



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD and FF

Introduction

This hearing was convened on the landlord's application for monetary compensation for damage to the rental unit, damage or loss under the legislation or rental agreement, authorization to retain the security deposit in set off and recovery of the filing fee for this proceeding.

As a matter of note, this tenancy was the subject of a hearing on March 22, 2012 on the tenant's application for return of her security deposit, among other claims. As the security deposit was disposed of in that hearing, it is not available for consideration in the present hearing. Therefore, that portion of the application is dismissed.

In addition, the landlord's agent seeks compensation for lost wages for time she took off work to participate in the last hearing. There is no mechanism within the legislation that would permit me to order compensation for costs of participating in a hearing and I cannot entertain a claim that is applicable to another hearing. That claim, also, is dismissed.

Issue(s) to be Decided

This matter now requires a decision on whether the landlord is entitled to a monetary award for damage to the rental unit and recovery of the filing fee for this proceeding. Claims in damage to the rental unit take into account comparison of move-in/move-out condition inspection reports, normal wear and tear and depreciation. The burden of proof falls to the claimant

Background and Evidence

This tenancy began on October 1, 2010 and ended on January 1, 2012 on a municipal order requiring removal of the stove.

There were no jointly signed condition inspection reports. The landlord stated the tenant had declined to sign the move-out condition inspection report and the tenant stated that the opportunity was not offered to her.

During the hearing, the landlord submitted a claim for replacement of a hot water baseboard heater in the bathroom of the rental unit. Photographic evidence shows an accumulation of rust on the top side of the unit, a condition that the landlord's agent said does not exist in any of the other heaters in the eight year old house. An estimate for replacement provided by an electrician was for \$260.

The tenant and her agent stated that the heater had been subject to no unusual use. It sat immediately beneath a towel rack, and the tenant said while damp towels used after a shower were hung on the rack, dripping wet ones were not. The tenant's agent pointed out that the washroom in question is in a basement suite with no window or automatic humidistat.

The landlord also claims the cost of steam cleaning the carpets on the grounds that there was a lingering odour of tobacco smoke in the unit. The tenant stated that she is asthmatic and that neither she nor any guest had ever smoked in the rental unit. In addition, I note that the \$100 receipt for steam cleaning was dated March 23, 2012, nearly three months after the tenancy had ended. The landlord stated the suite had not been occupied since the tenant's departure.

Analysis

On the question of the baseboard heater, I see no evidence of a deliberate act on the part of the tenant that would have caused the damage. However, I believe the tenant was marginally negligent in failing to bring the rusting to the attention of the landlord during the tenancy. Beyond that, I find the tenant's submission of limited circulation and lack of a window as contributing to the deterioration of the unit.

Therefore, I will allow the landlord \$60 on this claim.

As to the carpet cleaning, the tenant stated that she had borrowed a steam cleaner from her mother and did the carpets herself to a standard that the landlord stated was considerably lower than that at the beginning of the tenancy. I accept that evidence but reduce the award on this claim to \$50, on the grounds that, if the odour had been as strong as claimed by the landlord, the work would have been done much sooner.

As the application has succeeded in part, I find that the landlord may recover one-half of the filing fee from the tenant.

Thus I find that the landlord is entitled to Monetary Order calculated as follows:

Portion of deterioration of baseboard heater	\$ 60.00
One-half of filing fee	25.00
TOTAL	\$135.00

Conclusion

The landlord's copy of this Decision is accompanied by a Monetary Order for \$135, enforceable through the Provincial Court of British Columbia 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: April 02, 2012.

Residential Tenancy Branch