



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 reconvened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend this reconvened hearing. The Landlord confirms service of its application and evidence to each Tenant by registered mail on October 5, 2022. The Landlord provides postal evidence of this service. It is noted that the Tenant made some submissions on the Landlord’s claims at the original hearing and these submissions are included below. The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant named AZ (“Tenant AZ”) in the Landlord’s application states that the Landlord has incorrectly reversed their first and last name and that the name should be Tenant “ZA”. The Landlord does not wish to amend the application to change the order of the names of Tenant AZ. As it is up to an applicant to correctly name the respondents, and as the Landlord does not consent to an amendment the application remains unamended.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on June 1, 2019 and ended January 31, 2022. Rent of \$1,250.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$625.00 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection with a report completed and copied to the Tenants. The Tenants did not agree with the move-out inspection report.

The Landlord states that the Tenant's forwarding address was provided on the move-out report. The Tenant states they did not send any forwarding address to the Landlord and that the Parties only exchanged phone numbers.

The Landlord states that the Tenants cleaned nothing at the unit on move-out. The Landlord provides a cleaning invoice dated January 31, 2022 and claims the cleaning cost of \$192.00.

The Landlord states that the Tenant left marks on the walls and that washing one of the walls did not remove the marks. The Landlord states that the unit was last painted fresh at move-in as noted on the move-in inspection report. The Landlord states that as a result the entire one-bedroom, one-bathroom unit required painting. The Landlord provides an invoice and claims the cost of \$385.00.

The Landlord states that the Tenants left the kitchen countertop with burn marks. The Landlord does not know the age of the countertop and thinks it may be around 2 years. The Landlord confirms that the damage was aesthetic only and did not affect the countertop functionality. The Landlord provides a photo of an area on the countertop.

The Landlord claims \$656.45 as the replacement cost of the entire kitchen countertop and provides an invoice.

The Landlord states that the Tenants left the kitchen cabinet doors and cabinets damaged. The Landlord confirms that this damage is not noted in the move-out inspection report and that no photos of this damage has been provided. The Landlord claims \$100.00 for the cost to repair these items and provides an invoice. The Landlord states that the person who provided the receipt was a paid employee of the Landlord and was not paid the amount set out on the receipt.

The Landlord states that the Tenants left the stove top damaged to the extent that it could not be cleaned and provides a photo. The Landlord confirms that the oven worked. The Landlord does not know the age of the stove and that their maintenance person only checked the stove and made no report on possible repairs. The Landlord claims \$800.00 as the replacement cost for the stove. The Landlord makes no reference to an invoice for this cost and no invoice for this cost was submitted for this hearing.

The Landlord states that a plastic fridge container was left cracked and the Landlord claims \$75.00 as the cost. The Landlord does not know the age of the fridge.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or

mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the undisputed evidence that the Tenants did not agree with the move-out report I consider that this report is insufficient on its own to substantiate the condition of the unit as claimed by the Landlord. The Landlord did not provide any photos of an unclean unit other than one photo of an unclean stove and oven and one wall with marks. This evidence does not support that the entire unit was left unclean. I find therefore that the Landlord is not entitled to the amount claimed. However, given the undisputed evidence of the photos, I find that the Tenants did fail to leave these areas of the unit reasonably clean. As the Landlord's invoice does not set out any cleaning details I am unable to calculate any portion of the cleaning costs claimed and find the Landlord is therefore only entitled to a nominal sum of **\$50.00** for this breach.

As the Landlord has only provided one photo of one wall with apparent stains I find that the Landlord has not substantiated that the entire unit required paint. Given the Landlord's undisputed evidence of the photo I find that the Tenants did leave one wall requiring paint. As the Landlord's invoice does not contain any detail for the painting of the unit I am unable to calculate or determine any portion of the paint costs for that wall. I note as well that the invoice does not include any receipt for the paint supplies portion of the invoice. For these reasons I find that the Landlord is only entitled to a nominal sum of **\$50.00** for this breach.

Given the Landlord's undisputed evidence of the countertop photo I find that the Landlord has substantiated that the Tenant left the countertop with a small, stained area. However, as the Landlord does not know the age of the counter I consider that this damage may very well be only reasonable wear and tear. Further the damage was only aesthetic and yet the Landlord claimed the cost to replace the entire countertop. I find this claimed cost to be excessive in relation to the damage claimed. For these

reasons I find that the Landlord has not substantiated its claim for the costs to replace the countertop and I dismiss this claim.

As the move-out report does not note any damage to the kitchen cabinets and doors and as there are no photos of this damage, I find that the Landlord has not substantiated that the Tenants caused any damage to these areas and I dismiss the claim for repair costs.

Given the Landlord's photo evidence I find that the Landlord has substantiated that the Tenants left the stove top excessively dirty and possibly stained. There is no supporting evidence however that the burners did not work. Further there is no evidence that the stove had any useful life by the end of the tenancy and the photo appears to show an older stove. Nonetheless, as the Landlord did not provide any evidence of inspection report on the likelihood of repairs to the stove, I find that the Landlord failed to take reasonable steps to mitigate the costs being claimed to replace the entire stove. I therefore dismiss the claim for stove replacement costs.

Given the Landlord's evidence of not knowing the age of the fridge, as there is no photo of the fridge or the fridge part and considering the part is made of plastic, I find that the Landlord has failed to substantiate damage beyond reasonable wear and tear and I dismiss the claim for the replacement costs.

As the Landlord's claims have met with minimal success, I find that the Landlord is only entitled to recovery of half the filing fee in the amount of **\$50.00** for a total entitlement of **\$150.00**. Deducting this amount from the security deposit plus zero interest of **\$625.00** leaves **\$475.00** to be returned to the Tenants forthwith.

Conclusion

I Order the Landlord to retain **\$150.00** from the security deposit plus interest of \$625.00 in full satisfaction of the claim.

I grant the Tenants an order under Section 67 of the Act for **\$475.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: January 18, 2023

Residential Tenancy Branch