



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 12, 2023. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlord was present at the hearing. However, the Tenants did not appear. The Landlord provided registered mail tracking information into evidence which shows that they sent the Notice of Dispute Resolution Proceeding package to the Tenants on May 13, 2022, and the evidence package to the Tenants on October 14, 2022. Pursuant to section 90 of the Act, I find the Tenants are deemed served with these packages 5 days after they were mailed, May 18, 2022, and October 19, 2022, respectively.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit?

- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

The Landlord stated that:

- monthly rent was \$1,618.00 and was due on the first of the month.
- The Landlord holds a security deposit in the amount of \$797.50
- The Tenants provided their forwarding address in writing and the Landlord received this on April 22, 2022.
- The Landlord filed the application against the deposit on May 4, 2022.
- A move-in inspection was done on March 1, 2020.
- The tenancy ended and a move-out inspection was done on March 31, 2022. Both parties were present for this, but the Tenants left without signing the inspection report as they did not agree with the Landlord's characterization of the rental unit.

The Landlord provided photos of damage to the walls, and as well as photos of the unclean state. The Landlord also provided copies of receipts into evidence.

The Landlord is seeking several monetary items as follows, and as laid out on the monetary order worksheet:

1) \$520.98 – Handyman receipt

The Landlord pointed to the photos taken at the end of the tenancy to show the significant wall damage, holes in the drywall, nicks in the cornerbeads of the drywall, and heavy staining on the walls. The Landlord stated that they had to hire a handyman who spent 8 hours at a rate of \$45.00 per hour to fix the holes and damage to the drywall, sand/fill the holes, and repaint the relevant sections of the wall. The Landlord stated that they only repainted 7 walls in the rental unit, and this was done because of the damage, otherwise it wouldn't have required repainting.

This invoice included the 8 hours labour, plus costs for one container of paint, and gloves/tray/tape/roller.

2) \$86.00 – Cleaning fees

The Landlord provided photos taken at the end of the tenancy to show that the Tenant left behind a dirty stove and cabinets. The Landlord provided a copy of the invoice paid for this amount, and stated that it took a cleaner 2 hours to clean up the mess left by the Tenants.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

The burden of proof is on the applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 of the *Act* states:

- (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...*

The meaning of “reasonable wear and tear” is set out in Policy Guideline 1 as follows:

Reasonable wear and tear refers 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.

I also note the *Residential Policy Guideline #40 - Useful Life of Building Elements*, to assist with determining what residual value remains for damaged building elements, and what is reasonable for compensation amounts. This guideline states as follows:

This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the 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 or replacement.

In the above policy guideline, there are specific time periods for each type of item. The useful life expectancy of listed items is intended as a guideline, and is not prescriptive. When damage has occurred that stems from abnormal use, or use that goes beyond reasonable wear and tear, Policy Guideline #40 may not be applicable.

Based on all of the above, the evidence (condition inspection report, photos and invoices) and the testimony provided at the hearing, I find as follows:

Extinguishment and the Security Deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end

of a tenancy.

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, it appears both parties participated in the move-in and move-out inspections. Overall, I find there is no evidence that the Landlord extinguished their right to claim against the deposit by not complying with the Act.

I accept that the Tenants provided their forwarding address to the Landlord on April 22, 2022, as this is when the Landlord acknowledged receiving it. I note the Landlord filed this application on May 4, 2022.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or file a claim against it. In this case, the Landlords had 15 days from April 22, 2022 to repay the security deposit or file a claim against it. The Application was filed May 4, 2022, within time. I find the Landlords complied with section 38(1) of the *Act*.

Next, I turn to the Landlord's monetary items, as laid out above. They will be addressed in the same order as above:

1) \$520.98 – Handyman receipt

I have reviewed the testimony and evidence on this matter. I note the Landlord pointed to the photos taken at the end of the tenancy to show the significant wall damage, holes in the drywall, nicks in the cornerbeads of the drywall, and heavy staining on the walls. I find this damage goes beyond reasonable wear and tear, and I am satisfied that these repairs and expenses were required due to the damage caused by the Tenants (holes, nicks, stains on walls). The above noted amount is supported by receipts and photos. I find it more likely than not that the Tenants caused this damage and I award this item, in full.

2) \$86.00 – Cleaning fees

As stated above, the Tenants are required to leave the rental unit in a reasonably clean state at the end of the tenancy, which I find was not done in some areas. I find the Tenants breached section 37 of the Act in this regard. This item is supported by photos and receipts. I award this item in full.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with the application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the Act, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Total of items above	\$606.98
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$797.50)
TOTAL:	\$(90.52)

I order the Landlords to return the remaining balance of the deposit.

Conclusion

The Tenants are granted a monetary order in the amount of **\$90.52**, as specified above. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: January 13, 2023