



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD and FF

Introduction

This hearing was convened on the landlords' application of November 14, 2011 seeking a Monetary Order for cleaning and damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain the security deposit in set off. Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenant, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the claimant.

Background , Evidence and Analysis

This tenancy began on November 1, 2010 and ended on October 30, 2011. Rent was \$850 per month and the landlords hold a security deposit of \$425 paid on November 7, 2010. The rental building was brand new at the beginning of the tenancy.

During the hearing, the landlords submitted 50 photographs and some estimates and receipts in support of their claims on which I find as follows:

Mailing fees and photographs - \$12.31 + \$17.92 + \$14.28. Costs of preparing and serving documents are seen as discretionary costs of doing business and are not recoverable under the legislation. These claims are dismissed.

Driveway damage - \$1,500. The landlords submitted an estimate from a construction company for removing and re-pouring a section of the exposed aggregate driveway, a claim made on the grounds that placement of a U-Pak unit ordered by the tenant, resulted in three cracks in the driveway when it was delivered. The landlord stated that when he received a text message from the tenant on October 20, 2011 that U-Pak was coming, he did not realize it involved depositing a container unit in the driveway. The landlord stated that when he came home, he saw the truck depositing the unit on the driveway, and found three small cracks, two running from in-ground service boxes and one running between them. He said that he refused to allow the truck back on the driveway to remove the container when it was loaded and the tenant stated that he had paid \$300 for a crane to remove it. The landlord said that a specialist had told him that a repair of the cracks would make them more visible than they are. I find that the landlords' claim to have the whole 7 foot by 12 foot section of the driveway removed and re-poured is excessive. The cracks as they appear on the photographs are small and just visible and there is no apparent structural damage. I will allow \$150 for the diminished aesthetic value on this claim.

Repair back splash damage - \$800. The landlord submitted a written estimate for replacement of the tiled kitchen back splash on the grounds that the tenant had caused one small chip which appears on the photograph to be about 7 mm semi-circle on the top edge of one tile. The landlords said the whole back splash had to be replaced as the color of the originals was no longer available. The tenant said he had no knowledge of the chip, but the landlord said that there appeared to be a makeshift repair with spackle. The landlord state that the rental building had no defects when he took possession and the tenancy began. The rental unit currently has new tenants and the repair has not been done. I find on the balance of probabilities that the tile was chipped during the tenancy, but again, I find that replacement of the entire backsplash is not reasonable under the circumstances. I will allow \$100 on this claim for diminished aesthetic value.

Cleaning and paint supplies – \$42.03. On the basis of photographic evidence and submitted receipts, this claim is allowed.

Paint - \$150. The landlords' pictures included some of chips in some of the wood trim and a patch painted over by the tenant in a color that did not match the wall, and other imperfections of painting done by the tenant. Therefore, this claim is allowed in full.

Cleaning and painting labour - \$200. On the basis of photographic evidence, I find this claim to be reasonable and it is allowed in full.

Filing fee - \$50. Having found substantial merit in the application, I find that the landlords should recovery the filing fee for this proceeding from the tenant.

Security deposit – (\$425). As permitted under section 72 of the *Act*, I hereby order that the landlords retain the security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlords an amount calculated as follows:

Driveway damage	\$150.00
Cleaning and paint supplies	42.03
Paint	150.00
Cleaning and painting labour	200.00
Filing fee	50.00
Sub total	\$692.03
Less retained security deposit	- 425.00
TOTAL	\$267.03

Conclusion

In addition to authorization to retain the security deposit in set off against the balance, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$267.03 for service on the tenant.

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: January 31, 2012.

Residential Tenancy Branch