



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD and FF

This application was brought by the landlord on June 11, 2012 seeking a monetary award for 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 balanced owed.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

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 tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and/or 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 applicant.

Background, Evidence and Analysis

This tenancy initially began on October 1, 2011 and ended on May 31, 2012. Rent was \$1,450 per month and the landlord holds a security deposit of \$725 paid at the beginning of the tenancy.

While the parties did a walk through at the commencement of the tenancy, the landlord stated that she made no notations on the inspection form as all items in the rental unit were in good order. The tenant declined to participate in completion of a move-out condition inspection report despite invitation to do so.

As both parties breached the Act on the question condition inspection reports, I favour neither on the question.

The landlords did submit a number of receipts and photographs in support of their claims. The tenant stated that she did not have the landlords' photographic evidence but the landlord provided a Canada Post tracking number in verification of having mailed the evidence. I accept the attending landlord's testimony that the evidence was sent to the tenant who did not pick up the registered mail. Therefore, I have accepted and refer to the photographs.

The landlords claim and I find as follows:

Replace locks in the rental unit - \$126.17. The landlord acknowledged that the tenant had returned one key that opened all entrances to the rental unit but that she had not returned copies she had made for her children and spouse. The tenant concurred that she had not returned the copies because she had paid for them personally. *Residential Tenancy Policy Guideline 1* states that, "The tenant must return all keys at the including those he or she had cut at their own expense." Therefore, this claim is allowed in full.

Replace garage door lock - \$43.68. The tenant stated that she placed the garage door key in the mail box when she vacated the rental building on May 26, 2012. She stated she did not advise the landlord she had left because she had until May 31, 2012 to vacate. The landlord said she found other items left in the mail box by the tenant, but not the garage door key. Given that the landlord has provided a receipt for the new lock and that it would be highly unlikely for her to replace a functioning lock if she had the key, I prefer the evidence of the landlord and the claim is allowed in full.

Replace light fixtures - \$250.15. The landlord submitted receipts for \$235.15 and adds \$15 labour for replacement of four upstairs light fixtures, present at the beginning of the tenancy and missing at the end. The tenant gave various explanations including that she had replaced a couple of very old ones which didn't work and which she took with her when she moved. On the basis of the photographic evidence, I note that the fixtures were dated and will allow the tenant the benefit of some doubt on the question. I reduce the award on this claim to \$125.

Carpet cleaning - \$246.40. The landlord submitted a receipt on this claim and photographic evidence clearly shows the need for cleaning. The landlord's cleaning lady gave evidence that she attempted to steam clean the carpet as she had done at the beginning of the tenancy. She said when her efforts failed, she advised the landlord that it would be necessary to have the job done professionally. This claim is allowed in full.

General cleaning - \$210. On the basis of photographic evidence and the testimony of the cleaning lady that it took her two full days to complete the work, this claim is allowed in full.

Garbage removal - \$13. The tenant concurred with this claim and it is allowed in full.

Paint steps – \$224. The landlord submitted a photograph showing black paint had been over sprayed around a square object on the porch and steps and makes this claim for repainting. The tenant said she had not done any spray painting in that area and that the black overspray area must have been there when she moved in. The cleaning lady stated that there were no such markings on the area when she had cleaned the home shortly before the tenancy began and that it was clearly visible to her when she cleaned after the tenant moved out. This claim is allowed in full.

Replace dishwasher - \$462. The electrical cord on the dishwasher was cut at the end of the tenancy. The landlords claimed replacement costs on the grounds that Sears had advised them that they would not replace the cord and that doing so would void the warranty. As the unit has not been replaced and as I believe it would have been reasonable for the landlord to further explore the possibility of repair, I find that the landlords have not fully exercised the duty to minimize the loss as required by section 7(2) of the *Act* and this claim is dismissed without leave to reapply.

Cut grass - \$30. The tenant stated that the lawn had been mowed just a couple of days before she moved out – a stark contrast to photographic evidence provided by the landlord showing herself standing in the knee deep grass in the back yard. I prefer the evidence of the landlord and allow the claim in full.

Filing fee - \$50. As the application has succeeded on its merits, I find that the landlords are entitled to recover the filing fee for this proceeding from the tenant.

Security deposits – (\$725). As authorized by section 72(2)(b) of the *Act*, I order that the landlord retain the deposit in set off against the balance owed.

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

Replace locks in the rental unit	\$ 126.17
Replace garage door lock	43.68
Carpet cleaning	246.40
General cleaning	210.00
Garbage removal	13.00
To paint steps	224.00
Cut grass	30.00
Filing fee	<u>50.00</u>
Sub total	\$1,068.25
Less retained security deposit (No interest due)	<u>- 725.00</u>
TOTAL	\$ 343.25

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$343.25**, 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: August 09, 2012.

Residential Tenancy Branch