



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding CASCADIA APARTMENT RENTALS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on January 10, 2023. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- a monetary order for the cost to repair damage that the Tenant, their pets or their guests caused during the tenancy;
- a monetary order for compensation for monetary loss or other money owed;
- an order permitting the Landlord to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by MI, an agent. The Tenant attended the hearing on his own behalf. MI and the Tenant each provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. The Tenant acknowledged receipt.

The Tenant testified that the documentary evidence in response to the application was served on the Landlord by email and in person. MI acknowledged receipt.

During the hearing, no issues were raised with respect to service or receipt of the above documents. The parties were represented or were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

MI and the Tenant were provided with a full 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 and to which I was referred. However, 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 a monetary order for the cost to repair damage that the Tenant, their pets or their guests caused during the tenancy?
2. Is the Landlord entitled to a monetary order for compensation for monetary loss or other money owed?
3. Is the Landlord entitled to an order permitting the Landlord to retain the security deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on January 1, 2022, and ended on December 31, 2022. The Tenant acknowledged that he moved out in April 2022 and sublet the rental unit for the remainder of the tenancy. The parties agreed that rent of \$2,750.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$1,375.00, which the Landlord holds. A copy of the tenancy agreement between the parties was submitted into evidence. Although the Tenant referred to several perceived shortcomings with respect to the tenancy agreement, I am satisfied that a tenancy existed between the parties.

The application is particularized in a Monetary Order Worksheet dated January 6, 2023.

First, the Landlord claimed \$5,096.00 for losses incurred as a result of the Tenant subletting the rental unit from May to December 2022. MI testified that the Tenant was not permitted to sublet the rental unit and referred to the tenancy agreement which states: "The Tenant shall not assign or sublet the premises without the prior written agreement of the Landlord." MI confirmed that the amount claimed represents the difference between the amount the Tenant paid in rent and the amount Tenant received in rent while subletting the rental unit.

In reply, the Tenant acknowledged that he sublet the rental unit with the agreement and encouragement of the building manager, JL, who did not attend the hearing. The Tenant also testified that he was lured into the agreement and that he could not continue to live in the rental unit.

Second, the Landlord claimed \$1,000.00 for the cost to paint the rental unit. A receipt for \$997.50 was submitted into evidence. However, the Landlord did not submit a move-in condition inspection report to confirm the condition of the paint at the beginning and the end of the tenancy. Photographs submitted into evidence show light scuffs on a wall.

In reply, the Tenant testified the rental unit was not clean when he moved in. Further, the Tenant testified the previous tenant's furnishings were still in the rental unit when he moved in.

Third, the Landlord claimed \$725.00 for repairs and cleaning required in the rental unit. The Landlord submitted an invoice for services provided by in-house cleaning and maintenance staff. On behalf of the Landlord, MI referred to several photographs of the interior of the rental unit taken on December 31, 2022. The photographs submitted by the Landlord include images of a wall in the rental unit, flooring, the inside of cupboards and drawers, a bi-fold closet door, a windowsill, a broken microwave, the top of a fridge, and the oven.

In reply, the Tenant suggested the Landlord fabricated the photographs. The Tenant also testified that the Landlord broke a microwave intentionally.

Finally, the Landlord seeks to recover the \$100.00 filing fee paid to make the application. The Landlord also seeks to retain the security deposit in partial satisfaction of the claims made.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the Act empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$5,096.00 for losses incurred because the Tenant sublet the rental unit, I find there is insufficient evidence before me to grant the relief sought. While I accept that it is more likely than not that the Tenant sublet the rental unit without the written agreement of the Landlord, I am unaware of and was not referred to any provision in the Act that would empower me to award the Landlord the difference between the amount the Tenant paid in rent and the amount Tenant received while subletting the rental unit. I also find there is insufficient evidence of the value of the loss as MI did not elaborate on how the amount claimed was achieved. I also note that no evidence was adduced to suggest the Tenant did not pay the agreed amount of rent due under the tenancy agreement for the duration of the tenancy. This aspect of the Landlord's application is dismissed.

With respect to the Landlord's claim for \$1,000.00 for the cost to paint the rental unit, section 37(2) of the Act confirms that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there is insufficient evidence to establish the condition of the walls and baseboards at the beginning of the tenancy. As a result, it can not be established that the alleged damage was caused during the tenancy. As noted above, the Landlord did not submit a move-in

condition inspection report, or any photographs taken at the beginning of the tenancy, to establish the condition of the rental unit when the Tenant moved in. This aspect of the Landlord's application is dismissed.

With respect to the Landlord's claim for \$725.00 for paint supplies and cleaning required in the rental unit, section 32 of the Act requires that a tenant leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, based on the testimony of MI and the photographic evidence submitted, I find it is evident that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy. Although the Tenant may assert that he ceased to be the tenant of the Landlord when he sublet the rental unit, Policy Guideline #19 confirms that in a sublet situation, the original tenant remains the tenant of the original landlord until the tenancy ends. In addition, I note the invoice submitted includes \$300.00 for paint supplies. As I have found there is insufficient evidence before me to grant a monetary award related to painting, I deduct this amount and grant a monetary award of \$425.00 for cleaning in the rental unit.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application. I also order that the Landlord is entitled to retain part of the security deposit in satisfaction of the claim.

Policy Guideline #17 confirms that the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on a landlord's application to retain all or part of the security deposit. In this case, I have found that the Landlord is entitled to a monetary award of \$525.00. Therefore, I order the Landlord to return the balance remaining on the security deposit, or \$850.00 ($\$1,375.00 - \$525.00 = \850.00), to the Tenant. In support, I grant the Tenant a monetary order for \$850.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$850.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 4, 2023

Residential Tenancy Branch