



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENTS RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 44 minutes.

The landlord's agent confirmed her name, spelling, and the rental unit address. She provided her email address for me to send this decision to the landlord after the hearing.

The landlord's agent explained that she was the resident manager for the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She said that the landlord owns the rental unit.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord's agent and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. They confirmed that they were ready to proceed with this hearing, they did

not want to settle this application, and they wanted me to make a decision. They did not make any adjournment or accommodation requests.

The tenant confirmed receipt of the landlord's application and the landlord's agent confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on September 1, 2019 and ended on June 30, 2021. Monthly rent in the amount of \$2,400.00 was payable on the first day of each month. A security deposit of \$1,200.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The landlord filed this application on July 14, 2021.

The landlord seeks a monetary order of \$640.00 plus the \$100.00 application filing fee.

The landlord's agent testified regarding the following facts. She asked the tenant to do a move-out inspection at noon. The tenant stated that she needed another hour. The landlord's agent had to go on vacation, so she needed the apartment empty because she was leaving two hours after the inspection. The tenant was at work and said she thought the move out was at 12:00 a.m. not 12 p.m. The inspection was at 12:00 p.m. and the apartment was supposed to be empty. The landlord came at 12:00 p.m. and again at 1:00 p.m. She agreed to 4:30 p.m., as per the tenant's request. The apartment was full of furniture, including bikes and two mattresses, for which the landlord had to complete junk removal and is not charging the tenant for these costs. There were "dust bunnies" all over the rental unit and the tenant said that she forgot to clean the oven. The floor was full of the tenant's belongings. The landlord provided pictures showing the "dust bunnies" and the furniture at the rental unit. There were also dried up leaves on the balcony. It took two days to clean the rental unit for a cost of \$640.00 total. The

landlord provided an invoice with a balance due, but no receipt. The cleaning was done and paid on July 1, 2021. The landlord is aware that the invoice is dated for July 19, 2021. The head office for the landlord company deals with payment and cleaning details and none of this information was provided but the landlord's agent can ask for it after the hearing. One individual cleaned the rental unit from the landlord's internal cleaning company. Cleaning was done for 16 hours at a cost of \$40.00 per hour.

The tenant testified regarding the following facts. She originally agreed to do a move out inspection on the day before. But she had to move the next day, so she asked the landlord's agent if she could do the inspection later because she was behind. She asked the landlord's agent to do an inspection on July 1, 2021. Both parties agreed to an "end of the day" inspection. There was no move-in inspection done for this rental unit. The tenant cleaned the entire rental unit and spent the entire week cleaning during a heat wave. This was a two-year long tenancy. The tenant provided pictures showing how she left the rental unit, with all the furniture removed, including the couches that were not hers and left by the previous tenant. The landlord's agent estimated a cleaning expense of \$640.00 during the move-out inspection. The landlord's agent made up the above number and then got an invoice to support it for \$640.00 from the landlord's own company. This is not a big rental unit; it is only a two-bedroom apartment. The landlord's agent went on vacation after the move-out inspection. The tenant cleaned the rental unit and provided photographs of the cleaning, to show that everything was gone by the end of the day. The tenant wants to see the landlord's receipt for cleaning because she does not believe that it was paid by the landlord. Only the oven was not cleaned by the tenant.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord. I dismiss the landlord's application for cleaning costs of \$640.00, without leave to reapply.

The landlord only provided an invoice with a balance due, not a receipt to confirm that the any cleaning was done, or any cost was paid by the landlord. The invoice does not provide a breakdown of the tasks completed, what areas were cleaned, or who did the cleaning. The invoice is issued by the landlord's own maintenance company. The invoice is not signed by anyone. There is no date stating when the cleaning was done or when any payment was made.

The landlord's agent testified that the cleaning was done on July 1, 2021, and the invoice was paid by the landlord on the same date. However, as I informed the landlord's agent during this hearing, the invoice is dated for July 19, not July 1, with a balance due and no payment indicated.

The landlord had ample time, prior to this hearing, to provide a receipt to confirm the above work was completed and paid by the landlord. The landlord filed this application on July 14, 2021, approximately 6.5 months prior to this hearing on January 28, 2021.

I find that \$640.00 for cleaning is unreasonable and excessively high for this two-bedroom rental unit. I find that the landlord's own photographs submitted for this hearing, do not show that cleaning at a cost of \$40.00 per hour for a total of 16 hours, as indicated on the landlord's invoice, was required. I find that the landlord's photographs only show select areas of the rental unit, not the entire apartment. I find that the landlord failed to provide sufficient evidence that cleaning beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1, was required, in order for the tenant to pay for same.

The tenant questioned the landlord's invoice during this hearing, stating that she was told by the landlord's agent at the move-out inspection that the cleaning would be \$640.00. The tenant questioned whether there was a receipt for payment by the landlord, since it was not submitted for this hearing. The tenant stated that she thinks the landlord's agent asked for an invoice to justify her verbal quote, but no proof was given that it was actually paid. The landlord's agent did not explain, despite being given multiple opportunities during this hearing to respond to the tenant's testimony, how she knew the cost would be \$640.00 for cleaning, just by visually looking at the rental unit during the move-out inspection. The landlord's agent stated that she did not personally clean the rental unit.

I accept the tenant's affirmed testimony that she cleaned the entire rental unit. I accept the photographs that the tenant submitted and referenced during this hearing. I find that the tenant's photographs show that the rental unit was properly cleaned, and furniture was removed. Although the tenant agreed that she did not clean the oven, the landlord's agent did not indicate a breakdown of tasks completed or a specific cost for cleaning the oven. The landlord also failed to show that it paid the invoice, as noted above, or that the oven was cleaned. Therefore, the landlord has not been awarded any costs for cleaning the oven.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 application filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,200.00. No interest is payable on the tenant's security deposit during the period of this tenancy. I order the landlord to return the entire security deposit of \$1,200.00 to the tenant. The tenant is provided with a monetary order for same.

I find that the tenant is not entitled to double the value of her security deposit. The landlord extinguished its right to retain the deposit for damages, by failing to conduct a move-in condition inspection report with the tenant, as required by section 24 of the *Act*. However, the landlord only applied for cleaning, which I find is not damages, in this application. Therefore, I find that the tenant is only entitled to the regular return of her security deposit.

Although the tenant did not apply for the return of her security deposit, I am required to consider it on the landlord's application to retain the deposit, as per Residential Tenancy Policy Guideline 17.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,200.00 against the landlord. 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: January 31, 2022

Residential Tenancy Branch