



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 MNSD, MND, MNDC, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on September 20, 2018, wherein the Landlord sought monetary compensation from the Tenants, authority to retain their security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on April 18, 2018. Only the Landlord's representative, J.N. called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

As the Tenants failed to call into the hearing, service of the Landlord's Application and Notice of Hearing was considered. J.N. testified that she served the Tenants with the Notice of Hearing and the Application on September 21, 2017 by registered mail. A copy of the registered mail tracking numbers for both Tenants is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of September 26, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's representative testified as follows.

She stated that the tenancy began May 1, 2016. The Tenants paid monthly rent in the amount of \$1,420.00 and a security deposit in the amount of \$710.00. The tenancy ended on April 30, 2017.

The Landlord returned the sum of \$232.56 to the Tenants on May 15, 2017. The Tenants initially claimed they did not receive the cheque and then cashed it on September 13, 2017. J.N. stated that the Tenants also initially informed the Landlord they did not agree to the deductions following which the Landlord applied for dispute resolution.

In the within action the Landlord sought authority to retain the balance of the deposit, namely \$477.44 for the following:

Floor cleaning	\$30.00
Cleaning of drapes and blinds	\$40.00
Cost of cleaning materials	\$110.00
Cost of paint materials	\$202.50
Repairs	\$59.94
Fireplace	\$35
TOTAL	\$477.44

The Tenants failed to call into the hearing and therefore the Landlord's evidence was undisputed.

Analysis

Based on the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the Landlord's evidence that the rental unit required cleaning and repairs at the end of the tenancy. I find the Tenants breached their obligations pursuant to section 37 and are therefore responsible for compensating the Landlord for the \$477.44 claimed.

As the Landlord continues to hold the sum of \$477.44 I authorize the Landlord, pursuant to sections 38 and 72 of the *Act*, to retain those funds.

Further, the Landlord has been successful and I therefore grant them recovery of the \$100.00 filing fee. The Landlord is granted a Monetary Order in the amount of \$100.00 and must serve the Order on the Tenants as soon as possible. Should the Tenants not pay as required the Landlord may file and enforce the Order in the B.C. Provincial Court.

As noted, the Tenants failed to attend the hearing and dispute the Landlord's claims. The Landlord is reminded that section 38(1) of the *Act* requires a Landlord to make an application for dispute resolution within fifteen days of the end of the tenancy or receipt of the Tenant's forwarding address (whichever is later) if the Landlord is unable to obtain the Tenants' consent to retention of any portion of the deposit.

Conclusion

The Landlord's application for compensation in the amount of \$477.44 is granted. The Landlord may retain the Tenants' \$477.44 security deposit as payment of this sum.

The Landlord is granted a Monetary Order in the amount of \$100.00 as recovery of the filing fee.

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 18, 2018

Residential Tenancy Branch