



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the security deposit. The hearing was conducted by conference call. The landlord's representative and the landlord's agent called in and participated in the hearing the landlord was out of the country and unavailable to participate, but her representative acted on behalf of the landlord throughout the tenancy and had direct knowledge of the matters related to the claim. The tenant was served with the application and Notice of Hearing by registered mail sent on August 17, 2016, but she did not call into the hearing and did not participate.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit in satisfaction of the monetary claim?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began on August 3, 2015 for a fixed term ending July 31, 2016. The rental unit was rented as a furnished apartment. The monthly rent was \$1,750.00, payable on the first of each month. The tenant paid a security deposit of \$1,750.00 at the commencement of the tenancy. The tenancy agreement provided that the rental unit was a non-smoking unit. The landlord learned during the tenancy that the tenant and her guests were smoking in the unit.

The landlord's representative testified that the tenant was a chain smoker. She had a pet dog in the unit. The landlord's representative testified that the tenant, through her smoking, caused extraordinary damage to the rental unit and to its furnishings. The tenant's dog urinated on the laminate floor and caused damage. The damage was

evident upon an inspection of the unit in June. The tenant agreed to move out at the end of the fixed term and acknowledged that she was responsible for the cost to restore and repaint the interior damaged by smoke. The landlord's representative testified that the walls and interior surfaces were sticky with a tar and nicotine residue. The landlord arranged to have the walls scrubbed, covered with odour blocking primer and re-painted during the last month of the tenancy. The landlord's agent conducted a move-out inspection with the tenant on July 30, 2016. The tenant signed the report and agreed to forfeit her security deposit and pet deposit on account of the damage caused by smoking and by her pet. The landlord's representative said that the furnishing in the rental unit were soiled and damaged beyond repair. The queen size bed was stained and soiled with urine. A shag carpet was urine stained, wet and damaged by cigarette. The laminate flooring was damaged by pet urine and extensive clean was required that took days to complete a chair was damaged beyond repair. The landlord's representative testified that even after cleaning and painting the smell of smoke lingered in the rental unit and it had to be given a professional ozone treatment before it could be successfully re-rented. The landlord's representative referred to an email from prospective tenants who said they were deterred from renting by the persistent smell of smoke in the rental unit. this was what triggered the decision to have the unit treated.

The landlord made the following claims:

• Replacement cost for queen size bed, Ikea:	\$500.00
• Replacement cost for white shag rug, Ikea:	\$250.00
• Partial cost of flooring replacement:	\$800.00
• Paint prep primer block and paint:	\$1,800.00
• Chair replacement, Ikea:	\$50.00
• Cleaning fee as provided by lease:	\$200.00
• Ozone treatment:	\$300.00
• Loss of rent for one month, claim for 50% of loss:	\$850.00
Total:	\$4,750.00

The landlord's representative testified that the furniture was not replaced; it was discarded and the rental unit was re-rented as an unfurnished suite. The landlord obtained a quotation to replace the damaged laminate floor at a cost of \$2,200.00. The landlord has cleaned and attempted cosmetic repairs to the floor and re-rented the unit with the existing flooring. The landlord claimed \$800.00 for the floor damage, being 35% of the replacement cost to reflect normal wear and tear and a depreciation factor.

The landlord's representative testified that he and the landlord as well as friends spent several days cleaning the rental unit and the \$200.00 cleaning fee represents a small fraction of an amount that would reflect the actual time spent cleaning. The landlord's representative testified that the unit could not be rented for any part of August due to the smoke odour that had to be rectified before it could be rented. He said that claim for lost rental income was limited to a half month because the damage to the rental unit and the need to treat the unit caused the landlord to be delayed in placing the unit on the market beyond what would have been a reasonable turn-around time.

Analysis

The tenant acknowledge in the move-out inspection report that she was responsible for damage caused by her smoking in the rental unit. It turned out that the damage exceeded the landlord's estimate and additional treatment and cleaning was required. With the exception of the claims for the replacement bed and rug and with a qualification as to the cost for painting, I find the landlord's undisputed claims to be reasonable. The landlord has taken a depreciation factor into account in calculating a claim for the flooring damage. I find the approach to be reasonable.

The landlord claimed \$500.00 for a replacement bed and \$250.00 for a replacement rug. These items were used before the tenancy commenced and they have not been replaced. I find that the claims must take into account the used character of the goods. I allow the claim for the bed in the amount of \$250.00 and for the rug in the amount of \$125.00. The chair replacement estimated at \$50.00 I find to be reasonable.

With respect to the claim for smoke treatment and paint, the landlord claimed the sum of \$1,800.00. After a tenancy of one year there is an expectation that some amount of paint work would be required. The smoke odour and damage caused by the tenant significantly added to the work required, but I find that the painting claim should be reduced to reflect an allowance for ordinary wear and tear after a tenancy of one year's duration. I reduced the painting claim to \$1,400.00 to take into account repainting costs due to reasonable wear and tear.

The landlord's claim is allowed as follows:

- | | |
|--|------------|
| • Replacement cost for queen size bed, Ikea: | \$250.00 |
| • Replacement cost for white shag rug, Ikea: | \$125.00 |
| • Partial cost of flooring replacement: | \$800.00 |
| • Paint prep primer block and paint: | \$1,400.00 |
| • Chair replacement, Ikea: | \$50.00 |

• Cleaning fee as provided by lease:	\$200.00
• Ozone treatment:	\$300.00
• Loss of rent for one month, claim for 50% of loss:	\$850.00
Total:	\$3,975.00

The landlord is entitled to recover the \$100.00 filing fee for this application, for a total award of \$4,075.00. I order that the landlord retain the security deposit and pet deposit totalling \$1,750.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$2,225.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord's claim has been allowed in the amount of \$2,225.00 in addition to the security deposit which the landlord will retain..

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: February 14, 2017

Residential Tenancy Branch