Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On July 5, 2019, 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 retain the security deposit and pet damage deposit in satisfaction of these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On July 11, 2019, this Application was set down for a participatory hearing on October 21, 2019 at 1:30 PM.

J.S. and S.P. attended the hearing as agents for the Landlord. Tenant T.P. attended the hearing with S.T. attending as an advocate for the Tenants. All in attendance provided a solemn affirmation.

J.S. advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on July 12, 2019 and the Tenant confirmed receipt of these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served with the Notice of Hearing and evidence packages.

He also advised that he emailed evidence to S.T. on the day of the hearing. S.T. acknowledged that he received this evidence; however, he takes no issue with it. As this evidence was not served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this decision. The Landlord was permitted speak to this late evidence during the hearing.

S.T. advised that the Tenants' evidence was served to the Landlord by registered mail on October 10, 2019 and a late package of evidence was served by email on the day of the hearing. J.S. confirmed receipt of the registered mail package. As well, he confirmed that he received the emailed evidence, that he had reviewed it, and that he was prepared to respond to this late evidence. While this late evidence was not served in accordance with Rule 3.15 of the Rules of Procedure, as J.S. was prepared to proceed, I accepted all of the Tenants' 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 and pet damage deposit towards these debts?
- Is the Landlord entitled to recovery of 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.

All parties agreed that the tenancy started on January 1, 2019 and that rent was established at $1,150.00 per month, due on the first of each month. A security deposit of $575.00 and a pet damage deposit of $200.00 were also paid. J.S. advised that the tenancy ended on or around June 18, 2019 after receiving a text from the Tenants on that date. He stated that they skipped out of their tenancy and he received the keys to the rental unit back from another tenant in the building, who had been given the keys by the Tenants. He stated that a One Month Notice to End Tenancy for Cause (the “Notice”) was served to the Tenants that had an effective end date of the tenancy of June 30, 2019. A copy of the signed tenancy agreement was submitted as documentary evidence.
Tenant T.P. acknowledged that they were served with the Notice in May 2019 and they disputed the Notice. She then stated that they withdrew this claim and notified the Landlord of such. She submitted that the Landlord accepted this withdrawal, that this was documented in writing, and that June 16, 2019 was a mutually agreed upon date to end the tenancy. She agreed that they did not return the keys but left them with another tenant of the building because of issues they had with the Landlord and she stated that she never informed the Landlord of this. However, she denies that they skipped out of the tenancy.

J.S. confirmed that the Landlord served the Notice on May 15, 2019 with an effective end date of the tenancy of June 30, 2019. He stated that they agreed to mutually end the dispute but did not sign a mutual agreement to end the tenancy for a specific date.

S.T. acknowledged that there was no signed mutual agreement to end tenancy in writing; however, there was a verbal agreement that the Tenant would withdraw her Application and she would accept the Notice.

Both parties agreed that a move-in inspection report was conducted on January 1, 2019 tenancy. J.S. advised that a move-out inspection report was not conducted because the Tenants skipped out on the tenancy, left the keys with another tenant of the building, and he did not have any contact information for the Tenants. The Landlord received the keys on or around June 18, 2019 and the move-out inspection report was conducted approximately a week later by the building manager. A copy of the move-in and move-out inspection report was submitted as documentary evidence.

S.T. drew my attention to the move-out inspection report and indicated that it is not dated. As well, he stated that it indicated that “Touch ups as per Jordan” and he questioned this as the receipt for the related work was dated July 1, 2019. As such, it is his position that the work was completed prior to the inspection report, and this touch up note was added to the condition inspection report afterwards. He also submitted that it was the Landlord’s obligation to contact the Tenants to schedule a move-out inspection report and did not do so despite being aware to contact the Tenants through him.

J.S. advised that the touch up note was simply a note to indicate who would be conducting the repairs. He also stated that the Landlord was not informed that communication should be done through the Tenants’ counsel until receiving an email from the Tenants on June 24, 2019 requesting a return of their security deposit and to CC their counsel as well on any communication. S.T. confirmed that this email was the first communication to the Landlord about including the Tenants’ counsel on any communications.

All parties agreed that the Tenants provided the Landlord with their forwarding address via email on July 11, 2019; however, the Landlord had already made their Application on July 5, 2019 using the Tenants’ counsel’s address as per the June 24, 2019 email.

J.S advised that the Landlord was seeking compensation in the amount of **$125.00** for the cost to clean the carpets and **$115.50** for the cost of cleaning the curtains. He stated that the Tenants did not clean these items at the end of the tenancy, as per the tenancy agreement and their company policy. He referenced the receipts submitted as documentary evidence of these costs to support these claims.

S.T. does not disagree that these were terms of the tenancy agreement; however, he doubted the cost of the work charged as they seemed expensive. As well, he found the invoice for the drape cleaning to be questionable. He reiterated that this was a short-term tenancy and he referenced the pictures submitted prior to moving out.

J.S advised that the Landlord was seeking compensation in the amount of **$189.00** for the cost to make repairs to the rental unit. He stated that there were larger holes in the walls and that there were general repairs that were necessary. He advised that the cost of the labour for this was $40.00 per hour and that the person completing this work took four hours to do so. As this amounted to $160.00, J.S. amended the amount being sought as **$160.00 plus tax** despite the invoice for the work, submitted as documentary evidence, being incorrect. He stated that he could not directly point to any evidence to corroborate any deficiencies to support this claim and he did not submit pictures either; however, he referenced the Tenants' own pictures submitted to support his position.

S.T. speculated that the repairs were made prior to the move-out inspection report being completed and that these deficiencies were being unfairly placed on the Tenants. He referenced the Tenants' photos submitted as documentary evidence to show that the baseboards and walls were marked up prior to the tenancy starting. He pointed to the move-out inspection report which did not specifically note if the rental unit required painting or not. As well, he advised that the Tenants left the rental unit in the same condition as it was provided to them in. He submitted that the notation in the move-out report of one hour of a cleaning charge supports the allegation that these notes were added to the report after the work was completed. Finally, he stated that the Tenants always take pictures upon moving in and out of a rental unit.

J.S. advised that the Landlord was seeking compensation in the amount of **$44.80** for the cost to clean the rental unit. Based on the evidence and testimony already provided, this claim is self-explanatory.

S.T. referred to the photos provided as documentary evidence to support the Tenants' position that the rental unit was left in a re-rentable state.

J.S. advised that the Landlord was seeking compensation in the amount of **$94.50** for the cost of a flea inspection and neither S.T. nor the Tenant took issue with this claim.

Finally, J.S. advised that the Landlord was seeking compensation in the amount of **$85.00** for the cost of storage and applicable late fees. However, he was advised that the storage agreement is not a part of the tenancy agreement and the *Act* did not have jurisdiction over this issue. As such, this claim was dismissed in its entirety.

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.

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. However, Section 35(5)(b) allows the Landlord to complete the move-out inspection if the Tenants abandon the rental unit.

Section 37 of the *Act* outlines how the Tenants must leave the rental unit at the end of the tenancy and states that they must give the Landlord all the keys or other means of access that allow access to the rental unit.

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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address was not provided until July 11, 2019. While not indicated as the Tenants' forwarding address, as the Landlord had already made the Application to retain the deposits based on the Tenants' email advising to use their counsel's address for service of documents, I am satisfied that the Landlord made the Application prior to receiving a forwarding address in writing so the requirements of the *Act* with respect to the doubling provisions do not apply.

Furthermore, I find it important to note that the undisputed evidence is that the Tenants gave up vacant possession of the rental unit unexpectedly and left the keys with another tenant of the rental unit. It is not clear to me why the Tenants would believe that this was an appropriate method to return the keys to the rental unit to the Landlord and end their tenancy. This is contrary to the *Act* and I find that the Tenants ended their tenancy by abandoning it. As such, I am satisfied that the Landlord was entitled to conduct a move-out inspection report in the absence of the Tenants and was still entitled to claim against the deposits. As the Landlord has complied with the requirements of the *Act*, the doubling provisions are not triggered by this event either.

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."

Regarding the Landlords' claim for the damage to the rental unit, the first one I will address is the cost associated with the carpet and curtain cleaning. I find it important to note that the

tenancy agreement includes terms requiring that these items be cleaned at the end of the tenancy. Furthermore, I note that Policy Guideline # 1 states that the carpets may be expected to be cleaned if the Tenants have a pet, regardless of the length of the tenancy. Finally, the undisputed evidence is that the Tenants did not have either of these items cleaned prior to giving up vacant possession of the rental unit. Based on these reasons, I am satisfied that the Tenants are responsible for these costs incurred. As such, I find that I am satisfied of the Landlord's evidence with respect to the costs associated with cleaning these items. Consequently, I find that the Landlord should be granted a monetary award in the amount of **$240.50** to satisfy these claims.

With respect to the Landlord's claim for repairs of damage to the rental unit, the Tenants gave up vacant possession of the rental unit unexpectedly and contrary to the *Act*. While Tenant T.P. suggested that they did this due to difficulties they had with the Landlord, if this were in fact true, it is not clear to me why they could not have delivered the keys directly to the Landlord in a more appropriate manner or had someone do so for them at the end of the tenancy. As the Tenants simply texted the Landlord on a random day advising that they were leaving, and as they inexplicably left their keys with another tenant of the building, I find that these actions and behaviours, and this manner of abandoning the rental unit causes me to doubt the reliability or truthfulness of the Tenant overall.

As the Tenants abandoned the rental unit, I am satisfied that the Landlord was entitled to conduct a move-out inspection in accordance with Section 35(5)(b). When reviewing the totality of the evidence before me, I have the Landlord's move-in inspection report where the Tenants signed agreeing that there were no deficiencies. I also have the Landlord's move-out inspection report noting all the deficiencies at the end of the tenancy. In addition, I have before me an invoice of the cost to fix these issues. On the contrary, I have mostly speculation from S.T. questioning the legitimacy of the move-out inspection report and his attempts to generate doubts about the reliability of the Landlord's evidence.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, in addition to the Landlord's evidence, I find it important to note that the Tenants relied on their photographs to support their position that they did not damage the rental unit. However, when reviewing the pictures in their late evidence package entitled "Move-in photos" and then their "Evidence package", I can reasonably infer that these are supposed to be before and after photographs of the rental unit. When reviewing these photographs, I find it noteworthy pointing out that the move-in photographs portray uncleanliness and damage to the rental unit, which is contrary to the move-in inspection report, and the contrasting photographs in the Evidence package depict a clean rental unit. I find the most important pictures to note are the apparent move-in photos of the laminate around the toilet and the move-out photos of this flooring. In the move-in photos, this flooring appears cracked and damaged whereas the move-out photos illustrate them as being in good condition. As I am doubtful that the Tenants replaced the laminate in the bathroom with

identical, new flooring, I find this causes me to be suspicious of the legitimacy of the Tenants' submissions as it appears as if they have attempted to submit seemingly disingenuous evidence. As such, I place no weight on the Tenants' testimony of the condition they left the rental unit in and I prefer the Landlord's evidence on the whole. For these reasons, I also reject S.T.'s submissions. Consequently, I find that the Landlord should be granted a monetary award in the amount of **$168.00**, which amounts to $40.00 per hour for four hours of labour, plus GST.

Regarding the Landlord's claim for one hour of cleaning, as I am already satisfied that the Tenants' submissions lack credibility and reliability, I find that the Landlord should be granted a monetary award in the amount of **$44.80** to satisfy this claim.

With respect to the Landlord's claims pertaining to the cost of a flea inspection, as the Tenant accepted that they should be responsible for this cost, I am satisfied that the Landlord should be granted monetary award in the amount of **$94.50** to rectify this issue.

As the Landlord was successful in this Application, 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 and pet damage deposit in satisfaction of the debts outstanding.

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

Calculation of Monetary Award Payable by the Landlord to the Tenants

Costs associated with curtain and carpet cleaning	$240.50
Cost associated with repairs	$168.00
Cost associated with cleaning	$44.80
Cost associated with flea inspection	$94.50
Filing fee	$100.00
Security deposit	-$575.00
Pet damage deposit	-$200.00
TOTAL MONETARY AWARD	**$127.20**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$127.20** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 4, 2019

Residential Tenancy Branch