



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application filed August 29, 2012: MNSD

Landlord's application filed October 23, 2012: MNSD; MND; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek a monetary award in the equivalent of double the amount of the security deposit.

The Landlord seeks a Monetary Order for damages to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the parties served each other with their respective Notice of Hearing documents by registered mail.

Issues to be Decided

1. Are the Tenants entitled to a monetary award equal to double the amount of the security deposit?
2. Is the Landlord entitled to a monetary award for damage to the rental unit as a result of a flood, the cost of cleaning the rental unit at the end of the tenancy, the cost of making repairs to the rental unit and the cost of replacing a key at the end of the tenancy?
3. May the Landlord apply the security deposit in partial recovery of its monetary award?

Background and Evidence

This tenancy began on April 3, 2011, and ended on April 30, 2012. The Tenants paid a security deposit in the amount of \$425.00 at the beginning of the tenancy.

The Tenant testified that the Tenants did not agree that the Landlord could apply any of the security deposit towards cleaning and damages at the end of the tenancy. He

stated that he signed the Condition Inspection Report indicating that he agreed to the deduction from the security deposit, but he did not realize that he was agreeing that the Landlord could retain any of the security deposit. The Tenant stated that he provided the Landlord with the Tenants' forwarding address on May 15, 2012, but that the Landlord did not return any of the security deposit. The Tenants seek a monetary award in the amount of **\$850.00**.

The Landlord's agent testified that the Tenant GS signed over the security deposit on the Condition Inspection Report, a copy of which was provided in evidence. She stated that the Tenants did not provide a forwarding address until she received the Tenant's letter dated May 15, 2012, by registered mail. The Landlord's agent testified that on receipt of their forwarding address, she mailed a copy of the Condition Inspection Report to the Tenants on May 20, 2012.

The Landlord's agent stated that the occupants immediately below the Tenants alerted the building manager to water damage on their ceiling on January 25, 2012. It was discovered that the Tenants had left the water running in their sink, which damaged the carpet, ceiling and light in the suite below. On February 4, 2012, the Landlord wrote to the Tenants advising them that they would be held responsible for the cost of repairs and that once the costs were known, the Tenants would be advised. A copy of the letter was provided in evidence.

The Landlord's agent testified that a second letter was sent to the Tenants on February 11, 2012, setting out the cost of repairs which totaled \$1,121.85. In the letter, the Landlord suggested that the Tenants could make three equal payments of \$373.95. A copy of that letter was also provided in evidence. She stated that the Tenants did not respond to the letter.

The Landlord's agent stated that the Tenants also damaged doors and walls in the rental unit and did not leave it reasonably clean at the end of the tenancy. She testified that the Tenant RT did not return his DOM security key at the end of the tenancy. The Landlord provided photographs and invoices in evidence along with a copy of the Tenants' acknowledgement of receipt of two DOM security keys dated April 30, 2009. The acknowledgement of receipt indicates that the Tenants agreed to pay \$45.00 if one of the keys was not returned at the end of the tenancy.

The Tenant stated that his roommate left the water running in the sink, but that only about a gallon of water was spilled. The Tenant submitted that the spilled water could not have caused the amount of damage that the Landlord seeks to recover. He stated that his roommate also lost his DOM key at some point during the tenancy. The Tenant did not dispute the damage to the walls and the doors. He agreed that the photographs

accurately depict the state of cleanliness of the rental unit at the end of the tenancy. The Tenant stated that the carpet had a few coffee and tea stains, but that they should have come out when they were shampooed.

The Landlord's agent testified that the carpets would not come clean due to excessive damage and staining. She stated that the carpets were approximately 5 years old.

The Landlord seeks a monetary award, calculated as follows:

Description	Amount
Cost of carpet replacement in the Tenants' suite	\$2,033.12
Cost of cleaning drapes	\$75.00
Cost of cleaning the rental unit	\$150.00
Cost of repairing holes in doors and walls	\$240.00
Cost of repairs to unit below the Tenants after the flood (Aquamist)	\$1,121.85
Landlord's costs associated with repairs after the flood	\$290.00
Key replacement	<u>\$45.00</u>
TOTAL	\$3,954.97

Analysis

Regarding the Tenants' Application

Based on the testimony of both parties and the copy of the Condition Inspection Report, I find that the Tenants agreed that the Landlord could retain the security deposit in partial recovery of the damages caused by the Tenants. Therefore, the Tenants' application for compensation pursuant to the provisions of Section 38(6) of the Act is **dismissed**.

Regarding the Landlord's Application

The Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy 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 Tenants in violation of the Act, regulation or tenancy agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the undisputed testimony and documentary evidence provided, I accept that the Tenants did not leave the rental unit reasonably clean and undamaged at the end of the tenancy, contrary to the provisions of Section 37 of the Act. I also accept that the Tenants did not return one of the DOM keys. The Landlord provided sufficient documentary evidence to support the amount sought for cleaning the rental unit, replacing the key and repairing the holes in the walls and doors. Therefore, I allow the Landlord's claim for this portion of their application in the total amount of **\$510.00**.

I also accept that the Landlord's agent's testimony and documentary evidence that the carpets required replacing due to heavy staining. However, the carpets were approximately 5 years old. Residential Tenancy Branch Policy Guideline 40 provides a useful life for carpets of 10 years. I find that the carpets were already half way through their useful life and therefore I award the Landlords half of the amount sought for replacing the carpets, **\$1,016.56**.

I find that the Landlord has provided sufficient evidence that the flood occurred as a result of the Tenants' neglect. Tenants are jointly and severally responsible for debts and damages incurred over the tenancy. It is up to the Tenants to apportion liability between themselves. I also find that the Landlord has established its claim with respect to the Aquamist invoice for damage caused by the Tenants' actions. Therefore, I allow this portion of the Landlord's claim in the total amount of **\$1,121.85**.

I find that the Landlord did not provide sufficient evidence to support their claim in the amount of \$290.00 for the Landlord's maintenance repairs associated with the flood and this portion of its claim is **dismissed**.

The Landlord has been largely successful in its Application and I find that it is entitled to recover the cost of the filing fee from the Tenants.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of its monetary award.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Description	Amount
Cost of carpet replacement in the Tenants' suite (pro-rated)	\$1,016.56

Cost of cleaning and repairing the rental unit and replacing the DOM key	\$510.00
Cost of repairs to unit below the Tenants after the flood (Aquamist)	\$1,121.85
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$2,698.41
Less set off of security deposit	<u>\$425.00</u>
TOTAL	\$2,273.41

Conclusion

The Tenants' application is **dismissed without leave to reapply**.

I hereby provide the Landlord a Monetary Order in the amount of **\$2,273.41** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

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: November 27, 2012.

Residential Tenancy Branch