensation of \$1,140.00 for loss of January 2021 rent. The Landlord submitted that on January 6, 2021 the Tenant gave written notice to end the tenancy. The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for January 2021.

In reply, the Tenant provided testimony that about 1.5 months after moving into the rental unit, the occupant living above her started harassing her. She testified that the occupant above her would yell and scream at her. The Tenant provided three affidavits from her neighbors stating that they observed the occupant above the Tenant verbally insulting and/ or threatening the Tenant.

The Tenant testified that she informed the Landlord and that the Landlord stated she would take immediate action. The Tenant testified that she wrote to the Landlord at least three times regarding this situation. She testified that her daughter's father witnessed the harassment and he stated he was going to keep her daughter. The Tenant provided a copy of a August 25, 2020 letter from the Landlord stating she would try to take immediate action.

The Tenant stated that her health declined, and she was anxious, and she left the rental unit in fear because she was exhausted in dealing with the occupant.

The Tenant stated that when she informed the Landlord, she rolled her eyes and the Ministry said the occupant was not a threat. The Tenant stated that she did not file an application for dispute resolution for any loss of her quiet enjoyment.

In reply, the Landlord stated that the Tenant is describing one side of the issue. The Landlord stated that they dealt with the Tenant who was being aggressive with the occupant living above.

The Landlord stated that the Tenant was causing harm and the Landlord issued her a One Month Notice to End Tenancy for Cause. The Landlord stated that the Tenant

disputed the One Month Notice but did not appear at the dispute hearing as she had moved out.

The Tenant's counsel stated that the Tenant moved out early so there was no need for the hearing.

Carpet Cleaning

The Landlord is seeking \$105.00 for the cost of carpet cleaning. The Landlord testified that the Tenant did not have the carpet cleaned at the end of the tenancy. The Landlord testified that the Landlord paid a company \$105.00 for cleaning the carpet. The Landlord provided a receipt.

In reply, the Tenant testified that she does not believe the carpets were cleaned when she moved into the unit. She testified that she did not have the carpet cleaned at the end of the tenancy.

The Landlord stated that the carpets are cleaned prior to move in. He stated that he heard nothing from the Tenant about the carpet.

Drape Cleaning

The Landlord testified that the drapes are required to be cleaned at the end of the tenancy. He stated that the Tenant did not have the drapes cleaned or provide a receipt showing the drapes were cleaned at the end of the tenancy. The Landlord had the drapes cleaned by a company and is seeking to recover the cost of \$115.00. The Landlord provided a receipt.

In reply, the Tenant stated that she agrees that she did not have the drapes cleaned.

Apartment Cleaning

The Landlord testified that the Tenant left the rental unit unclean at the end of the tenancy. The Landlord provided photographs showing the condition of the rental unit at the end of the tenancy. The photographs show that the refrigerator, stove, and bathroom were left very unclean. The Landlord is seeking \$120.00 for the cost to have the rental unit cleaned. The Landlord provided a receipt.

In reply, the Tenant testified that she did not clean the apartment, but she did vacuum the carpet. She stated that the photographs do not represent what she left it like.

Damage

The Landlord is seeking \$629.00 for painting costs, damage to a toilet seat, and damage to a closet as provided below:

Painting

The Landlord testified that smoking was not permitted in the rental unit and the walls of the rental unit were found to be damaged due to smoking, nail holes, and scratches. The Landlord stated that the walls were yellow. The Landlord provided photographs showing walls of the rental unit were left dirty, stained, and marked up. The photographs show nail type holes left on the Livingroom walls.

The Landlords move out charge form in the documentary evidence indicates that painting charge of \$600.00 will apply.

The Landlord stated that the rental unit was freshly painted prior to the Tenant moving in. The Landlord stated that all the walls of the one-bedroom unit were repainted. The Landlord is seeking to recover the cost for materials and labor to repaint the rental unit.

In reply, the Tenant testified that she smoked on the deck and not in the rooms. She stated that she did not smoke in the bedroom. The Tenant provided a photograph of the bedroom and stated that the walls were immaculate.

Closet

The Landlord testified that the closet door was off its guide and the guide had to be replaced. The Landlord did not provide a receipt for the purchase of new track hardware.

In reply the Tenant testified that the closet door came off but was not broken.

Toilet Seat

The Landlord testified that the toilet seat was found broken off and was replaced. The Landlord did not provide a receipt for the purchase of a new toilet seat. The Landlords move out charge form indicates that a toilet seat costs of \$30.00.

In reply, the Tenant stated that the toilet seat was not broken, it was just removed because of her disability and need for a toilet seat lift.

Light Bulbs

The Landlord testified that a few light bulbs were burned out and needed to be replaced. The Landlords move out charge form indicates that a replacement lightbulb costs \$6.00 and that four are needed. The Landlord provided a photograph showing a light fixture missing three bulbs.

The Tenant testified that she may have left light bulbs burned out and missing.

Security Deposit and Pet Damage Deposit

The Landlord applied on February 1, 2021 to keep the \$570.00 security deposit and \$570.00 pet damage deposit that he is holding in partial satisfaction of the Landlord's claims.

The Tenant stated that she participated in a move out inspection with the Landlord on January 3, 2021 but did not sign the report because she disagreed that the stove was damaged and that the toilet was broken.

The Tenant stated that she had a cat that did not damage the unit and that she should get the deposits back because of the harassment she suffered.

Analysis

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation, or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Residential Tenancy Policy Guideline # 16 Compensation for Damage or Loss provides:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises provides that the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

Based on the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

Loss of January 2021 Rent

I find that the Tenant failed to give proper notice to end the tenancy as required under the Act. The Tenant gave notice on January 6, 2021 and based on a tenancy where rent is due on the first day of each month, the earliest date the tenancy could legally end was February 28, 2021. In addition, I find that the Tenant failed to pay the rent owing under the tenancy agreement for January 2021.

I have considered the Tenant's submissions that she was being harassed by another occupant and I find that this does not entitle her to end the tenancy without giving proper written notice to the Landlord. There is insufficient evidence from the Tenant to

establish that the tenancy could have ended early due to a breach of a material term of tenancy on behalf of the Landlord.

I find that the Tenant owes the Landlord \$1,140.00 for unpaid January 2021 rent.

Carpet Cleaning

Upon review of the tenancy agreement I find that there is a term requiring the Tenant to have the carpets cleaned by a professional company at the end of the tenancy. I find that the Tenant failed to have the carpet cleaned and the Tenant is responsible to pay the Landlord \$105.00 for the cost of carpet cleaning.

If the Tenant believed the carpet was not clean at the start of the tenancy, she could have asked the Landlord to have it cleaned. There is no evidence that the Tenant raised the issue. Nevertheless, even if the carpet was not clean, the Tenant is still required to have it cleaned by a professional company at the end of the tenancy.

I award the Landlord the amount of \$105.00.

Drape Cleaning

The Tenant stated that she did not have the drapes cleaned at the end of the tenancy.

I accept the Landlords evidence that the Landlord had the drapes cleaned and I award the Landlord \$115.00.

Apartment Cleaning

The Tenant stated she did not clean the rental unit. I find that the Tenant left the rental unit unclean at the end of the tenancy. I award the Landlord the amount of \$120.00. for the cost of having the rental unit cleaned.

Painting

Upon review of the tenancy agreement I find that there is a term stating that smoking is not permitted on the premises or common areas of the building at any time. The Tenant stated she smoked on the deck. It appears that the Tenant was breaching a term of the tenancy by smoking on the premises. I note the move out inspection report indicates there was a smoke odor in the unit and full paint needed. The Landlord provided

photographs showing walls of the rental unit were left dirty, stained, and marked up. The photographs show nail type holes left on the Livingroom walls.

I find that the bedroom photograph provided by the Tenant shows the bedroom walls to be reasonably clean and undamaged.

I find that the Tenant left some of the walls of the rental unit dirty or damaged to the degree that painting was required. I find that the Tenant is responsible for the cost to have most of the rental unit painted. I find that a reasonable amount for the cost to repaint the rental unit is 2/3 of the \$600.00 amount claimed.

I award the Landlord \$400.00 for painting costs.

Closet

I find that there is insufficient evidence from the Landlord that the Tenant is responsible for damaging the closet track hardware. I find that it is normal for a bifold closet door to come off the track with normal use and the Landlord is responsible to maintain this building element.

The Landlords claim for track hardware is dismissed.

Toilet Seat

The Landlord stated that the toilet seat was broken off and Tenant replied that it was only removed and was unclean. The Landlord did not provide any further response on this claim following the Tenants statement.

There is insufficient evidence from the Landlord that the toilet seat was damaged and needed to be replaced.

The Landlords claim for the replacement cost of a toilet seat is dismissed.

Light Bulbs

I accept the evidence that the Tenant failed to replace lightbulbs at the end of the tenancy. I accept the Landlords evidence that four light bulbs were required at a cost of \$24.00.

I award the Landlord \$24.00 for light bulbs.

Security Deposit

The Landlord applied against the security deposit and pet damage deposit on February 1, 2021, which is within 15 days of when the tenancy ended, and the Tenant's forwarding address was received.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful with most of the claims, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,004.00 comprised of \$1,140.00 in unpaid rent, \$340.00 in cleaning costs; \$400.00 for painting costs, \$24.00 for lightbulbs, and the \$100.00 fee paid by the Landlord for this hearing.

Section 72 of the Act permits me to deduct an amount owing from a tenant to a landlord from any security deposit or pet damage deposit due to the tenant. I authorize the Landlord to keep \$1,140.00 from the security deposit and pet damage deposit in partial satisfaction of the Landlords awards.

I grant the Landlord a monetary order for the remaining balance of \$864.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent owing under the tenancy agreement for the month of January 2021.

The Tenant left the rental unit unclean and is responsible for Landlords cleaning costs, painting costs, and for the cost of replacement lightbulbs.

The Landlord is awarded \$2,004.00 and is authorized to keep the security deposit and pet damage deposit of \$1,140.00 and is granted a monetary order for the balance owing of \$864.00.

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 16, 2021

Residential Tenancy Branch