



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for 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 testified that on February 11, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail to the forwarding address provided by the tenant. A Canada Post tracking number and receipt was provided as evidence of service.

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.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$312.50 for damage to the rental unit?

May the landlord retain the deposit?

Is the landlord entitled to filing fee costs?

Preliminary Matter

At the start of the hearing I attempted to clarify the nature of this tenancy as the evidence before me indicated potential jurisdictional issues. The landlord was asked to submit evidence of ownership of the rental property; the landlord stated he would attempt to obtain documentation and could provide a copy of a letter of authorization signed by the property owner.

On June 7, 2011, the landlord submitted copy of an April 28, 2008 note, signed by the individual purported to be the property owner, J.L, providing the landlord with the authority to act as property manager for a number of properties; one of which included the unit indicated on the application before me. I determined, from the evidence before

me, that the landlord is acting as agent for the owner of the property and that there is jurisdiction under the Act.

Background and Evidence

The tenancy agreement required the tenant to pay monthly rent of \$475.00. The tenant paid a security deposit of \$237.50 at the start of the tenancy. The tenant vacated the unit on December 30, 2010. No move in or move out condition inspection reports were completed.

The landlord returned \$37.50 of the deposit after receiving a forwarding address on January 28, 2011; by way of a letter sent by the tenant, dated January 20, 2011. Within 15 days the landlord applied to retain the deposit, plus compensation for damage to the unit.

The details of the dispute portion of the application indicated that after refunding the deposit, less deduction the landlord realized he required authority to make the deductions and did not wish to pay double the deposit owed. The application did not provide a detailed breakdown of the amount claimed.

The landlord has claimed:

Garbage removal	25.00
Replace twin bed	50.00
Carpet shampoo	25.00
Table repair, chair replacement	25.00
Cleaning	25.00
Linen, pillow replacement	25.00
Washing machine repair	50.00
TOTAL	275.00

The landlord provided testimony in relation to damage to the rental unit and supplied copies of receipts in relation to a portion of his claim. A copy of a January 30, 2011 letter was supplied by another occupant, who provides cleaning services; this individual indicated the tenant had left the room in disarray, the bed had been dismantled, the linen had been destroyed and 10 bags of garbage had to be removed from the room. New window blinds were installed and linen was replaced. Holes in the wall were repaired, the run was then cleaned and the appliances washed.

The landlord provided a hand-written receipt in the sum of \$75.00 for a cash payment made for cleaning, blind and carpet cleaning.

A receipt dated December 14, 2010, was submitted for blinds costing \$34.12 each.

The landlord paid \$100.00 for a used mattress. The invoice provided dated December 31, 2010, did not indicate where the mattress was purchased. No information was provided on the age of the original mattress.

The landlord provided a receipt dated May 26, 2010 for a pillow in the sum of \$4.97; he purchases them in bulk. A receipt for linen in the sum of \$20.14 was provided; dated January 10, 2011.

A receipt was not provided for garbage removal or table and chair repairs claimed.

The landlord stated the tenant put heavy loads in the washing machine and that repair costs were reduced from \$150.00 to a claim for the tenant's portion, to \$50.00 a January 6, 2011, receipt was supplied as evidence.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of receipts for garbage removal and table and chair repair; that portion of the claim is dismissed.

The blinds were replaced prior to the end of the tenancy; there is no evidence of a condition inspection report completed at either move in or move out and no evidence that the tenant was made aware of the need to repair blinds during the tenancy. Further, no evidence was supplied as to the age of the blinds; therefore, the claim for blinds is dismissed.

There is no evidence before me of the age of the mattress or the state of the mattress at the start of the tenancy; therefore, that portion of the claim is dismissed.

I find on the balance of probabilities, that the room required some cleaning and that the landlord is entitled to cleaning costs for carpet and general cleaning in the sum of \$50.00.

There is no evidence before me of the age of the linens or the state of those linens at the start of the tenancy; therefore, that portion of the claim is dismissed.

There was no evidence before me that the tenant caused damage to the washing machine; that portion of the claim is dismissed.

	Claimed	Accepted
Replace blinds	50.00	0
Replace twin bed	50.00	0
Carpet shampoo	25.00	25.00
Table repair, chair replacement	25.00	0
Cleaning	25.00	25.00
Linen, pillow replacement	25.00	0
Washing machine repair	50.00	0
TOTAL	275.00	50.00

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

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$100.00 in satisfaction of the monetary claim. Therefore, I find that the landlord must forthwith, return the balance of the deposit, in the sum of \$100.00 to the tenant at his forwarding address. This amount takes into account the \$37.50 payment previously made to the tenant. I have issued the tenant a monetary order.

The landlord testified that the rental arrangement is one of "supportive housing" for individuals who are addicted. A copy of an agreement signed by the parties on August 17, 2010, was submitted as evidence of a tenancy. I note that this document included a number of terms which indicated that there were a series of "conditional gifts" granted by the landlord to the tenant; only if the tenant complied with all the terms of the agreement. This agreement appears to only minimally comply with the Act and the landlord should be aware that terms which breach the Act are unenforceable.

Further, the landlord retained a portion of the deposit without the written consent of the tenant, given at the end of the tenancy; this is a breach of the Act.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for review by each party.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$100.00, which is comprised of \$50.00 in compensation and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$100.00 in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary Order for the balance of \$100.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant has previously received \$37.50 of the deposit; which left a balance in the sum of \$200.00.

The balance of the landlord's claim is dismissed.

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 10, 2011.

Residential Tenancy Branch