



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing. The parties exchanged documentary evidence before the hearing.

There was an earlier dispute resolution proceeding concerning this tenancy. In a decision dated April 18, 2016 I addressed the tenants' claim for the return of their security deposit and awarded them double the amount of their security deposit. Because the security deposit has been dealt with in the earlier proceeding, it is not open to the landlord to claim the deposit in this application. I will address the landlords' claim for a monetary award for the cost of cleaning and repairs to the rental unit, but his claim to retain the deposit has already been determined. The landlord's claim to retain the deposit is *res judicata* and it is therefore dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for the cost of cleaning and repairs and if so, in what amount?

Background and Evidence

The rental unit is a residence in North Vancouver. There is a separate rental unit. The tenancy began April 1, 2014 for a one year term. The monthly rent was \$3,275.00 and the tenants paid a security deposit of \$1,637.50 before the commencement of the tenancy. The tenants moved out on March 30th. The landlord testified that the tenants damaged the rental unit and failed to clean it properly before they moved out. The landlord claimed the following amounts as set out in a monetary order worksheet:

- | | |
|--|------------|
| • new driveway asphalt to repair oil damage: | \$1,260.00 |
| • replacement kitchen counter top: | \$589.05 |
| • Patio screen and cleaning supplies: | \$110.76 |

• 7 hours of cleaning at a rate of \$20/hr:	\$140.00
• Replacement of garbage cart with lesser quality:	\$129.00
• Application fee:	\$100.00
Total:	\$2,328.81

The landlord testified that the tenant's automobile regularly parked in the driveway of the rental property had a persistent oil leak that damaged the asphalt. The landlord said he sent the landlord a letter in July, 2014 warning the tenant to fix his car or park it elsewhere because of the damage it was causing to the driveway. The landlord submitted photos of the damage alleged to have been caused. The landlord has not repaired the driveway as of the date of the hearing. He submitted a quotation from a paving company in the amount of \$1,260.00: "-To cut out badly damaged oil spot, remove and dispose of old product –Supply and install new asphalt 14X5". He provided a second e-mail quotation in the amount of \$1,625.00.

The landlord claimed that the kitchen counter top in the basement was damaged with serious burns in two places. The landlord submitted a quotation for the replacement of the counter top in the amount of \$589.05.

The landlord submitted numerous photographs of the interior of the rental unit. He referred to damage and extensive cleaning that he said was needed as shown in the photographs. There were a series of photos showing individual items of damage and required cleaning. Also pictured was damage to a screen door that the landlord said was caused by the tenant. The landlord testified that the tenants' rough treatment was the cause of extensive damage to the landlord's large Schaefer garbage cart. The large cart cannot be replaced and the landlord claimed the sum of \$129.00 which is the cost for the smaller version of the garbage cart.

The tenant disputed substantially all of the landlord's claims. He did acknowledge that his car had an oil leak, but he denied receiving a letter from the landlord telling him to fix the car.

The tenant denied damaging the screen or the garbage container. The tenant submitted that the rental unit was properly cleaned at the end of the tenancy and he denied any responsibility for cleaning or repair charges.

Analysis

The landlord conducted a condition inspection at the start of the tenancy. I found in the earlier proceeding that the tenants participated in a move out inspection, but were not given an opportunity to disagree with the inspection at move out. This fact precluded the landlord from claiming against the security deposit, but it does not prevent him from pursuing a claim for the cost of cleaning or repairs. The tenant disputed substantially all of the landlord's claims, but I find that the landlord provided convincing evidence in the form of testimony and photographs of the rental unit to show that the unit was not properly cleaned at the end of the tenancy. The tenant submitted that the photographs could not be relied upon because the landlord failed to establish when they were taken. I accept the landlord's testimony that the photos were taken at the end of the tenancy and that they depict the condition of the rental unit immediately after the tenants moved out.

Based on the photos and the landlord's testimony, I find that the tenants did not leave the rental unit in acceptable condition at the end of the tenancy and significant cleaning was required. I find that the landlord is entitled to recover compensation for his cleaning time as claimed in the amount of \$140.00. There is no indication of screen door damage on the move-in inspection and I allow the landlord's claim for a patio screen door and for cleaning supplies in the amount of \$110.76. I allow as well the claim for a replacement garbage cart in the amount of \$129.00. It was mentioned on the move-in inspection report and there was no indication of damage at move-in.

The landlord's evidence shows that the driveway was significantly damaged by oil. The tenant admitted that his car was leaking oil; I accept the landlord's testimony that the asphalt itself was damaged and in order to effect a proper repair, a section must be cut out and replaced with new asphalt. The landlord submitted a quote for \$1,260.00. He has not performed the work. I find that he is entitled to an award, but it should be discounted to reflect the fact that the driveway was not new. The Residential Tenancy policy guideline with respect to the useful life of building elements gives a useful life of 15 years for a driveway. I award the landlord the discounted amount of \$750.00 for the driveway repair.

The landlord claimed for the cost to replace the countertop in the basement suite. The suite was apparently occupied by a sub-tenant. The landlord has not repaired or replaced the counter top. The condition inspection report completed at the start of the tenancy does not contain entries about the basement suite. The counter top was mentioned on the move out report, but I do not find the landlord's evidence or the photograph of alleged damage to the counter top to establish that the counter top was damaged during the tenancy, or that the respondents are responsible for the damage. this claim is denied.

Conclusion

I have allowed the landlord's claims in the amount of \$1,129.76. All other claims by the landlord are dismissed. The landlord has been ordered to return the tenants' security deposit including double the amount in the earlier proceeding. He is not entitled to retain any part of the security deposit in satisfaction of this award. The landlord is entitled to recover the \$100.00 filing fee for his application, for a total award of \$1,229.76 and I grant him 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: July 11, 2016

Residential Tenancy Branch