



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for compensation under the Act and the tenancy agreement, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The landlord on June 5, 2012, filed late evidence which was not served on the tenants and was not filed within the required timelines under the Act. Therefore, the evidence filed on June 5, 2012 is not admissible for this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on July, 1, 2011. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 and a pet deposit of \$50.00 were paid by the tenants. Tenancy ended January 31, 2012.

The landlord claims as follows:

a.	Two keys not returned & three light bulbs not replaced	\$7.00
c.	Cigarette butts & beer caps in driveway	\$25.00
d.	Dog license fine	\$200.00
e.	Garbage removal by Kelowna junk removal	\$165.00
f.	Drywall, paint & two new doors	\$1,943.00

g.	Showerhead replacement	\$60.00
h.	TV stand	\$200.00
i.	Two weeks rental displaced tenants	\$450.00
j.	Filing fee	\$50.00
	<b>Total claimed</b>	<b>\$3,150.00</b>

#### Two keys not returned & three light bulbs not replaced

The tenant (BW) agreed to pay the landlord \$7.00 for the keys and light bulbs.

#### Dog feces & holes in yard cleanup

The landlord testified that the tenants did not clean up the dog feces or repair the holes in the yard left by their dog at the end of tenancy. The landlord seeks to recover the \$50.00 she paid to have someone clean and repair the damage caused by the dog. Filed in evidence is a receipt. Filed in evidence are photographs.

The tenant (TM) signed an acknowledgement that dog feces and holes were left in the yard at the end of tenancy.

#### Cigarette butts & beer caps in driveway

The landlord testified the tenants left cigarette butts and beer caps in the driveway and she seeks to recover the \$25.00 she paid to have them removed. Filed in evidence is a receipt.

The tenant (TM) signed an acknowledgement that cigarette butts and beer caps were left in the driveway.

#### Dog license fine

The witness for the landlord testified that the bylaw officers came to her unit and she was issued dog license fines for having her dogs unlicensed. Filed in evidence are copies of the municipal tickets issued to the witness.

The landlord stated the bylaw officers would not have known about the witness have her dogs unlicensed, if the tenants, did not allow their dog to run at large. The landlord stated the tenants should be responsible for the fines the witness incurred.

#### Garbage removal

The landlord writes in her application that she seeks to recover \$165.00 for garbage removal by (name of company). The landlord testified that she did not use this company

and paid \$150.00 cash to have the garbage removed. Filed in evidence are photographs.

The tenants agreed that they left some garbage behind at the end of tenancy, however, they do not agree all the garbage was theirs. They also do not agree that it would cost \$150.00 to dispose of the items.

#### Showerhead replacement

The landlord testified the bathroom was fully renovated during the tenancy and the tenant damaged the showerhead and seeks to recover the \$60.00 she paid to have it replaced. Filed in evidence is a receipt for the renovation.

The witness for the landlord testified that it appeared to her that the showerhead was pulled to hard as it was a hand held showerhead.

The tenant (TM) testified that he was in the shower when the seal on the showerhead broke due to normal use.

The tenant (BW) testified that the showerhead was not replaced during the renovation.

#### TV stand

The landlord testified that the TV stand that was mounted to the wall was taken by the tenant (TM). The landlord seeks to recover the amount of \$140.16 plus taxes. The landlord further claims it will cost \$43.00 to install.

The tenant (TM) signed an acknowledgement that he took the TV stand.

#### Drywall, paint & two new doors

The landlord testified that the tenant (TM) damages the walls by punching holes during domestic disputes and by removing the mounted TV stand. The landlord stated there were also holes in two doors which she had repaired. The landlord stated there was damage caused by the tenant's cat scratching the wall. Filed in evidence is an estimate to have the drywall repaired and painted in the amount of \$1,954.00. Filed in evidence are photographs of the walls.

The landlord writes in her application "Note: this house has never been smoked in therefore the whole premises they resided in should be repainted however, in spite of the difficulties with these tenants I am only asking for one room (not including ceiling)" [reproduced as written]

The tenant (TM) signed an acknowledgement that there were several holes punched in the wall.

Two weeks rental displaced tenants

The landlord writes in her application “two weeks rental while work is done as tenants are displaced”. [Reproduced as written].

The landlord testified that she compensated the new tenants in a form of a rent reduction for the inconvenience they endured during the period the work that was performed in the rental unit as the new tenant remained in the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

Two keys not returned & three light bulbs not replaced

The tenant (BW) agreed to pay the landlord for the cost of the keys and the light bulbs. Therefore, I find the landlord is entitled to compensation in the amount of **\$7.00**.

Dog feces & holes in yard cleanup

In this case, the tenant (TM) signed a written acknowledgement that dog feces was not picked up and the holes made by their dog were not repaired at the end of tenancy. The landlord paid \$50.00 to have the feces picked up and the holes repaired. Therefore, I find the landlord did suffer a loss do the neglect of the tenants. I find the landlord is entitled to compensation in the amount of **\$50.00**.

Cigarette butts & beer caps in driveway

In this case, the tenant (TM) signed a written acknowledgement that cigarette butts and beer caps were left in the driveway. The landlord paid \$25.00 to have the cigarette butts and beer caps picked up. Therefore, I find the landlord did suffer a loss do the neglect of the tenants. I find the landlord is entitled to compensation in the amount of **\$25.00**.

#### Dog license fine

In this case, the landlord's witness failed to comply with the municipal bylaws by having her dogs unlicensed. The fact that the tenant's dog was running at large does not make them at fault for the witness not complying with the law. I find the tenants have not violated the Act and or tenancy agreement. Therefore, I dismiss the landlord's claim for compensation for the municipal bylaw fines.

#### Garbage removal

In this case, the tenants have acknowledged that some of their garbage was left behind, however, they dispute that it was not all their garbage and the amount claimed is not justified. I find the tenants have violated the Act. However, I find the landlord had failed to prove the actual amount paid to have the garbage paid as there was no proof of payment or receipt filed. Therefore, I dismiss the landlord's claim for compensation for garbage removal.

#### Showerhead replacement

The evidence of the landlord was the showerhead was replaced during the bathroom renovation. The tenant's evidence was the showerhead was not replaced and it broke due to normal use. The documentary evidence filed by the landlord does not support her claim that it was replaced during the renovation. There is no reference on the invoice which is detailed to show the showerhead was replaced. There is no update in the move-in inspection report to show all fixtures were replaced. I find the landlord has failed to prove the loss incurred was due to the neglect of the tenants. Therefore, I dismiss the landlord's claim for compensation for the showerhead.

#### TV stand

In this case, the tenant (TM) signed a written acknowledgement that stated he took the TV stand. I find the tenant violated the Act and the landlord suffered a loss. Therefore, the landlord is granted the cost to replace the TV stand in the amount of **\$160.00**, this includes taxes.

The landlord has not proven she has incurred a loss to install the TV stand as she has not replaced the TV stand as of today's hearing. Therefore, I decline to grant compensation for installation of the TV stand.

#### Drywall, paint & two new doors

The tenants (TM) acknowledge he punched several holes in the drywall and removed the TV stand for the wall. The photographic also supports the landlords claim that the drywall was also scratched.

However, the estimate of \$800.00 that the landlord has provided to repair the drywall included two new doors which were not replaced as they were repaired. Therefore, I will

reduce the estimate by \$100.00. I grant the landlord compensation for repairing the drywall and doors in that amount of **\$700.00**.

The landlord's application was claiming compensation to paint one wall, no amendment was made to the application to claim compensation for painting the unit. The estimated provided in the amount of \$600.00 was to paint the entire unit, as I am unable to determine the amount it would cost to paint one room. Therefore, I will allow a nominal for compensation for painting in the amount of **\$200.00**.

Further, the landlord has not provided any proof that HST was paid on the services provided as a result the landlord is not granted any compensation for taxes.

#### Two weeks rental displaced tenants

The evidence of the landlord was that she provided the new tenants with a rent reduction for their inconvenience while work was being performed in the rental unit. In this case, the landlord has provided insufficient evidence to support her claim. There were no rent receipts produced to prove the tenants received such a benefit. Therefore, I dismiss the landlord's claim for compensation for loss of revenue.

The landlord has established a monetary order in the amount of **\$1,192.00** comprised of the above amounts and the \$50.00 paid to file the application.

I order that the landlord retain the security deposit of \$450.00 and a pet deposit of \$50.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$692.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The landlord is granted a monetary order for the balance due.

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 21, 2012.

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Residential Tenancy Branch