

## **DECISION**

Dispute Codes:

**MND, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation damage to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord provided affirmed testimony confirming service of copies of the Application for Dispute Resolution and Notice of Hearing sent to the tenant by registered mail. A Canada Post tracking document was submitted as evidence indicating that the tenant signed for the registered mail on January 18, 2010; four days after mailing.

These documents are deemed to have been served in accordance with section 89 of the *Act*; however the tenant did not appear at the hearing.

### Preliminary Matter

The landlord's Application was amended to reflect the costs claimed supported by receipts submitted as evidence and served to the tenant via regular Canada Post mail.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for damages to the rental unit?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy ended with proper notice on December 31, 2009. A deposit in the sum of 375.00 was paid on June 2, 2009.

The landlord is claiming the following:

Cleaning	196.00
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Carpet cleaning	73.50
Painting	140.00
Hauling	105.00
	539.50

A copy of a move-out condition inspection was submitted as evidence; however the landlord could not provide information as to whether a move-in condition report was completed or if the tenant was provided with at least 2 opportunities to complete the move-out inspection.

The condition inspection completed in the absence of the tenant indicated that the rental unit was not properly cleaned and that the carpets were dirty. The landlord submitted receipts dated January 6, 2010 for fourteen hours of cleaning at \$14.00 per hour, plus \$25.00 in cleaning supply costs. One cleaning receipt indicated that the bachelor apartment was left in a “disgusting” state.

A copy of a carpet cleaning receipt dated January 7, 2010, was submitted as evidence.

The tenant was allowed to smoke in the rental unit. The rental units are constantly repainted and have the painting maintained. The tenant had smoked to such an extent that the unit required fresh paint. A receipt dated December 31, 2010 was submitted as evidence of painting and repair of a hallway wall and kitchen cabinet. No testimony was offered in relation to the wall or kitchen cabinet.

The tenant left some “trash furniture” behind and the landlord provided a receipt dated January 4, 2010, for hauling costs.

### Analysis

In the absence of the tenant at this hearing, based on the receipts supporting the claim, I find that the landlord is entitled to the following compensation:

	Claimed	Accepted
Cleaning supplies	25.00	25.00
Carpet cleaning	73.50	73.50
Painting	140.00	0
Hauling	105.00	105.00
	539.50	399.50

I have dismissed the portion of the claim for painting costs as the painting was required due to the tenant having smoked in the rental unit. As the tenancy agreement places no limits on the amount a tenant may smoke in the unit, I find that any painting required

due to cigarette smoke, outside of the cleaning, was the result of an activity that is allowed under the tenancy.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord have failed to offer the opportunities for inspection.

Section 35 of the Act requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the application of section 36(2); which extinguishes the right of a landlord to claim against the deposit for damages when the tenant was not provided the opportunities for inspection at the end of the tenancy.

Section 72(2) of the Act provides:

*(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*

*(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and*

*(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.*

There is no evidence before me that the landlord has offered the tenant opportunities to complete the condition inspections, therefore I find that the right of the landlord to claim against the deposit for damages is extinguished. However; pursuant to section 72(2) of the Act, I have set-off the amount owed to the landlord from the deposit held in trust by the landlord.

The landlord will retain the deposit plus interest, in the sum of \$378.27, in partial satisfaction of the claim and a monetary Order will be issued for the balance owed in the sum of \$21.23.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$449.50, which is comprised of \$399.50 in damages to the rental unit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, the landlord will be retaining the tenant's security deposit plus interest, in the amount of \$378.27, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$71.23**. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: June 23, 2010.

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Dispute Resolution Officer