Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent of $85.00; for a monetary order for damages for the Landlord of $18,720.00, retaining the security deposit to apply to these claims; and to recover the $100.00 cost of their Application filing fee.

An agent for the Landlord, L.H. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Agent and gave her an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on April 20, 2021. She also said she provided the Tenant with additional evidence by registered mail on September 5, 2021. The Agent provided Canada Post tracking numbers as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the Application and she confirmed it in the hearing. The Agent said that she did not know the Tenant's email address, but she gave me the forwarding address that the Tenant had given her at the end of the tenancy. The Agent confirmed her understanding that the Decision would be sent to both Parties in these ways, and any Orders would be sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which the Agent pointed or directed me in the hearing. I also advised her that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Agent affirmed that she was not recording the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent said that the rental unit for this tenancy is a three-bedroom, one-bathroom townhouse unit that is approximately 30 years old. The tenancy agreement states, and the Agent confirmed that the tenancy began on September 1, 2019, with a monthly rent of $991.00, of which the Tenant was required to pay $586.00 each month. The Agent confirmed that the rent was due on the first day of each month, and that the Tenant paid the Landlord a security deposit of $495.50, and no pet damage deposit. The Agent said that the Landlord retains the security deposit to apply to this Application.

The Agent said that the Parties did a condition inspection of the rental unit at the start of the tenancy, which condition inspection report ("CIR"), she submitted into evidence. I note that the Tenant signed the CIR after the move-in inspection was complete. I also note that nothing is written on the CIR as being damaged or dirty in the rental unit in the move-in portion of the CIR. However, unlike the move-out CIR, the Landlord did not make any notes on the move-in CIR, besides drawing a line/arrow through the categories listed.

The Agent said that the Tenant was given two opportunities to participate in a move-out inspection of the rental unit; however, the Agent said that the Tenant did not attend or

contact the Agent about it at any time. The Agent submitted a different CIR document than what was used for the move-in condition inspection. However, if the two CIRs are compared, the move-out CIR can be used to determine what damage and/or dirt was left behind by the Tenant at the end of the tenancy.

The move-out CIR indicates that the entrance way was dirty and that it had rat feces throughout. For the living room, it states: “dirty, needs painting, carpets ruined, blinds broken and dirty. The rest of the move-out CIR states that the entire unit was dirty and had rat feces throughout. It also indicated that the carpets were stained and ruined and that there was rat feces throughout the rental unit. It also said that the Tenant left behind a “washer, trampoline, misc. water-soaked items, tire, cabinets, large table, chair left to be hauled”.

At the end of the move-out CIR, it estimates the repair and cleaning of the rental unit to be $18,805.00. It also states: “floors & paint need oil stain/blocker primer b/c of condition of unit.”

The Agent said that the rental unit was renovated just prior to the Tenant moving in by giving it new floors and new paint throughout.

#1 UNPAID RENT → $85.00

The Agent said that the first claim for $85.00 is, as follows:

> It was for an unpaid charge for changing a lock at the Tenant’s request on August 24, 2020. It remained on her ledger; she didn’t come in to pay that amount, although we asked her repeatedly.

The Agent had submitted a ledger for this tenancy, and the $85.00 charge is included along with rent payments..

#2 COMPENSATION FOR DAMAGE OR LOSS → $18,720.00

The Landlord’s primary claim is for compensation for repairing flooring, painting, and cleaning the rental unit. The Agent said:

> It’s for flooring and wall painting. We had to use a special primer, because of the rodent infestation and a special primer on the floors. We had a full cleaning done,

plus a bio-clean, because of the amount of rat feces. And we had to replace blinds and baseboard heaters.

The Agent had submitted a document entitled purchase order and dated May 19, 2021 ("Purchase Order"), which was given to the Landlord by a local, industrial coatings company. This sets out the actions completed by this company in the rental unit, as follows:

Full oil prime	1,000.00
Full unit paint	3,900.00
Repair drywall	300.00
Sub floor prime	1,000.00
Flooring throughout	8,500.00
Blinds	1,150.00
Baseboard heaters	750.00
Light fixtures	130.00
Final clean	325.00
TOTAL	**17,055.00**

There were other purchase orders in the Landlord's evidence which totalled $3,152.95. Adding these to the Purchase Order noted above equals $20,207.95.

The Agent said: "The purchase orders add up to more - that was a little more than I had applied for, so I just went with the amount I'd applied for." I explained that in the future, she could submit an amendment to an application, if a name, amount, or claim, etc., differs from that for which she initially applied.

The Agent submitted photographs of the rental unit at the end of the tenancy, which show a 30-year-old rental unit that appears to be dirty and old.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Agent testified, I let them her know how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16

sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

#1 UNPAID RENT → $85.00

In an administrative hearing, the respondent must served with the claims the applicant alleges. This claim is for a compensation for unpaid rent; however, the Agent said that this charge is for a lock change, not unpaid rent. As a result, I find that the Landlord did not apply for this claim properly, and as a result, I **dismiss it without leave to reapply**, pursuant to section 62 of the Act.

#2 COMPENSATION FOR DAMAGE OR LOSS → $18,720.00

Subsections 32 (2) and (3) of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or

> not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16, “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. It is up to the party claiming compensation to provide evidence to establish that compensation is due.” [emphasis added]

The Agent had said that the residential property is 30 years old, but that the floors had been updated and the walls painted at the start of the tenancy. However, from the photographs submitted by the Landlord, I find that the flooring and the carpeting is of an old style used decades ago. I find it is more likely than not that the Landlord did not renovate/update the unit at the start of the tenancy, as claimed in the hearing. This raises questions in my mind about the credibility and reliability of the Landlord’s evidence

I also find that, while the floors and walls may be dirty, that the Landlord should have tried cleaning them first, rather than replacing the carpets and tile. Rat feces can be vacuumed up and the carpets steam-cleaned, although I appreciate that an extra level of cleaning would be needed in the case of rodent feces.

However, if there are rats in this rental unit, I find it is more likely than not that they are also in other parts of the residential property. The Landlord has not provided evidence that explains how the Tenant is responsible for cleaning up after a pest that the Landlord should have exterminated for the Tenants, pursuant to sections 32 (1) and (5) of the Act, which states:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> > (a) complies with the health, safety and housing standards required by law, and
> >
> > (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> **. . .**
>
> (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Further, Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

In PG #40, the useful life of interior paint is four years. The evidence before me is that the rental unit was newly painted in 2019, therefore, it was approximately two years old at the end of the tenancy and had two years or 50% of its useful life left. The CIR indicates that the paint was in good condition at the start of the tenancy, but the Agent said in the hearing that it was actually new at the start of the tenancy. However, the Agent did not explain what the Tenant did to the rental unit walls to require them to be repainted two years after they were allegedly done in the first place.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

Based on the evidence before me, I find that it is more likely than not that the Landlord is taking this opportunity to make the Tenant responsible for replacing the carpeting, flooring, and paint in the rental unit. As noted above, and pursuant to the Landlord's photographs, I find on a balance of probabilities that the rental unit was not renovated prior to the start of this tenancy, contrary to the Agent's testimony that it had been.

Based on the evidence before me, I find that the Tenant failed to clean the rental unit to a reasonable standard at the end of the tenancy. I find that the Tenant was responsible for cleaning the rental unit pursuant to section 37 of the Act; and, therefore, I award the Landlord with recovery of the cleaning fees noted in the Purchase Order of **$325.00**, pursuant to sections 32 and 67 of the Act.

I authorize the Landlord to retain $325.00 of the Tenant's $495.50 security deposit in complete satisfaction of this award, and pursuant to section 72 of the Act. Further, I Order the Landlord to return the remaining $170.50.of the Tenant's security deposit. I grant the Tenant a Monetary Order for **$170.50** in this regard, pursuant to section 67 of the Act. The Landlord must be served with this Order, as soon as possible.

Conclusion

The Landlord is marginally successful in their Application, as they only provided sufficient evidence to support their burden of proof for the cleaning portion of their claim. The Landlord is awarded **$325.00** from the Tenant for cleaning the rental unit; however, I find that the Landlord did not provide sufficient evidence to prove on a balance of probabilities that the Tenant was responsible for the rest of the claims the Landlord made in this Application. The Landlord's other claims are dismissed without leave to reapply.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord for **$170.50** for the remainder of the Tenant's security deposit being held by the Landlord.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 03, 2021

Residential Tenancy Branch