



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for damages to the rental unit pursuant to s. 67 of the *Act*, and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the tenant by registered mail on April 09, 2009. The tenant confirmed he had received them.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- What is the extent of the damage to the unit, site or property?
- Has the landlord provided sufficient evidence that the damage is caused by actions or neglect of the tenant?
- Has the landlord provided sufficient evidence of the actual amount required to compensate him for the claimed loss or to rectify the damage?
- Is the landlord entitled to keep all or part of the tenants' security deposit?
- Is the landlord entitled to recover his filing fee?

Background and Evidence

This tenancy started on August 01, 2005. This was a month to month agreement and rent was \$ 519.00 per month payable on the 1st of each month. The tenant paid a security deposit of \$240.00 on August 01, 2005. A move in condition inspection report was completed on August 01, 2005.

The tenant moved from the rental unit on March 28, 2009. A move out condition inspection report was completed by the landlord after giving the tenants three dates to attend. The condition inspection highlights areas of damage to the rental unit. In the landlords evidence she has provided photographs showing the extent of the tenants personal belongs that have been abandoned at the rental unit. These include furniture, household items, clothes, children's toys and personal belongings. The landlord is also claiming lost rent for March and April but this has not been included in the application and will therefore not be heard.

Total estimated expenditure as follows:

Replace closet doors	\$90.00
Replace linoleum in the kitchen	\$588.95
Replace the toilet due to a toy being stuck in it	\$110.00
Repair screw holes in the living room wall	\$80.00
Replace two closet brackets	\$10.00
Replace three light bulbs	\$4.50
Replace lampshade in living room	\$25.00
Replace two smoke detectors.	\$80.00
Cleaning costs 35 hours @ \$10.00 per	\$350.00

hour	
Pack and remove belongings and garbage 40 hours @ \$12.00 per hour	\$480.00
Trips to garbage dump, 30 @ \$25.00 per load	\$750.00
Total claim	5,019.94

The tenant testifies that when they moved into the rental unit the carpets were dirty and had not been cleaned. The linoleum in the kitchen was filthy and needed to be replaced. The general decoration of the unit was poor, the closet doors were not hanging and he removed them into the basement to use as shelves. The smoke detectors were not in place and the tenant had to buy these. The tenant stated that the toilet had never worked properly and the landlord sent a maintenance man to try to repair it. The lampshade in the living room went to another unit.

The tenant stated, and the landlord confirmed, that when they moved into the rental unit the tenants were given two weeks free rent because they had to carry out the cleaning of the unit themselves. The tenant disputes the move in condition inspection report and testifies that it was not completed when they moved in but completed two years later and then backdated by the previous landlord.

The tenant states that due to a domestic altercation he had to leave the rental unit in October 2008. At that time his co-tenant remained in the unit. At a previous hearing for Dispute Resolution in March 2009 the landlord and tenant reached an agreement that the tenant would vacate the rental unit within three days and the landlord would give the tenant back his rent for February, 2009 of \$519.00. He tenant testifies that he was given three days to collect his belongings as per the agreement reached but this was not enough time for him to move everything. He had to abandon the rest of his

belongings and did not have time to clean the unit. The tenant and landlord agree that the tenant has not yet received his rent back for February as previously agreed.

The tenants' girlfriend and co-tenant remained in the rental unit until the end of January 2009. The landlord had removed the tenants name from the rental agreement without permission to do so. The tenant had already found alternative accommodation but was locked out of the rental unit by the landlord and was unable to collect his belongings at the end of January when his girlfriend moved out.

The landlord states that they did not store the tenants' belongings but removed them to the dump. The landlord states that although the items were worth more than \$500.00 the cost of storage would have exceeded this amount pursuant to s. 25(2) of the Residential Tenancy Regulations.

I asked the landlord to provide any invoices for the work carried out. The landlord testifies that she has some invoices for the cleaning and garbage removal and only estimates for the flooring work based on work carried out in another unit. I asked the landlord to fax me any copies she had to use as evidence of the actual costs of the work completed to date.

Analysis

Test for damage or loss claims

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

- Proof that the claimant followed s. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord has provided sufficient evidence in respect of the tenants' personal belongings and garbage left and the cleaning that was required in the rental unit. She has provided photographic evidence of the tenants abandoned belongings, furniture, household items and children's toys. She has provided a list of the expenses and invoices showing the actual amount which is higher then originally quoted at \$1,635.50. This is the cost incurred to clean the rental unit and the removal of garbage and abandoned items. In March, 2009 when the tenant was removing his belongings from the unit, he admits that the landlord did ask him if he wanted more time to do this and to clean the rental unit. The tenant stated that he was feeling angry and did not want to discuss things with the landlord. Therefore, this proves the landlord took steps to try to minimize the loss. As this work was carried out by the landlord and her employees I will allow this portion of their claim to stand.

The landlord has provided a move in and move out inspection report highlighting areas of damage. However, the landlord has not provided any receipts or estimates connected to this particular rental unit as to the cost of repair or replacement of flooring, carpets, closet doors, closet brackets, screw holes, light bulbs, lampshade, and smoke detectors. By the landlords own admission the carpet and linoleum are over 10 years

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old and therefore are past their useful life expectancy. The toilet was successful unblocked and did not need to be replaced. Therefore, I dismiss this portion of the claim with respect to the replacement of the toilet, carpets and linoleum. If the landlord obtains receipts for the rest of the items on her claim she may reapply for compensation for loss or damage under the *Act*.

The tenant is unable to provide any evidence that reduces his responsibility to remove his belongings and to clean the rental unit. If the tenant had taken the landlords offer for more time he may have been able to reduce the amount of belongings left in the unit and to carry out a satisfactory clean up of the unit.

I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit in partial payment of the amount owing for damage or loss. As the landlord has been partially successful in this matter, she is also entitled to recover her \$100.00 filing fee for this proceeding.

A Monetary Order will be issued for the following:

Cleaning the rental unit, pack and remove belongings and garbage, trips to the garbage dump	\$1635.50
Less security deposit and accrued interest	(-249.02)
Less amount owed to the tenant for rent as ordered in previous hearing	(-\$519.00)
Total amount owed	\$967.48

Conclusion

The landlord has been partially successful in her claim. A Monetary Order in the amount of **\$967.48** has been issued to the landlord and a copy of it must be served on the



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tenant. If the amount of the order is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

The landlord is able to reapply for the sections of this claim that have not been dealt with today within two years of the date the tenant vacated the rental unit pursuant to s. 60(1) if and when she can provide sufficient evidence to support these sections of her claim.

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: June 02, 2009.

Dispute Resolution Officer