Dispute Resolution Services

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, MNRL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

LV attended for the agent and stated she is the assistant property manager for the landlord ("the landlord"). Both tenants attended. The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted and served in compliance with the Rules of Procedure to which I was referred.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

Background and Evidence

The parties agreed on the following. The tenancy began on December 25, 2015 for monthly rent of $1,760.00 payable on the first of the month. The tenants provided a security deposit of $815.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The landlord seeks a monetary award for rent and compensation for damages. The tenants deny that the landlord is entitled to most of the items claimed.

On March 18, 2020, the tenants informed the landlord they intended to vacate at the end of March. The landlord acknowledged receipt of this notice. The parties agreed the landlord informed the tenants right away that they were required to give one month's notice and were responsible for rent until the end of April 2020. The tenants testified they understood they were responsible for April's rent.

The parties' version of what happened next is contradictory.

The tenants claimed that on March 28, 2020, the landlord unexpectedly told them the manager agreed after all that they could vacate on March 31, 2020 providing they were out by 1:00 PM. The tenants stated that they worked hard during the next three days to move their possessions and juggled child care and employment obligations. The male tenant said he called the landlord the day before March 31, 2020 and asked for more time as he did not think he could accomplish everything in the time allowed. The landlord declined the request. The parties agreed the tenants vacated on time, that is, before 1:00 Pm on March 31, 2020.

The landlord denied this version of events. She said her position throughout was that the landlord required proper notice of one calendar month and the tenants were responsible for rent for the month of April 2020. The landlord vehemently denied she ever agreed the tenants could vacate early, that is, on March 31, 2020 without being responsible for April's rent.

The tenants replied that the only reason they left by 1:00 on March 31, 2020 was because they believed, based on their understanding of what the landlord said, that if they moved out by then, they would not be charged for rent for April. They testified they persuaded friends to help them so they could accomplish this challenging task on time.

The parties agreed a condition inspection was conducted on moving in which indicated the unit was in good condition in all material respects. They also agreed a condition inspection was conducted on moving out which reflected the need for cleaning of the unit and the carpet as well as the damage to the door. A copy of the report was submitted which was signed by the parties.

The tenants agreed to compensate the landlord in the amount claimed for damage to the door but disagreed with all other claims.

The parties agreed the unit and carpet needed cleaning when the tenants vacated, and the landlord incurred the expenses claimed. However, the tenants stated that the carpet was old, worn out, and uncleanable; they asserted the carpet was in this condition when the tenancy started and that they repeatedly asked the landlord throughout the tenancy to do something about it.

The parties agreed that the landlord immediately began to completely renovate the unit when the tenants vacated, during which time they removed the carpet. The tenants asserted there was no reason to clean the unit if they were going to be replaced. The landlord replied that the carpet and unit needed to be cleaned *before* workers would enter the unit to begin repairs.

As stated, the parties agreed a door needed replacing and the tenants agreed to compensate the landlord for $68.32 as claimed.

The landlord clarified her claim as follows:

ITEM	AMOUNT
Rent for April 2020	$1,760.00
Carpet cleaning	$240.40
Cleaning	$288.40
Door replacement	$68.32
TOTAL CLAIM	**$2,357.12**

The landlord submitted copies of receipts with respect to all claims receipt of which was acknowledged by the tenants.

The landlord requested reimbursement of the filing fee and authorization to apply the security deposit to the award.

The tenants requested the return of the security deposit.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. The hearing lasted 57 minutes and the parties' version of events was contradictory in some respects.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> *7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*
>
> *. . .*

> *67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

I acknowledge each party has a different version of key events.

In considering the credibility of the parties, I found the tenants to be sincere and believable. I prefer the tenants' version of events as the most likely and in keeping with the facts and events as I understand them. Where the parties' evidence conflicts, I prefer the tenants' version.

With respect to the moving out date agreed between the parties, I determined that the tenants' testimony was the more accurate with respect to the agreement between the parties about the moving out date and the responsibility of the tenants for rent for April 2020.

While I found the landlord to be well-prepared and organized with respects to the expenses claimed, I give greater weight to the tenants' testimony regarding the claimed authorization to vacate on March 31, 2020.

Each of the four tests are considered separately with respect to the landlord's claims.

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

The Act sets out the obligation of the tenant at the end of the tenancy:

> **Leaving the rental unit at the end of a tenancy**
> ***37*** *(1)…*
> *(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*

Policy Guideline # 5 Duty to Minimize Loss refers to situations where the unit is damaged and the landlord betters it, stating as follows:

Betterment

The purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred. Sometimes repairing damage or replacing damaged items puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred.

This may happen as a matter of course – for example if arborite countertops from the 1960s must be replaced because of damage, this almost always requires installing brand new countertops. Similarly, if a circuit that was wired in the 1940s needs to be replaced, it should be brought up to code. The result is that the property is made better than it was before the damage or loss occurred.

See Policy Guideline 40: Useful Life of Building Elements for guidance on how this type of situation may be dealt with.

Sometimes damaged items are replaced with more extravagant, expensive or luxurious ones by choice. Some examples are:

- Replacing a damaged laminate floor with hardwood floors
- Replacing a damaged linoleum floor with marble
- Replacing damaged arborite countertops with granite
- Replacing a $300 futon with a $3,000 bed

A person can replace damaged items with more expensive ones if they choose, but not at the expense of the party responsible for the damage. The person responsible for the damage is only responsible for compensating their landlord or tenant in an amount that covers the loss. The extra cost of the more extravagant, expensive or luxurious item is not the responsibility of the person who caused the damage.

Each of the landlord's claim is addressed.

Carpet and unit cleaning

The tenants acknowledged that the carpet and the unit needed cleaning when they vacated. However, they asserted that the landlord immediately began a renovation in which the entire unit was overhauled. Because of this, they claim they should not be held responsible for either of these expenses.

The tenants testified the carpet was old, stained and outdated when they moved in and, while they did their best to care for it during the 5-year tenancy, it could not be cleaned when they left. Their evidence is supported by the landlord's acknowledgement that the carpet needed to be replaced as it was "infested with insects".

I accept the landlord had the carpet cleaning expenses claimed. I also find the carpet was beyond the useful life set out in Policy Guideline # 40 (ten years). I find the landlord replaced a carpet which was past its useful life with a new carpet. I find that the tenants are not responsible for cleaning a carpet which the landlord replaced shortly after they moved out.

The landlord acknowledged the unit was renovated after the tenants' left. I accept that tenants generally have an obligation to leave a unit "reasonably clean". I find that because renovation of the unit was scheduled by the landlord right after they left, the tenants did leave the unit "reasonably clean" given the circumstances of the landlord's plans.

In consideration of the testimony, the Act and Guideline # 5 and # 40, I find the landlord has *not* met the burden of proof under the first factor with respect to each of the claimed cleaning of either the unit or the carpet. I therefore find the landlord has not met the first test on a balance of probabilities with respect to all aspects of the landlord's claim that the tenant failed to comply with the Act and tenancy agreement and dismiss these claims without leave to reapply.

As the tenants' agreed to the compensation with respect to the door only, I grant the landlord a monetary award in the amount claimed.

Landlord's claim for rent for April 2020

A landlord is entitled to proper notice from the tenants. As acknowledged by the parties, the tenants provided inadequate notice on March 18, 2020 of their intention to leave at the end of March. When the landlord told the tenants of their obligation to pay rent until the end of April 2020, I accept the tenants' testimony that that they were prepared to do so.

I also accept the tenants' testimony that a few days before the end of March 2018, the landlord informed the tenants they could vacate on March 31, 2020. I find the tenants reasonably understood that if they moved out by the end of March, there were not responsible for the April's rent. The parties acknowledged the tenants moved out by

1:00 PM on March 31, 2020. I have considered and accept the testimony of the tenants that their friends helped them as they worked diligently to vacate as requested and they would not have gone to this effort if they thought they could stay in the unit until the end of April.

A landlord has an obligation to re-rent a unit as soon as possible. Guideline # 5 states:

> ***Loss of Rental Income***
>
> When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:
> 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
> 2. re-rent the unit as soon as possible.

As acknowledged by the landlord, the landlord undertook renovations of the unit during April 2020 and the unit was not available for rent. The tenants could not actually have continued to live in the unit in April 2020. I find the landlord is not entitled to claim rent for the month of April 2020 as the landlord made no effort to re-rent the unit until after the renovations were completed.

In consideration of the testimony of the parties, the Act and Policy Guidelines, I therefore find that the landlord agreed the tenants could vacate on March 31, 2020 and I find the landlord is not entitled to rent for the month of April. I dismiss the landlord's claim without leave to reapply.

Having found that the tenants have not failed to comply with the Act and the tenancy agreement, (except with respect to damage to the door), I need not consider the remaining tests with respect to the landlord's claim.

Summary of findings – Landlord's claims

Considering the evidence and testimony, I find the landlord has not met the burden of proof on a balance of probabilities that the tenants failed to comply with the Act or the Agreement (except for the acknowledged compensation for the door) and the remainder of the landlord's claims are dismissed without leave to reapply.

Conclusion

I grant a monetary order to the landlord in the amount of **$68.32**. My award to the landlord is summarized as follows:

ITEM	AMOUNT
Door replacement	$68.32
TOTAL AWARD	**$68.32**

As the landlord has not been substantially successful in this claim, I do not award reimbursement of the filing fee.

I direct the landlord to return the balance of the security deposit as follows

ITEM	AMOUNT
Award	$68.32
(Less Security deposit)	($815.00)
TOTAL AWRD TENANTS	**($746.68)**

Conclusion

I grant a Monetary Order to the tenants of $746.68. This Order must be served on the landlord. This Order may be filed and enforced in the courts of the Province of British Columbia.

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: September 29, 2020

Residential Tenancy Branch