Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL, MNDCT, MNSD, FFT

Introduction

This hearing dealt with cross applications filed by the parties. On October 15, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On December 3, 2021, the Tenants made an Application for Dispute Resolution seeking a return of their security deposit and pet damage deposit pursuant to Section 38 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for June 9, 2022. The original hearing was adjourned as per an Interim Decision dated June 9, 2022. The final, reconvened hearing was set down for October 11, 2022, at 11:00 AM.

J.L. attended the final, reconvened hearing as an agent for the Landlord. Tenants S.S. and J.S. attended the final, reconvened hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns.

The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

At the final, reconvened hearing, S.S. was asked for her legal name as it was noted differently on the Landlord's Application. S.S. confirmed her legal name, and J.L. did not have any opposition to this being corrected on the Landlord's Application. As such, I have amended the Style of Cause on the first page of this Decision to reflect this correction.

Service of documents was discussed at the original hearing. As per the Interim Decision dated June 9, 2022, the Landlord's documentary evidence was excluded and will not be considered when rendering this Decision. Furthermore, the Tenants' documentary evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?
- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to a return of the security deposit and pet damage deposit?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2015, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on September 30, 2021. Rent was established at an amount of $855.00 per month and was due on the first day of each month. A security deposit of $380.00 and a pet damage deposit of $200.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The parties also agreed that a move-in inspection report was conducted on October 1, 2015, and that a move-out inspection report was conducted on September 30, 2021. As well, the Tenants provided their forwarding address in writing to the Landlord on September 30, 2021, on the move-out inspection report.

At the original hearing, J.L. advised that the Landlord was seeking compensation in the amount of **$855.00** for October 2021 rent because the Tenants gave verbal notice to end their tenancy and then emailed on September 7, 2021, that they would be giving up vacant possession of the rental unit on September 30, 2021.

J.S. advised that they provided their notice to end their tenancy on September 22, 2021.

S.S. advised that they made requests for repairs over the last year, and stated that they were unaware of their rights as Tenants on how to deal with ongoing repair issues. She confirmed that they never provided a letter to the Landlord requesting that any repairs needed to be completed, and that if they were not, they would be ending their tenancy based on a breach of a material term. She testified that after they gave up vacant possession of the rental unit, the Landlord conducted repairs up until October 7, 2021, and re-rented the unit on October 19, 2021. She referenced documentary evidence submitted to support this position.

J.L. confirmed that their handyman was completing the necessary repairs to the rental unit on October 7, 2021. The Landlord’s agent at the original hearing confirmed that the rental unit was painted, but he could not specifically outline what work specifically was completed. However, he acknowledged that what was repaired was not as a result of any negligence from the Tenants. As well, he confirmed that the rental unit was re-rented on October 17, 2021.

At the reconvened hearing, J.L. advised that the Landlord was seeking compensation in the amount of **$150.00** because the Tenants did not clean the carpets at the end of the

tenancy. He stated that the tenancy agreement required this to be completed, and that there was an invoice for this amount.

S.S. advised that they lived in the rental unit for six years, that there were large rips in the carpet at the start of the tenancy, and that the carpet needed to be replaced as it was already beyond its useful life. She testified that the move-in inspection report indicated that the carpets were torn and old at the start of the tenancy. She acknowledged that they did not clean the carpets as the building manager informed them, at the end of the tenancy, that the carpets would be replaced in any event. She referenced pictures submitted as documentary evidence to demonstrate the condition of the carpet and to illustrate the Landlord's lack of maintenance during the tenancy.

J.S. advised that the carpet was left in the same condition as it was provided to them at the start of the tenancy. He also stated that there was a flood that damaged the carpet at some point during the tenancy.

J.L. noted that the carpet cleaning charge was noted on the move-out inspection, so it did not make sense that the building manager would state that the carpets would be replaced. He did not know how old the carpet was prior to the start of the tenancy, but he confirmed that the carpet condition was poor at the start and that the move-in inspection report noted them as "torn and old". He testified that only a portion of the carpet was replaced prior to the next tenants moving in, but he was not exactly sure of how much of the carpet was actually replaced.

J.L. advised that the Landlord was seeking compensation in the amount of **$115.00** because the Tenants did not clean the drapes at the end of the tenancy. He stated that the tenancy agreement required this to be completed, and that the charge for this was noted on the move-out charge form. He submitted that the move-in inspection report indicated that the drapes were in good condition at the start of the tenancy.

The Tenants advised that they were aware that the drapes needed to be cleaned at the end of the tenancy; however, they cited Policy Guideline # 1 and it is their belief that they should not be responsible for this as it states that "The tenant is not responsible for water stains due to inadequate windows." They maintain that the windows were single pane, which were responsible for moisture and condensation, and were thus "improperly installed". As well, they referenced documentary evidence of infestations and lack of maintenance to further their claims that the windows were not installed properly.

J.L. advised that the windows were installed properly, and that condensation is not indicative of a defect of the windows. He stated that there were no other complaints from other tenants and that the stain on the drapes in the Tenants' picture was not at the bottom of the drapes.

J.L. advised that the Landlord was seeking compensation in the amount of **$350.00** because the Tenants left a sofa outside the garbage enclosure, which was not an area permitted for the dumping of unwanted items. This was noted on the move-out charge form, and he stated that there was an invoice for this cost to dispose of the furniture, but it actually exceeded the amount claimed.

S.S. advised that they did leave this sofa behind because it was contaminated due to the lack of required maintenance that the Landlord completed in the rental unit. She stated that they left their furniture in this area because other residents of the building had done the same, and this was a common practice. She acknowledged that they knew that this area was not designated for the disposal of furniture or unwanted debris. She questioned whether this claim was for the cost to remove their furniture solely, or if it was the cost to remove all of the furniture and debris that was left behind by other residents as well.

J.L. stated that this claim was only for the Tenants' furniture and that the other residents were charged separately.

Finally, J.L. advised that the Landlord was seeking compensation in the amount of **$75.00** because the Tenants were required, as per the tenancy agreement, to complete a flea inspection at the end of tenancy. He stated that the Tenants sent an email on September 7, 2021, informing the Landlord that they would not be completing the flea inspection that was required. He noted that this amount was indicated on the move-out charge form.

S.S. confirmed that they did not have a flea inspection report completed as the rental unit was infested anyways and there was no point. As well, she stated that the property manager told her over the phone that the rental unit would be treated for the pest infestation, so completing this report would be a waste.

This concluded the Landlord's Application for compensation, so the attention was turned to the Tenants' Application. S.S. advised that they were seeking compensation in the amount of **$460.00** for moving costs because they lived under terrible living conditions

for many years. She stated that there was a well-known mouse infestation as far back as January 2017 and that the Landlord did not fill holes or block access so that the mice could not return. She submitted that it took the Landlord more than a year to complete maintenance requests and that the previous building manager installed the bathroom fan backwards, causing moisture to be blown into the rental unit. She referenced documentary evidence submitted to support their claims.

J.L. advised that the Tenants' email correspondence indicated that they could have taken steps to have these issues resolved through the Residential Tenancy Branch, but they waited too long to do so. This indicated that the Tenants were aware of the resources at their disposal to deal with any problems that they may have had. He stated that there were no requests for maintenance in 2015, but he acknowledged that there was a mouse and cockroach issue since approximately 2017. He submitted that the Landlord was conducting a heat map to locate the source of the infestation.

Finally, S.S. advised that they were seeking compensation in the amount of **$300.00** for the cost to replace their sofa that they purchased for $750.00 approximately five years ago. She stated that the sofa was a year old when they purchased it, but they did not have any documentary evidence of the condition of the sofa when they purchased it, nor did they have any proof of how much they paid for it at that time. She submitted that it was in "excellent condition" when they purchased it and they had to dispose of it because they discovered mouse feces in it.

J.S. advised that this sofa was stored and wrapped up by the previous owner and that it was clean when they purchased it.

J.L. advised that the sofa does not look brand new. He noted that the Tenants did not have any receipts or timelines of their purchase and it is possible that this could have been gifted to them.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as all parties agreed that a move-in and move-out inspection report was conducted, I am satisfied that the Landlord complied with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has not extinguished the right to claim against the deposits.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' security deposit and pet damage deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing

the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the forwarding address in writing was received on September 30, 2021, and the Landlord filed to claim against the deposits on October 15, 2021. As such, I am satisfied that the Landlord made this Application within 15 days of receiving the forwarding address in writing. As the Landlord has not extinguished the right to claim against the deposits, I find that the doubling provisions do not apply to the security deposit or pet damage deposit in this instance.

With respect to the parties' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants/Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord/Tenants prove the amount of or value of the damage or loss?
- Did the Landlord/Tenants act reasonably to minimize that damage or loss?

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties'

testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim in the amount of $855.00 for October 2021 rent, Sections 44 and 45 of the *Act* set out how tenancies end, and they also specify that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than one month after the date the Landlord receives the notice, and 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. What this means is that the Tenants' written notice to end their tenancy must have been received by the Landlord in August 2021, to be effective for September 30, 2021.

Given that the Tenants did not comply with the *Act*, I am satisfied that they are liable for any rental loss in October 2021 that the Landlord suffered. However, as the Landlord confirmed that repairs to the rental unit, that were not the Tenants' fault, were completed until October 7, 2022, and given the fact that the unit was re-rented on October 17, 2021, I grant the Landlord a monetary award in the amount of **$252.99**, which is calculated as $855.00 X 12 months / 365 days X 9 days.

Regarding the Landlord's claim in the amount of $150.00 because the Tenants did not clean the carpets at the end of the tenancy, Policy Guideline # 40 indicates that the average useful life of carpets is estimated at 10 years. Given the consistent and undisputed evidence that the carpet had not been changed during the six-year tenancy, that J.L. had no idea how old the carpet was at the start of the tenancy, that it was noted as "torn and old" at the start of the tenancy, and that at least some portion of it was changed after the tenancy ended, I find it more likely than not that the carpet had already exceeded its useful life. As such, I dismiss this claim in its entirety

With respect to the Landlord's claim for compensation in the amount of $115.00 for the cost to clean the drapes at the end of the tenancy, the consistent and undisputed evidence is that cleaning of the drapes was required to be completed at the end of tenancy as per the tenancy agreement; however, the Tenants failed to complete this. While I accept that there were some deficiencies in the rental unit that were a responsibility for the Landlord to rectify, I do not accept the Tenants' suggestion that single pane windows would be considered an "improper" installation. Condensation can appear on windows for a number of reasons, including possibly the manner with which the Tenants could have lived in the rental unit. Furthermore, I do not accept, from the pictures provided, that the stains were necessarily due to condensation, as the Tenants

allege. As such, I find that the Tenants were responsible, as per the tenancy agreement, for cleaning the drapes at the end of tenancy. However, given that the Landlord has not submitted any documentary evidence to support the cost of this claim, I grant the Landlord a monetary award in the amount of **$50.00**, which I find to be a reasonable estimate for the cost of cleaning drapes.

Regarding the Landlord's claim for compensation in the amount of $350.00 for the coast to dispose of a sofa, the consistent and undisputed evidence is that the Tenants left their sofa, for the Landlord to deal with, in an area that they were not permitted to do so. I do not accept that this was a reasonable action that was justified based on other residents of the building also disposing of their unwanted items in this manner. As such, I am satisfied that the Tenants are negligent for this cost. However, as there is no documentary evidence to support the actual amount of this claim from the Landlord, I am doubtful that it would have cost this much to dispose of one sofa. Consequently, I grant the Landlord a monetary award in the amount of **$100.00**, which I find is an amount that is commensurate with the cost to remedy this issue.

Finally, with respect to the Landlord's claim for compensation in the amount of $75.00 for the cost of a flea inspection, the consistent and undisputed evidence is that the Tenants had a pet in the rental unit and that this inspection was required to be completed at the end of tenancy as per the tenancy agreement; however, the Tenants failed to do so. While it may have been possible that the rental unit was infested with other insects, given that this inspection was required and that it is entirely possible that the Tenants' pet could have been responsible for any fleas that may have been present in the rental unit, I find that the Tenants were still responsible for this cost. Despite there being no documentary evidence to support the cost of this inspection, I find this claim to be a reasonable approximation of such an inspection. As such, I grant the Landlord a monetary award in the amount of **$75.00** to satisfy this claim.

Regarding the Tenants' claim for compensation in the amount of $460.00 for moving expenses, based on the move-in inspection report and the documentary evidence before me from the Tenants, I accept that the Landlord did not provide a rental unit that complied with the health, safety and housing standards required by law, nor was it made suitable for occupation at the start of the tenancy. Furthermore, I am not satisfied that the Landlord adequately maintained or repaired deficiencies in the rental unit during the tenancy. However, as a condition of the four-part test above, a party must act reasonably to mitigate their losses. As the Tenants lived with many deficiencies for a substantial amount of time without taking action and forcing the Landlord to correct

these issues, I am not satisfied that the Tenants sufficiently mitigated their losses. As such, I find it appropriate to grant the Tenants a monetary award in the amount of **$230.00**, which I find is commensurate with the amount that they have established based on their actions and the documentary evidence provided.

Finally, with respect to the Tenants' claim for compensation in the amount of $300.00 for the cost to replace their sofa, as per above, the consistent and undisputed evidence is that there was a mouse and cockroach infestation in the rental unit that was not present as a result of the Tenants' negligence. As such, I accept that their sofa was more likely than not damaged due to this infestation. However, I do not find there to be sufficient documentary evidence to corroborate the age, condition, purchase price, or value of the sofa at the time of purchase. Without this evidence, I am not satisfied of the claimed value of this approximately six-plus year-old sofa. Nevertheless, as I am satisfied that the Tenants likely disposed of this sofa because of the mouse and cockroach infestation, I grant the Tenants a monetary award in the amount of **$150.00**, which I find is a reasonable estimate that is commensurate with the value of this sofa as established by the evidence provided.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application.

As the Tenants were partially successful in these claims, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
October 2021 pro-rated rent	$252.99
Drape cleaning	$50.00
Sofa disposal	$100.00
Flea inspection	$75.00
Recovery of filing fee for Landlord	$100.00
Moving expenses	-$230.00
Cost of sofa	-$150.00

Recovery of filing fee for Tenants	-$100.00
Security deposit	-$380.00
Pet damage deposit	-$200.00
Total Monetary Award	**$482.01**

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$482.01** in the above terms, and 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: October 15, 2022

Residential Tenancy Branch