



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 was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order of \$865.00 for damage to the unit, site or property, to retain the tenants' security deposit and to recover the cost of the filing fee.

Tenant JB (tenant) and landlord agent, JN (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However; only the evidence relevant to the issues and findings in this matter are described in this Decision.

As neither party raised any valid service issues and confirmed that they both had the opportunity to review the evidence served upon them, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord also entitled to recover the cost of the filing fee?

Background and Evidence

The tenant began on October 1, 2018. The tenant paid a security deposit of \$800.00 at the start of the tenancy, which the landlord continues to hold. The tenant vacated the rental unit on June 30, 2021.

The landlord's monetary claim is for \$865.00 and is comprised as follows:

Item 1: \$80.00 for cleaning costs

Item 2: \$585.00 for painting costs

Item 3: \$100.00 for painting material costs

Item 4: \$100.00 for the filing fee

The parties confirmed that on May 31, 2021, the tenant provided written notice that they would be vacating the rental unit on June 30, 2021. The tenant vacated the rental unit on June 30, 2021. The tenant provided their written forwarding address on the outgoing Condition Inspection Report dated June 30, 2021. The landlord filed their application within 15 days on July 14, 2021.

Regarding item 1, the landlord has claimed \$80.00 for the cost to clean the rental unit. The landlord referred to one photo of a fridge crisper drawer that has some debris at the bottom of the drawer. A photo of the kitchen was taken from the hallway and does not show a visible need for cleaning. A photo of the washroom was taken from a distance out in the hallway and does not show a visible need for cleaning. The landlord presented an invoice dated July 13, 2021 that indicates \$80.00 with no taxes from CM and billed to the landlord, CA Ltd.

The tenant referred to their video where in Part One, which the tenant stated shows the sink clean and the fridge and freezer clean. In Part Four, the tenant showed the toilet that they indicated was cleaned.

Regarding items 2 and 3, the landlord has claimed \$585.00 for item 2 and \$100.00 for item 3, which related to painting costs and painting materials. The landlord claims the tenant painted the rental unit in bold colours during the tenancy without permission. The landlord submitted two photos showing a red wall and a green wall. The tenant submitted several colour photos showing wall colours painted in various colours including red, green, light blue and dark blue. The tenant also provided the creation date

of each photo which indicate that the photos were taken on October 1, 2018 between 5:28 p.m. and 5:37 p.m.

The landlord replied to the tenants' photos by claiming that the tenant must have painted the rental unit as soon as they moved in and then took the photos after 5:00 p.m., which the tenant vehemently denied. The landlord provided an invoice of \$100.00 for painting material but there is no invoice for the other \$485.00 portion of this claim. The agent was asked how old the paint was in the rental unit, and the agent was unable to confirm that information as there was a prior manager in 2018, that has since passed away.

The Condition Inspection Report (Report) does not indicate the age of the interior paint or any issues with the interior paint. The tenant stated that the Report does not mention the interior paint because it was already painted in the bold colours when they moved in. The tenant also pointed out that they would have not had the time to go out and get the various paint colours and take the time to change paint colours and paint the entire rental unit on the same day they moved in, which proves the rental unit was already painted that colour when they moved into the rental unit in October 2018.

Analysis

Based on the documentary evidence, the oral testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where 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.

Item 1 – I have reviewed the video evidence and the photo evidence and the testimony and find that there is insufficient evidence to support that tenant left the rental unit in less than a reasonably clean condition. Section 37(2) of the Act applies and states:

37(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
[emphasis added]

I find two of the photos submitted by the landlord are of no weight as they are taken outside of the rooms that were supposed to show a need for cleaning and are too blurry due to the distance from the bathroom and kitchen to show any need for cleaning. I find the tenant video supports that the sink, fridge and toilet were all reasonably clean. Therefore, **I dismiss** this item due to insufficient evidence and find that the landlord failed to meet parts one, two and four of the test for damages or loss.

Items 2 and 3 – After weighing the testimony, photo evidence and digital evidence, I find that the tenant would not have had enough time on October 1, 2018, the same date that they were moving into the rental unit, to purchase at least four different colours of paint and painting supplies and proceed to paint the entire rental unit with many rooms being a different colour, all before 5:28 p.m. when the photo evidence from the tenant was time and date stamped. On the balance of probabilities, I find it more likely than not that the rental unit was already the four different paint colours when they moved in, and that the person who would have been able to confirm that information, the former building manager (former agent) has since passed away as the agent before me was not the same agent in 2018, when the tenancy began.

Based on the above, I find the landlords claim fails in its entirety. Therefore, I dismiss the landlords claim in full without leave to reapply. I find the landlord has not met the burden of proof for any of the three items claimed.

I do not grant the filing fee as the application fails.

As the landlord continues to hold the tenants' security deposit of \$800.00 confirmed at the first hearing date, I make the following order pursuant to section 62(3) of the Act.

I ORDER the landlord to return the tenants full security deposit within 15 days of receipt of this decision.

Should the landlord fail to comply with my order, I grant the tenants a monetary order pursuant to section 38 and 67 of the Act in the amount of **\$800.00**. Should the tenants require enforcement of the monetary order, the tenants may visit the website below for more information:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution/after-the-hearing/serving-and-enforcing-orders>

Conclusion

The landlord's claim is dismissed due to insufficient evidence, without leave to reapply.

The filing fee is not granted.

The landlord has been ordered to return the tenants' security deposit within 15 days of receipt of this decision.

The monetary order will be of no force or effect if the landlord complies with my order above.

The website noted above will provide the tenants with additional information about how to serve and enforce a monetary order.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 17, 2022