



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, 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, unpaid utilities, compensation for damage or loss under the Act, 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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant supplied a copy of an Order previously issued to the tenants, returned the deposit. Therefore, the claim against the deposit has been previously decided.

The tenant confirmed receipt of an amended application and calculation of the claim made on December 5, 2011.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid utilities?

Is the landlord entitled to compensation for damage to the rental unit and compensation for damage or loss?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that a fixed-term tenancy commenced on September 1, 2010; rent was \$1,950.00 per month, due on the first day; a deposit in the sum of \$1,000.00 was paid. The tenant recalled signed a tenancy agreement but was not given a copy of the document. A copy of the agreement was not supplied as evidence.

By mutual agreement the tenants vacated the unit on August 21, 2011.

BC Hydro	291.57
Carpet shampoo/garburator repair	280.00
Vacumn cleaner	250.00
Water bill	146.97
TOTAL	1192.54

The tenant agreed that they owe hydro costs in the sum of \$291.57, but had not previously seen a copy of the bill.

A move-in condition inspection report was not completed. A copy of a move-out condition inspection report was completed on April 30, 2011 and signed by the landlord and tenant. The report indicated that the carpets were very dirty and stained; no other deficiencies were listed.

The landlord stated after the inspection report was completed he discovered that the oven and fridge had not been sufficiently cleaned; the home had not been vacuumed; resulting in cleaning costs.

The landlord found a fork in the garburator and the agent has submitted an invoice for work he competed to repair the unit. An invoice charging fees for carpet cleaning by the agent was also submitted as evidence. The carpets are 30 years old.

The tenant agrees a vacumn was borrowed from the occupants of the lower unit; the vacumn belonged to the landlord. The tenant did not deny that they failed to vacumn at the end of the tenancy, as the vacumn could not be located. The landlord started one of the co-tenants lent the vacumn to a friend and that it was retuned and found to be inoperable due to drywall dust that clogged the motor. The tenant stated that during the first 2 weeks of the tenancy the lower unit was being renovated and that those occupants likely used the vacumn on drywall dust. The landlord has claimed cost of replacing the 1 year old vacumn.

The parties agreed that some mail for the landlord was delivered to the rental unit address. The tenant stated this mail was placed in a drawer for the landlord. The landlord stated she did not receive the water bill and that the tenancy agreement signed by the parties included payment of hydro and water by the tenants. The tenant acknowledged signing a tenancy agreement, but stated she did not receive a copy. The tenant testified that they ere responsible only for hydro costs and that the agreement did not include water costs. The landlord could not obtain a 2nd copy of the bill but called the Municipality of Saanich and was provided with the cost of water consumed by the tenants.

The tenant stated that the rental unit was unclean when they moved in and that they spent several weeks cleaning at the start of the tenancy. The tenants did not feel they should have to rehabilitate the unit further at the end of the tenancy. The tenant submitted that the unit was reasonably clean, that the garburator was broken at the start of the tenancy and they never used it; that the carpet in front of the dishwasher did have water stains as the dishwasher emptied in to one sink that was plugged and they had to bail water between sinks.

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.

The tenant has acknowledged the cost of hydro in the sum of \$291.57.

In the absence of a move-in condition inspection report which set out the state of the unit at the start of the tenancy, the landlord has not been able to demonstrate the differences in the unit at the start, compared to the end of tenancy. The move-out condition inspection report recorded only the carpets as being dirty and stained.

I find, based on the disputed testimony and the evidence before me; on the balance of probabilities; that the carpets required vacuuming and that the landlord is entitled to a nominal amount for that cost in the sum of \$25.00. In the absence of evidence that the rental unit was not left reasonably clean; such as a notation on the condition inspection report signed by both parties at the end of the tenancy; I dismiss the balance of the claim for cleaning costs.

Residential Tenancy Branch policy suggests carpets have a useful life span of 10 years. Even if the home had not been rented for an extended period of time, I find that 30 year old carpets would be beyond their reasonable lifespan and the tenants are not responsible for having them cleaned. There was no evidence before me of a term of the tenancy which required the tenants to clean them at the end of the tenancy, or any evidence they had been cleaned at the start of the tenancy.

I find, on the balance of probabilities that the garburator never worked during the tenancy and was not used by the tenants and, in the absence of evidence that it was operable and then damaged by the tenants that the claim for repair is dismissed.

There is no evidence before me that the tenants or their friend used the landlord's vacuum to vacuum drywall dust. I find it is just as likely that the occupants in the lower unit used the vacuum to vacuum drywall dust. Further, there was no evidence before me verifying the cost of the original vacuum. Therefore, I find that the claim for vacuum replacement is dismissed.

In the absence of a tenancy agreement indicating what utilities were owed by the tenants, I find, on the balance of probabilities, that the landlord has failed to prove the water utility is owed by the tenant and dismiss that portion of the claim.

Therefore the landlord is entitled to the following:

	Claimed	Accepted
House Cleaning	224.00	25.00
Carpet shampoo/garburator repair	280.00	0
Vacuum cleaner	250.00	0
Water bill	146.97	0
TOTAL	1192.54	325.57

I find that the landlord's application has partial merit and 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 \$375.57, which is comprised of damage or loss, damage and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$375.57. 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.

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: December 12, 2011.

Residential Tenancy Branch