



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

On October 12, 2022, 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 towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

F.S. attended the hearing as an agent for the Landlord; however, the Tenant did not appear at any point during the 16-minute teleconference hearing. At the outset of the hearing, I informed F.S. that recording of the hearing was prohibited, and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:41 PM. Only a representative of the Applicant dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Respondent had not called into this teleconference.

F.S. advised that he served the Notice of Hearing and evidence package to the Tenant by Xpresspost on October 27, 2022 (the tracking number is noted on the first page of this Decision). He testified that the Tenant confirmed by email on November 2, 2022, that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been duly served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and 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 towards these debts?
- Is the Landlord 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.

F.S. advised that the tenancy started on April 1, 2022, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on September 30, 2022. Rent was established at \$2,150.00 per month and was due on the first day of each month. A security deposit of \$1,075.00 was also paid. A copy of the signed tenancy agreement was submitted into evidence for consideration.

He testified that a move-in inspection report was conducted with the Tenant on April 1, 2022, and that a move-out inspection report was scheduled on September 30, 2022, at 12:00 PM. He stated that the Tenant appeared just prior to this time, that he informed F.S. that he was not able to participate in the move-out inspection because he was too busy, and that he then left. As a result, F.S. conducted the move-out inspection in the Tenant's absence.

As well, he submitted that the Tenant provided his forwarding address in writing on September 30, 2022, on the Security Deposit Refund form. A copy of this form, and the move-in and move-out inspection reports were submitted as documentary evidence for consideration.

F.S. advised that the Landlord was seeking compensation in the amount of **\$2,000.00** because the Tenant broke off a substantial corner of the stone kitchen countertop. He testified that the Tenant mentioned that this was broken when they met on September 30, 2022. He submitted that this damage could not be repaired, so the entire 7-year-old countertop required replacement. He referenced the documentary evidence provided to support the alleged damage and to substantiate the cost to repair this damage.

Analysis

Upon consideration of the evidence 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 Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

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

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 Tenant 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 for damage is extinguished if the Landlord does not complete the condition inspection reports.

The undisputed evidence before me is that the Landlord completed a move-in inspection report with the Tenant. Furthermore, the parties agreed to a time to conduct the move-out inspection report; however, it was the Tenant that attended at the agreed upon time and notified F.S. that he was then not able to attend. As I am satisfied that the Landlord complied with the *Act*, I find that the Landlord did not extinguish the right to claim against the security 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 Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was provided to the Landlord on September 30, 2022. As the Landlord made the Application within the 15-day time frame to claim against the deposit, and as the Landlord did not extinguish the

right to claim against the security deposit, I find that the doubling provisions do not apply in this instance.

With respect to the Landlord's claim 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."

Regarding the Landlord's claim for compensation in the amount of \$2,000.00 to cover the cost of replacing the broken countertop, the consistent and undisputed evidence before me is that the kitchen countertop was broken at the end of the tenancy, and that this was caused by the Tenant's negligence. As such, I am satisfied that the Tenant should be responsible for the cost of fixing this damage.

However, Policy Guideline #40 indicates that the average useful life of a countertop is 25 years. Given that the Landlord has already benefitted from approximately seven years of use of this countertop, I find that the Landlord's claim would be reduced accordingly. Consequently, I grant the Landlord a monetary award in the amount of **\$1,440.00** to satisfy this debt.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the debt awarded.

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

Calculation of Monetary Award Payable by the Tenant to the Landlord

Damaged countertop	\$1,440.00
Filing fee	\$100.00
Security deposit	-\$1,075.00
TOTAL MONETARY AWARD	\$465.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$465.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the

Tenant 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: November 30, 2022

Residential Tenancy Branch