



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for damages, and damage or loss under the Act, regulation or tenancy agreement, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 17, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. This package was returned to the landlord as the tenant failed to collect it. The tenant was deemed to be served the hearing documents on June 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords' agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- 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 Tenant's security deposit?
- Is the Landlord entitled to recover the filing fee for this application?

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Background and Evidence

This tenancy started on February 04, 2002 and ended on June 02, 2009. The tenants and landlord signed an agreement to end the tenancy without one months notice. Rent for this unit was \$945.00 per month due on the 1st of each month. The tenants paid a security deposit of \$415.00 on January 17, 2002 and a pet damage deposit of \$25.00 approximately one month before vacating the unit.

The landlord has provided a substantial amount of evidence to support their monetary claim for damage to the rental unit and property. The landlord has taken into account the depreciation of items claimed for and has deducted this from their overall costs. The damages and cleaning are as follows;

Removal and disposal of personal items, repair of walls, interior cupboards, cleaning of cigarette smoke damage, general repairs to interior of suite and replacement of light bulbs - **\$656.25**

Painting of suite – \$1253.70 charge to tenant - **\$105.00**

Cleaning of appliances, windows and suite - **\$153.00**

Steam cleaning of carpets (Unsuccessful due to staining) - **\$254.63**

Replacement of carpets (three years old) \$2154.90 charge to tenants **\$1346.80**

Replacement of vinyl flooring due to damage (eight years old) - \$2131.00 Cost to tenant - **\$639.30.**

Replacement and cleaning of blinds (five years old) - \$406.00 cost to tenant **\$48.46**

Cleaning four blinds **\$131.20.**

Repairs to blocked toilet caused by toys flushed into system outstanding amount - **\$26.51.**

Removal and replacement of damaged closer and closer arm and drop plate (one year old) \$392.29 cost to tenant **\$313.84.**

The landlords' agent testifies that the tenant was late for the prearranged inspection at the end of the tenancy so she completed it in his absence. When the tenant arrived at the end of the inspection the landlords agent redid it with the tenant however the tenant refused to sign the report as he disagreed with much of the contents.

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The landlords' agent has supplied documentary evidence and a testimony from a witness as to the damage caused to the closer for the gate leading to the parking garage. This witness statement contains details of his view of the area and seeing the tenant's son continually opening and closing the gate and using an object to poke into the gate latch. The landlords' agent states that it was the actions of the tenant's son which caused the damage to the gate closer.

Analysis

The tenant did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have applied a test for damage or loss under the Act to determine if the landlord is entitled to a Monetary Order. The landlord must provide evidence of the following:

- Proof that the damage or loss exists
- Proof that this damage or 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.

I find 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 to support their claim and they are able to meet all of the components of the above test. Therefore, I find that the landlords' application is upheld and pursuant to s.67 of the Act, that the Landlord is entitled to recover the cost of the damages to the rental unit and property to the amount of **\$3,674.99**. As the Landlord has been



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successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding.

I order the Landlord pursuant to s. 38(4) of the *Act* to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Cost of repair, decorating and cleaning	\$3674.99
Less security and pet damage deposit and accrued interest	(-\$454.68)
Total	\$3270.31

Conclusion

A Monetary Order in the amount of **\$3270.31** has been issued to the landlord and a copy of it must be served on the 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.

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 04, 2009.

Dispute Resolution Officer