Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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

DECISION

Dispute Codes **MNDL-S, FFL**
MNDCT, MNSD

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant the *Residential Tenancy Act*.

The landlord applied for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

- A monetary order for damages or compensation pursuant section 67; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Both tenants and the landlord's representatives attended the hearing. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

The tenants acknowledged service of the landlord's Notice of Dispute Resolution Proceedings and evidence. The landlord did not acknowledge being served with the tenant's application or evidence.

The tenant CB testified that she sent the landlord a copy of the tenants' Notice of Dispute Resolution Proceedings package via registered mail on August 17, 2023, and provided the tracking number, recorded on the cover page of this decision. The tenant CB testified that the package was sent addressed to the developer of the rental unit, not the property management company representing the developer named on the tenancy agreement. The landlord's representative testified that the two companies share office space and that the property management company is not the same entity as the developer. I determined that the landlord was not sufficiently served with the tenants' Notice of Dispute Resolution Proceedings package, as it was not addressed to the correct landlord named on the tenancy agreement. The tenants' dispute was dismissed with leave to reapply at the beginning of the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages to the rental unit?
Can the landlord retain the tenants' security deposit?
Can the landlord recover the filing fee?

Background, Evidence and Analysis

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the tenancy began on December 21, 2021 and ended on June 30, 2022. The rental unit is a unit in a building built in 1977 and a condition inspection report was done at the beginning and end of the tenancy. The landlord was provided with the tenants' forwarding address on the condition inspection report dated June 30, 2022.

Both parties signed the condition inspection report, and an additional form called a move out charge form on June 30th. The tenants testified that they signed this form blank and were told by the building manager that they could not move out without signing the blank form. The landlord's representative testified that the building manager in the building has worked for them the past 4 years and would never have tenants sign a blank form as doing so is deceitful. The tenants also allege that photos taken by the landlord depicting the condition of the unit on move-out is of not theirs. The landlord countered, saying that their common practice is to have their staff photograph the units at the end of tenancies to provide evidence fir disputes. Their property management company would never provide false evidence.

I find that, on a balance of probabilities, the tenants understood what they were signing when signing the condition inspection report and the move out charge form. I do not find the tenants credible on their allegation that the form was blank when they signed it. Any reasonable person would read the contents of the form before agreeing to acknowledge the validity of the document they sign. I find the tenants knew the landlord was seeking to deduct $1,518.00 of the security deposit and the tenants agreed to the deduction as they were moving out.

The parties dispute 3 elements of the landlord's claim. First, the landlord seeks compensation of $210.00 for large items in the rubbish bin which their disposal company charged them to dispose of. The landlord provided the invoice and photos of the dumpster with a chair, stool, artwork and plastic bins belonging to the tenants. The tenants denied those items were theirs, but acknowledged putting a la-z-boy recliner into the dumpster. (not shown in the photo). I find that the landlord incurred the fee from the junk removal company to properly dispose of the tenant's furniture. I base this on the admission from the tenant that they put the recliner in the dumpster when they moved out, even if the other items may not have been theirs. Further, the tenants agreed to $200.00 for garbage removal, noted as one chair on the move our charge form. The landlord is awarded $210.00.

The landlord seeks $94.50 for painting and patching of small dents and scuffs to the walls. They paid a handyman 2 hours of work to patch and paint the walls in the living room and bedroom. The tenant argue that the scuffs are reasonable wear and tear. Once again, I find the tenants signed off on $150.00 towards drywall repair on the move out charge form, thereby acknowledging the damage to the walls. I award the landlord the $94.50 they seek.

Lastly, the landlord seeks to recover $210.00 as 5 of cleaning at $40.00 per hour, due to the dirty kitchen. In evidence, the landlord provided photos of an uncleaned oven, a greasy vent hood, an uncleaned fridge and cupboards that were not wiped down. Residential Tenancy Branch Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises] states that at the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher. I find the tenants failed to carry out this responsibility at the end of their tenancy.

While the tenants dispute that the photos depict their unit and that the landlord is using another unit for the pictures, I have nothing from the tenants as evidence to convince me this is the version of facts I should deem more likely to be true. While they had the opportunity to provide photographs in this file to contradict the landlord, none were provided to me. Further, the tenants agreed to 5 hours of cleaning for a total of $200.00 on the move out charge form. Based on the evidence before me, I find the tenants did not leave the unit reasonably clean as required by section 37 of the Act and I award the landlord the $210.00 they seek.

At the hearing, the tenants acknowledged that the tenancy agreement addendums required that they have the carpets cleaned and the unit inspected for fleas at the end of the tenancy and that these were not done because they just didn't have the funds on June 30th. The tenants agreed to compensate the landlord with $204.25 for the flea inspection and $204.25 for the carpet cleaning. Further, the tenants acknowledged that their cat made tears to the drapes and that they would pay for new drapes. They did not dispute the landlord's invoice for $602.45 as the cost of the drapes.

The landlord was successful in his claim and the filing fee of $100.00 will be recovered. The landlord continues to hold the tenants' security deposit and pet damage deposit and in accordance with the offsetting provisions of section 72, the landlord may retain the sum of both deposits ($1,025.00) in partial satisfaction of the monetary order.

Item	**amount**
Junk removal	$210.00
Drape replacement	$602.45
Flea inspection	$204.25
Carpet cleaning	$204.25
Painting/patching	$94.50
Cleaning	$210.00
Filing fee	$100.00

Less security deposit and pet damage deposit	($1,025.00)
Total	**$600.45**

Conclusion

The landlord is awarded a monetary order in the amount of $600.45 pursuant to section 67 of the Act.

The tenant's application seeking compensation for monetary loss is dismissed with leave to reapply. The application seeking a return of the security deposit and pet damage deposit is dismissed without leave to reapply.

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: April 11, 2023

Residential Tenancy Branch