



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenants: MNSD-DR FFT
Landlord: MNDL-S FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for losses or damage?

Are the tenants entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on September 1, 2018, and continued on a month-to-month basis after August 31, 2019 until the tenants moved out on February 27, 2021. Monthly rent was set at \$1,075.00 payable on the first of the month. The landlord had collected a security deposit in the amount of \$525.00 at the beginning of the tenancy. The landlord returned \$195.00 to the tenants by way of a cheque dated March 12, 2021, which has not yet been cashed by the tenants. The landlord confirmed at the hearing that the cheque is still valid. On March 17, 2021, the landlord applied to retain the remaining \$330.00 security deposit to cover the losses associated with this tenancy. The tenants provided a forwarding address to the landlord on March 2, 2021, and is seeking a monetary order for the return of their security deposit less \$150.00 for carpet cleaning.

The landlord is seeking compensation for the following losses associated with the tenancy:

Item	Amount
Cleaning	\$80.00
Carpet Cleaning	150.00
Wall painting	100.00
Total Monetary Order Requested	\$330.00

Although the tenants agreed to a deduction of \$150.00 for the carpet cleaning, the tenants are disputing the landlord's claim for cleaning and painting. The tenants testified

that the landlord did not provide them with a copy of the move-out inspection report until the hearing, and that they had only signed for the move-in inspection. The tenants testified that the landlord's agents made no mention of any damage during the move-out, and that the damage was already there as the building was very old. The tenants also testified that they had cleaned the rental unit, and that there was no mention of deficiencies during the move out.

The landlord's agent testified that the tenants were provided a copy of the report, and that they chose to not sign the move-out inspection report. The landlord testified that the tenants failed to leave the home in reasonably clean and undamaged condition, and that the landlord had to incur the cost of \$100.00 for touching up the damaged walls. The landlord testified that prior to the tenants moving in the, walls were touched up as needed, and when the tenants moved out the living room and kitchen area had damage beyond wear and tear. The landlord believes that the hallway was scratched by furniture.

The landlord's agent also testified that the tenants did generally perform a good job cleaning, except that certain areas were missed such as the stove and bathtub. The landlord provided invoices for the losses the incurred, as well as the move-in and move-out reports. Both parties submitted photos in evidence to support the condition of the rental unit.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

As the tenants are not disputing the landlord's claim for carpet cleaning, I allow this portion of the landlord's claim.

Although the tenants' testimony is that they were not provided with a copy of the inspection report, the landlord still has the right to claim for losses or damage as noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- *having made an inspection does not complete the condition inspection report.*

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

The landlord made a claim in the amount of \$100.00 to touch up the walls, which the landlord testified was damaged by the tenants. The tenants cited wear and tear as the home was "very old". Residential Tenancy Policy Guideline #1 states that "The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible". Furthermore, Residential Tenancy Policy Guideline #40 speaks to the useful life of an item. As per this policy, the useful life of interior paint is four years. Although the landlord testified that the home was touched up prior the tenants moving in on September 1, 2018, I find that the landlord failed to provide sufficient evidence to support when the home was last fully painted. In light of the disputed testimony, I find that it had been at least two and a half years since the unit was last touched up. As stated in the Policy Guideline, the landlord is responsible for painting the interior at reasonable intervals. I do not find touching up the walls to be the

equivalent of painting the entire wall, and in the absence of evidence to support when the walls were last fully painted, I am unable to ascertain whether the interior paint has exceeded its useful life. As noted above, the burden of proof is on the landlord to support their claim, and in this case I find the landlord falls short in providing sufficient proof of their claim. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

The landlord also filed a claim for the cost of cleaning. Residential Tenancy Policy Guideline #1 states that "At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher". Although the tenants may have cleaned the majority of the rental unit, I find the evidence shows that the tenants missed some areas, including the stove. I find that as a result of the tenants' failure to leave the home in reasonably clean condition, the landlord suffered a loss of \$80.00 as claimed. Accordingly, I allow this portion of the landlord's claim.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. In this case, I find that the landlord filed their application within the required time limit, and therefore no monetary award under section 38 of the *Act* is applicable.

The landlord continues to hold the remainder of the tenant's security deposit in the amount of \$330.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$230.00 of the tenants' security deposit in satisfaction of the monetary awards. I order that the remaining \$100.00 be returned to the tenants.

I allow both parties to recover their filing fees. As both parties obtained offsetting monetary awards for the filing fees, no order will be made in regards to the recovery of their filing fees.

Conclusion

I allow the landlord the following monetary awards. I issue a Monetary Order in the amount of \$100.00 for the return of the tenants' deposit.

The remainder of the applications are dismissed without leave to reapply.

Item	Amount
Cleaning	\$80.00

Carpet Cleaning	150.00
Less Security Deposit Held	-330.00
Total Monetary Order to Tenants	\$100.00

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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: September 15, 2021

Residential Tenancy Branch