



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 application was brought by the landlord on November 3, 2011 seeking a monetary award for costs of cleaning and repairs 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.

As a matter of note, this application was originally scheduled for January 23, 2012 but was adjourned on the request of the tenants' agent, with consent of the landlord, due to a death in the tenants' family.

When the hearing reconvened, the tenants' agent, their son, requested a further adjournment on the grounds that his parents were travelling in Africa. The landlord objected to another adjournment on the grounds that the tenants had been provided with the 800 number to call in to the hearing. For that reason, and because the tenants' son in attendance was familiar with the tenancy, I found it would be unfair to the landlord to postpone the hearing a second time and ordered that it proceed.

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. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on November 1, 1990 and ended on October 31, 2010. Rent was \$1,266 after subsidy and the landlord holds a security deposit of \$250 paid on September 18, 1990.

As a matter of note, the tenancy ended pursuant to a two month Notice to End Tenancy and earlier verbal notice after the tenants had become ineligible for the subsidized units due to an increase in income of the occupants. The landlord gave evidence that he had found a market unit for the tenants at a lower rent five minutes from the subject rental unit, but they had declined it shortly before the tenancy ended.

The landlord stated that the application had been made just over one year after the tenancy had ended because the tenants had not provided a forwarding address until November 3, 2011 which was given by telephone rather than in writing as required. The resident manager gave evidence that she had been unable to fully complete the move-out condition inspection report on schedule due to the hostility of the tenants' son.

The landlord submitted 59 photographs and a number of receipts and vouchers in support of the claims for cleaning and repairs on which I find as follows:

Repainting of rental unit - \$562. The landlord submitted an invoice for \$1,775.20 plus HST showing the actual costs of repainting the rental unit. The landlord has reduced the claim on the grounds that 19 months remained in the useful life of the paint job, but notes that premature repainting was necessitated by holes in the walls and markings. The tenants' representative objected on the grounds that after 20 years, the damage fell into the category of reasonable wear and tear. On the basis of the photographic evidence, and considering that the landlord has substantially discounted the claim from the actual cost, I find that the damage is beyond reasonable wear and claim is allowed.

Replace bi-fold door in kitchen - \$80. The landlord's photographs include one picture of a bi-fold door in the kitchen with a hole in the lower portion. The landlord's receipt shows the claim is the cost of the door and no charge has been added for shipping or installation. This claim is allowed in full.

Replacement of damaged carpet - \$330.40. The landlord submitted photographs of candle burns in the living room carpet. He submitted a receipt for \$660.80 for the actual cost of the replacement, discounted to accommodate depreciation, and noted a further effort to reduce the tenants' liability was made by patching damage on the landing with a piece of the old carpet. I find this claim to be reasonable and it is allowed in full.

Carpet cleaning - \$144.48. On the basis of photographic evidence, standard practice and receipt, this claim is allowed in full.

General cleaning - \$200. This claim is based on 10 hours work at \$20 per hour and is supported by photographic evidence and staff time sheet. The tenant objected on the grounds that the tenants could have completed this and other work if they had been allowed one more day. The landlord stated that the tenants had two months written notice and even more verbal notice of the end of the tenancy and had been provided more than sufficient time to prepare the rental unit for inspection. I find that the tenancy ended on October 31, 2010 and that the landlord was under no obligation to provide the tenants with any additional time for cleaning. This claim is allowed in full.

Filing fee - \$50. Having found full merit in the application, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Security deposits (\$250 plus \$109.72 interest). As authorized under section 72 of the *Act*, I find that the landlord is entitled to retain the security deposit in set off against the balance owed.

As a matter of note, the tenants' right to the deposit had been extinguished by their failure to provide a forwarding address in writing within one year.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Repainting of rental unit -	\$562.00
Replacement of damaged carpet	330.40

Carpet cleaning	144.48
General cleaning	200.00
Filing fee	<u>50.00</u>
Sub total	\$1366.88
Less retained security deposit	- 250.00
Less interest (September 18, 1990 to date)	<u>- 109.72</u>
TOTAL	\$1,007.16

Conclusion

In addition to authorization to retain the tenants' security deposit and interest in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$1,007.16** for service on the tenants.

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: February 16, 2012.

Residential Tenancy Branch