



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, FFL

Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution, filed on April 21, 2021, wherein Landlord requested an Order for monetary compensation from the Tenants, authority to retain their security deposit, and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on November 25, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties 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 entitled to retain the Tenants' security deposit towards any amounts awarded?
3. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this tenancy began June 1, 2020. Monthly rent was \$1,775.00 and the Tenant paid a \$887.50 security deposit and \$887.50 pet damage deposit.

In the case before me the Landlord sought monetary compensation for the cost to repaint the rental unit when the tenancy ended. In support of the Landlord's claim, the Landlord's Agent stated that there were a number of holes in the walls at the end of the tenancy. He further confirmed the Landlord was aware of the 4-year useful life of interior paint, and intended to repaint on that schedule, however, the holes in the walls requiring patching and repainting. The Landlord provided a copy of the move out condition inspection report which in turn included photos of the walls.

In response to the Landlord's claim the Tenant, J.D., testified as follows. He stated that there were some holes in the wall from hanging pictures and shelving; however, he submitted that this was normal wear and tear, and not an excessive number of holes. He further stated that he did approximately 75% of the spackling and repairs and left 25% to be done by the Landlord.

The Tenant further stated that there was no final walk through, as they had already left the city at the time. He confirmed that they signed the move out inspection report because the Agent stated that this fell under normal wear and tear and they would not be pursuing any compensation from the Tenants.

In reply, the Agent stated that the Tenants did not attend the move out inspection. However, he also confirmed that that they did not serve them with an official Notice of Final Opportunity for Condition Inspection. The Agent also denied the Tenant's claim that they would not pursue monetary compensation for repairs as it was the Landlord's position that the damages were not normal wear and tear but damage.

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.

In this case the Landlord sought monetary compensation from the Tenant for the cost to paint the rental unit.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides the following guidance with respect to walls and painting:

WALLS

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

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.

BASEBOARDS AND BASEBOARD HEATERS

The tenant must wipe or vacuum baseboards and baseboard heaters to remove dust and dirt.

As noted above tenants are permitted to hang items on the walls provided that they do not create an excessive number of nail holes. In this case, and based on the photos submitted in evidence, I find the Tenants did not make an excessive number of nail holes in the rental unit. I also find that they attended to spackling and repair of those holes as required by the *Guidelines*. I therefore find the Landlord is not entitled to monetary compensation for painting.

I also dismiss the Landlord's request to retain a portion of the Tenants' security and pet damage deposit; those funds must be returned to the Tenants.

As the Landlord has been unsuccessful in their Application, they are not entitled to recover the \$100.00 filing fee.

Conclusion

The Landlord's request for monetary compensation is dismissed.

The Landlord must return the Tenants' security deposit of \$887.50 and the Tenants' pet damage deposit of \$887.50. In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$1,775.00**. This Order must be served on the Landlord 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: November 25, 2021

Residential Tenancy Branch