



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On May 25, 2022, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

A.P. and N.T. attended the hearing as agents for the Landlord; however, neither Tenant attended the hearing at any point during the 26-minute teleconference. At the outset of the hearing, I informed A.P. and N.T. that recording of the hearing was prohibited. As well, they provided a solemn affirmation.

A.P. advised that each Tenant was served with a separate Notice of Hearing package on June 9, 2022, by registered mail (the registered mail tracking numbers are noted on the first page of this Decision). He testified that these packages were received by the Tenants as they were not returned to sender. Based on his solemnly affirmed testimony, I am satisfied that the Tenants were duly served the Landlord’s Notice of Hearing packages.

He then advised that each Tenant was served with a separate evidence package on November 6, 2022, by registered mail (the registered mail tracking numbers are noted on the first page of this Decision). He testified that these packages were returned to sender on November 18, 2022. Based on his solemnly affirmed testimony, I am satisfied that the Tenants were deemed to have received these evidence packages five days after they were mailed. As such, I have accepted this evidence and will consider it 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 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.

A.P. advised that the tenancy started on January 1, 2022, as a fixed-term tenancy of one year, ending on December 31, 2022. However, the Tenants gave up vacant possession of the rental unit on April 30, 2022. Rent was established at \$1,550.00 per month and was due on the first day of each month. A security deposit of \$775.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

He stated that a move-in inspection report was conducted with the Tenants on January 1, 2022. As well, he testified that the Tenants were present on April 30, 2022, for a move-out inspection report; however, the Tenants did not sign this report. A copy of the move-in and move-out inspection report was submitted as documentary evidence for consideration. In addition, he noted that Tenant T.W. provided their forwarding address in an email to the Landlord, dated May 14, 2022. He cited this documentary evidence and testified that the Notice of Hearing and evidence packages were all sent to this address accordingly.

A.P. then advised that the Landlord was seeking compensation in the amount of **\$227.94** for the cost of repainting and repairing damage to the walls caused by the Tenants. He testified that there were scuffs, scratches, and items left on the wall, which

all needed to be dealt with to return the rental unit to a re-rentable state. He referenced pictures submitted to corroborate this damage, and an invoice submitted to support the cost of fixing this damage.

A.P. advised that the Landlord was also seeking compensation in the amount of **\$66.00** because the Tenants did not adequately clean the rental unit and leave it in a re-rentable state at the end of the tenancy. He stated that these deficiencies were noted on the move-out inspection report, and he referenced pictures submitted of the dirty areas of the rental unit. As well, he pointed to the receipt submitted to support the cost of this claim.

A.P. advised that the Landlord was seeking compensation in the amounts of **\$630.00** and **\$120.75** because the Tenants ended their tenancy early and gave up vacant possession of the rental unit contrary to the *Act*. Despite this, the Landlord was able to find new tenants for the rental unit for May 1, 2022. These costs were for the building manager's time to advertise, screen applications, and general duties required to re-rent the unit.

N.T. advised that the Tenants gave their notice to end the tenancy at the end of March 2022, effective for April 30, 2022. He referenced the liquidated damages clause in the tenancy agreement, which outlined that a liquidated damages fee of \$775.00 would be charged if the Tenants ended the fixed term tenancy early. He stated that multiple ads were posted immediately, that efforts were made to show the rental unit, and that new tenants were found on or around April 18 or 19, 2022. He referenced receipts submitted to support the cost of re-renting the unit.

Finally, A.P. advised that the Landlord was seeking compensation in the amount of **\$210.00** because the Tenants did not provide receipts that the drapes or carpets were cleaned, in accordance with the terms in the tenancy agreement. He referenced a picture of a stain on the carpet to support this claim; however, he could not point to any documentary evidence of an issue with the drapes. He cited an invoice submitted to support the cost of cleaning the drapes and the carpet.

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 Regulation* (the "*Regulation*") 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 the undisputed evidence is that a move-in inspection report was conducted and signed by both parties, and that the Tenants were present on April 30, 2022, but refused to sign the move-out inspection report, 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 deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' 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 Tenants' 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 Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, a forwarding address was provided on May 14, 2022, and the Landlord filed to claim against the deposit on May 25, 2022. As such, I am satisfied that the Landlord made this Application within 15 days of receiving the forwarding address. As the Landlord has not extinguished the right to claim against the deposit, I find that the doubling provisions do not apply to the security deposit in this instance.

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

With respect to the Landlord's claim for compensation in the amount of \$227.94 for the cost of repainting and repairing damage to the walls, the consistent and undisputed

evidence before me is that the walls were marked in good condition on the move-in inspection report at the start of the tenancy, and that there were deficiencies noted on the move-out inspection report. Moreover, there was documentary evidence presented to demonstrate the extent of the damage, and an invoice submitted to support the cost to remedy this damage. As such, I am satisfied that the Landlord has provided sufficient documentary evidence to substantiate that the Tenants were negligent for this damage, and I grant the Landlord a monetary award in the amount of **\$227.94** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$66.00 for the cost to clean the rental unit and return it to a re-rentable state, the consistent and undisputed evidence before me is that the rental unit was mostly noted in good condition on the move-in inspection report at the start of the tenancy, and that there were deficiencies noted on the move-out inspection report. Moreover, there was documentary evidence provided to demonstrate the areas that the Tenants did not clean, with an invoice submitted to support the cost to rectify this issue. As such, I am satisfied that the Landlord has provided sufficient documentary evidence to substantiate that the Tenants did not adequately clean the rental unit, and I grant the Landlord a monetary award in the amount of **\$66.00** to remedy this matter.

With respect to the Landlord's claim for compensation in the amounts of \$630.00 and \$120.75 for what is effectively liquidated damages, there is no dispute that the parties entered into a fixed-term tenancy agreement from January 1, 2022, for a period of one year, ending on December 31, 2022. Yet, the tenancy effectively ended when the Tenants gave notice to end the tenancy on March 31, 2022, and gave up vacant possession of the rental unit on April 30, 2022.

Furthermore, I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

In addition, Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline

also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Based on the undisputed evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. However, I am suspicious that this amount noted was an actual genuine pre-estimate of the cost to re-rent the unit, but rather simply chosen as it was conveniently equivalent to the security deposit.

Barring this, I am satisfied from the uncontested evidence that the Landlord made reasonable efforts to effectively mitigate this loss and re-rented the unit as quickly as possible for May 1, 2022, despite the costs to repair and/or clean the rental unit. As such, I grant the Landlord a monetary award in the amount of **\$750.75** to satisfy this claim.

Finally, regarding the Landlord's claim for compensation in the amount of \$210.00 for the costs of drape and carpet cleaning, I acknowledge that the terms in the tenancy agreement require the Tenants to provide proof that this was done at the end of the tenancy. However, I note that while it was indicated on the move-out inspection report that the drapes "need[ed] cleaning", it also indicated that the drapes were in good condition. Moreover, A.P. could not provide any other testimony, or point me to any other documentary evidence, that demonstrated that the drapes were in need of cleaning. Furthermore, I note that there were "stains" noted on the carpet on the move-in inspection report, and it is not clear if these were the same stains as noted on the move-out inspection report.

Even though the Landlord has included terms in the tenancy agreement that the Tenants must provide receipts of these items being cleaned, given that the Tenants only lived in the rental unit for four months, and given that there are some doubts about the actual condition of the drapes and carpet at the end of the tenancy, I am not satisfied that the Landlord has adequately established that there were actually any deficiencies in

these items, or that it was due to the negligence of the Tenants. As such, this claim is dismissed in its entirety.

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 Tenants to the Landlord

Repainting and repairing walls	\$227.94
Cleaning	\$66.00
Liquidated damages	\$750.75
Recovery of filing fee	\$100.00
Security deposit	-\$775.00
TOTAL MONETARY AWARD	\$369.69

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$369.69** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: February 7, 2023

Residential Tenancy Branch