



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary award and an order that the landlord comply with the Act. The hearing was conducted by conference call. The Tenants and the landlord called in and participated in the hearing. At the hearing it was discovered that photographic evidence and documents submitted by the tenant had been received by the landlord but was not present on the Residential Tenancy Branch file. The tenants re-submitted their evidence and I reviewed it before issuing the decision with respect to this application.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of a portion of the security deposit and if so, what amount?

Background and Evidence

The rental unit is a residence in Victoria. The tenancy began July 1, 2013, for a one year fixed term and thereafter on a month to month basis. Monthly rent in the amount of \$1,895.00 was payable on the first of each month. The tenants paid a security deposit of \$947.50 at the start of the tenancy.

The tenants gave one month's notice and moved out of the rental unit on May 31, 2015. The landlord and the tenants participated in a move-out inspection of the rental unit. In the condition inspection report the landlord claimed deductions from the tenants' security deposit in the approximate amount of \$715.00. The tenants did not agree to the proposed deductions; the tenant signed to condition inspection report to state that he was not prepared to authorize deductions from the security deposit.

The landlord repaid the sum of \$235.00 to the tenants at the end of the tenancy. In an email dated June 8, 2015 she said she made the following deductions from the security deposit:

• Powerwashing, receipt attached:	\$70.00
• Carpets, receipt attached:	\$135.45
• Cleaning:	\$80.85
• Painting:	\$292.00
Total:	\$578.30

The landlord said: "Your security deposit was \$950.00 so \$371.70 is owing. I gave you \$235.00 already so I have \$136.70 left to pay you. Please confirm and I will email rest today. The tenants acknowledged that they received a further \$136.70 from the landlord.

The tenants disagreed with the landlord's deductions from their deposit. They applied for dispute resolution to claim a monetary order in the amount of \$427.45 plus the filing fee for their application. The tenants agreed that they should be responsible for the charge for power washing in the amount of \$70.00 and for cleaning in the amount of \$80.85, but they did not accept the landlord's claim for carpets and painting. The tenants testified that they did clean the carpets themselves at the end of the tenancy and they repaired some nail holes in the walls. The tenants submitted pictures of the rental unit; they testified that the pictures showed that the rental unit was left in a reasonable state of cleanliness and any defects present amounted to reasonable wear and tear.

The landlord did not apply to retain the security deposit and has submitted her own application for dispute resolution to claim a monetary award for the cost of cleaning and repairs. The landlord referred to photographs that she supplied as evidence. The landlord submitted that the photos showed that the tenants damaged the walls and existing paint by inadequate patching and touch up.

Analysis

The landlord did not have the tenants' written permission to retain the tenants' security deposit. Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing,

whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenants have agreed that the landlord is entitled to retain the sum of \$70.00 for power washing and \$80.85 for cleaning. The tenants do not agree with the landlord's other charges and they have requested the return of the remainder of their security deposit less the two amounts mentioned. The tenants have not asked for the payment of double their deposit, but they requested reimbursement of their filing fee for this application.

The Landlord submitted that she should be allowed to claim amounts for painting and carpet cleaning, but she does not have the tenants' consent with respect to the claimed amounts and absent a claim by the landlord I am unable to award any amount for those items. The landlord has not applied for dispute resolution to claim the balance of the tenants' deposit, but, based on the tenants' consent, I find that the landlord is entitled to retain \$150.85 from the tenants' security deposit. She has returned the sum of \$371.70 and the tenants' have authorized the landlord to retain \$150.85. This leaves a balance of \$424.95 to be returned to the tenants and I allow the tenants' claim in the said amount.

Conclusion

The tenants are entitled to recover the \$50.00 filing fee for their application, for a total award of \$474.95 and I grant the tenants an order under section 67 in the said amount. This order may be registered in the 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: December 17, 2015

Residential Tenancy Branch

