



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 MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 09, 2021 (the "Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Agent for the Landlord (the "Agent") appeared at the hearing. The Tenant appeared at the hearing late. The Tenant called the Witness during the hearing. The Witness was not involved in the hearing until required. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties and Witness provided affirmed testimony.

Preliminary Issue - Service

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed receipt of the hearing package and Landlord's evidence in August of 2021.

The Agent testified that they did not receive evidence from the Tenant. The Tenant testified that they sent their evidence to the Landlord by email the week prior to the hearing. The Tenant could not point to documentary evidence of service.

The Tenant has the onus to prove service of their materials. The parties disagreed about whether the Tenant's evidence was served on the Landlord. There is no further evidence of service before me. I was not satisfied the Tenant served their evidence on the Landlord as required by rule 3.15 of the Rules.

Pursuant to rule 3.17 of the Rules, I heard the parties on whether the Tenant's evidence should be admitted or excluded. The Agent submitted that the evidence should be excluded because they do not have it. The Tenant submitted that the evidence should be admitted and commented on the content of the evidence.

Pursuant to rule 3.17 of the Rules, I excluded the Tenant's evidence as I found it would be unfair to admit it when the Agent had not seen it and could not address it at the hearing.

Preliminary Issue – Adjournment

The Tenant sought an adjournment based on the Landlord not having their evidence. The Tenant acknowledged receiving the Landlord's evidence at the beginning of August of 2021. The Tenant testified that they have been in recovery and had a lot on their plate. The Agent did not agree to an adjournment.

I considered rule 7.9 of the Rules. I denied an adjournment. I found that the Tenant had ample time to prepare for the hearing given they received the hearing package and Landlord's evidence more than four months prior to the hearing. Further, I found that the need for an adjournment arose because the Tenant did not provide proof of service of their evidence as required. I found there was no basis to adjourn and doing so would be unfair to the Landlord who had already waited more than six months for the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Cleaning	\$72.00
2	Carpet cleaning	\$99.75
3	Rent for July 2021	\$1,250.00
4	Filing fee	\$100.00
	TOTAL	\$1,521.75

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started November 11, 2017 and was for a fixed term ending May 31, 2018. The tenancy then became a month-to-month tenancy. The parties agreed rent at the end of the tenancy was \$1,250.00 per month. Rent was due on the first day of each month. The Tenant paid a \$610.00 security deposit.

The parties agreed the Tenant moved out of the rental unit June 30, 2021.

The Tenant testified that they provided the Landlord with a forwarding address June 29 or 30, 2021. The Agent testified that the Tenant provided a forwarding address June 30, 2021.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlord keeping the security deposit.

A Condition Inspection Report (the "CIR") was submitted. The parties agreed a move-in inspection was done November 09, 2017 and the CIR is accurate in relation to the inspection. The parties agreed a copy of the move-in CIR was provided to the Tenant in person on the same day as the inspection.

The Agent testified that the parties did a move-out inspection June 30, 2021 and the CIR was completed. The Agent testified that the Tenant did not sign the CIR because they did not agree with it. The Agent testified that a copy of the move-out CIR was provided to the Tenant in person the same day as the inspection. The Tenant agreed they participated in the move-out inspection but would not sign the CIR. The Tenant agreed they were provided a copy of the move-out CIR in person the same day as the inspection.

#1 Cleaning

The Landlord sought compensation for cleaning and materials and relied on an invoice from a cleaning company in evidence. The Agent testified that the rental unit was not cleaned properly at the end of the tenancy and the Landlord had a regular clean of the rental unit done.

The Tenant disputed that the rental unit required cleaning at the end of the tenancy. The Tenant submitted that there is no company name on the cleaning invoice and the invoice is not proper. The Tenant testified that the rental unit was left reasonably clean which is why they did not sign the move-out CIR.

#2 Carpet cleaning

The Landlord sought compensation for hiring a company to clean the carpets in the rental unit. The Agent testified that the Tenant did not have the carpets professionally cleaned at the end of the tenancy and the carpets were not clean at the end of the tenancy.

The Tenant disputed that the carpets were not clean at the end of the tenancy and testified that they used a carpet cleaner to clean the carpets. The Tenant also testified that the Landlord removed the carpets and installed hardwood floor at the end of the tenancy.

#3 Rent for July 2021

The Landlord sought one month of rent because they received notice from the Tenant on June 15, 2021 ending the tenancy. The Agent testified that the rental unit was posted for rent immediately on a rental website and re-rented for August 01, 2021.

The Tenant testified that they told the Landlord June 09, 2021 that they were ending the tenancy. The Tenant testified about the reasons they provided late notice ending the tenancy. The Tenant disputed that the Landlord posted the rental unit for rent immediately and testified that the Landlord was renovating units in the building as tenants vacated. The Tenant testified that they do not know when the rental unit was re-rented.

Witness

The Witness testified as follows. They were present on the day the Tenant moved out of the rental unit. The rental unit was very clean. The Agent did not find damage in the rental unit. The only thing mentioned as an issue was in relation to the blinds. The CIR provided to the Tenant was different than the CIR the Agent had. The Agent listed issues on the CIR that the Witness disagrees with. The Tenant cleaned the rental unit for two or three days. The rental unit was very clean with no damage other than visual wear and tear.

The Agent stated that they do not agree with the testimony of the Witness but did not have questions for the Witness.

Documentary Evidence

The Landlord submitted the following relevant documentary evidence:

- A text message from the Tenant dated June 15, 2021 ending the tenancy for July 01, 2021
- The CIR
- An invoice for cleaning
- An invoice for carpet cleaning
- The tenancy agreement
- Notice of Rent Increase

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and

Residential Tenancy Regulation (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the CIR and testimony of the parties, I find the Tenant participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for cleaning, carpet cleaning and rent, none of which are damage to the rental unit.

Based on the testimony of the parties, I accept that the tenancy ended June 30, 2021.

Based on the testimony of the parties, I accept that the Tenant provided the Landlord with a forwarding address June 30, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant’s forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from June 30, 2021. The Application was filed July 09, 2021, within time. I find the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant’s] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

#1 Cleaning

Section 37 of the *Act* states:

(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...

The parties disagreed about whether the rental unit was left reasonably clean. The further evidence provided by the Landlord about cleaning includes the CIR and cleaning invoice. The Tenant's testimony about the rental unit being left reasonably clean is supported by the testimony of the Witness.

I am not satisfied based on the evidence provided that the rental unit was not left reasonably clean at the end of the tenancy.

I do not find that the Landlord has submitted compelling evidence to prove the rental unit was not left reasonably clean. The CIR is not compelling evidence to support the Landlord's position because the Tenant did not agree with it and therefore the CIR simply reflects the Landlord's position. The cleaning invoice is not compelling evidence to support the Landlord's position because it does not provide detail about the condition of the rental unit at the end of the tenancy.

I note that the Landlord did not submit photos of the rental unit at the end of the tenancy which would have been simple to obtain and would have been compelling evidence of the state of the rental unit at the end of the tenancy.

I find the Tenant has provided compelling evidence to support their position that the rental unit was left reasonably clean by calling the Witness who provided affirmed testimony that the rental unit was very clean on the day the Tenant moved out. There was nothing about the testimony of the Witness that caused me to question their reliability or credibility. I note that the Agent simply disagreed with the Witness without asking the Witness anything that called into question their affirmed testimony.

Given the lack of compelling evidence provided by the Landlord, and the compelling evidence provided by the Tenant, I am not satisfied the rental unit was not left reasonably clean and am not satisfied the Tenant breached section 37 of the *Act*. Given this, I am not satisfied the Landlord is entitled to compensation and dismiss this request without leave to re-apply.

#2 Carpet cleaning

Section 37 of the *Act* applies to this claim.

The parties disagreed about whether the Tenant cleaned the carpet at the end of the tenancy. I am not satisfied based on the evidence provided that the Tenant failed to clean the carpet at the end of the tenancy for the same reasons as outlined above in relation to cleaning.

The only further evidence before me to support the Agent's testimony about the carpet is the CIR and invoice for carpet cleaning, neither of which I find compelling for the same reasons as outlined above in relation to the CIR and cleaning invoice.

I again note that the Landlord did not submit photos of the rental unit at the end of the tenancy which would have been simple to obtain and would have been compelling evidence of the state of the rental unit, including the carpet, at the end of the tenancy.

I again find the Tenant has provided compelling evidence to support their position that the rental unit, including the carpet, was cleaned at the end of the tenancy by calling the Witness who provided affirmed testimony that the rental unit was very clean on the day the Tenant moved out.

Given the lack of compelling evidence provided by the Landlord, and the compelling evidence provided by the Tenant, I am not satisfied the Tenant failed to clean the carpet at the end of the tenancy and am not satisfied the Tenant breached section 37 of the *Act*. Given this, I am not satisfied the Landlord is entitled to compensation and dismiss this request without leave to re-apply.

#3 Rent for July 2021

Section 45(1) of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to section 45(1) of the *Act*, the Tenant was required to provide the Landlord notice on or before May 31, 2021 to end the tenancy June 30, 2021. Regardless of whether the Tenant provided notice June 09, 2021 or June 15, 2021, the Tenant breached section 45(1) of the *Act* by ending the tenancy early.

The Landlord must prove loss and that they acted reasonably to minimize their loss. Here, proving loss would include proving when the rental unit was re-rented. Proving that the Landlord acted reasonably to minimize their loss would include proving they tried to re-rent the rental unit immediately upon receiving the Tenant's notice to end tenancy.

Although the Agent testified that the Landlord posted the rental unit for rent immediately, the Tenant disputed this and the Landlord has not provided any further evidence to support the Agent's testimony. Given the conflicting testimony, and lack of evidence to support the Landlord's position, the Landlord has failed to prove they took reasonable steps to mitigate their loss.

I also note that the Landlord did not provide further evidence that the rental unit was not re-rented until August 01, 2021, such as the next tenancy agreement showing this.

In the circumstances, the Landlord has failed to prove they are entitled to compensation for loss of rent and this request is dismissed without leave to re-apply.

#4 Filing fee

Given the Landlord was not successful in the Application, the Landlord is not entitled to reimbursement for the \$100.00 filing fee.

Summary

In summary, the Landlord has failed to prove they are entitled to compensation and the Application is dismissed without leave to re-apply. The Landlord must return the security deposit to the Tenant and the Tenant is issued a Monetary Order in the amount of \$610.00.

Conclusion

The Application is dismissed without leave to re-apply. The Landlord must return the security deposit to the Tenant and the Tenant is issued a Monetary Order in the amount of \$610.00. If the Landlord does not return the \$610.00 to the Tenant, this Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: February 23, 2022

Residential Tenancy Branch