



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) by the landlord under the *Residential Tenancy Act* (the “Act”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to retain all or part of the tenant’s security deposit and pet damage deposit, and to recover the cost of the filing fee.

The landlord, landlord agent (the “agent”), tenant and tenant support person appeared at the teleconference hearing and the parties gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that she received the documentary evidence from the landlord and had the opportunity to review that evidence prior to the hearing. The tenant confirmed that they did not serve documentary evidence on the Residential Tenancy Branch or the landlords in response to the landlord’s Application.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 1, 2015 and ended on May 30, 2017 when the tenant vacated the rental unit. Monthly rent in the amount of \$1,150.00 was due on the first day of each month. The tenant paid a security deposit of \$575.00 and a pet damage deposit of \$150.00 for a total of \$725.00 in combined deposits at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim of \$725.00 is limited to that amount but actually totals \$1,036.09 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Oven cleaning and general cleaning	\$300.00
2. Damage repair costs	\$600.00
3. Vinyl flooring (Home Depot receipt)	\$94.09
4. Stove diagnostic charge	\$42.00
TOTAL	\$1,036.09

The parties were advised during the hearing that the landlord's monetary claim was limited to the \$725.00 amount claimed on the Application and that I found it would be prejudicial to the tenant to allow the landlord to amend their monetary claim through the submission of documentary evidence such as receipts to the higher amount of \$1,036.09. In support of my finding is the fact that the landlord did not serve the tenant with an amendment of the landlord's Application for Dispute Resolution. Therefore, in the interests of administrative and procedural fairness the maximum monetary claim before the filing fee is addressed would be \$725.00.

Regarding items 1 and 2, both parties confirmed that an incoming condition inspection report (the "incoming CIR") was completed dated November 9, 2015. According to the incoming CIR, nothing was listed as dirty or damaged and the document was signed by the parties. The landlord submitted colour photo evidence and referred to the photos in support that the tenant did not reasonably clean the rental unit. The landlord referred to the photos and stated that the stove was dirty, fridge was not fully cleaned, and that the rental unit was dirty and that a wall was damaged that required repair. One of the colour photos showed an area on a wall that was clearly repaired. The tenant admitted that she damaged the wall during the tenancy. In support of items 1 and 2, the landlord submitted a receipt of \$600.00 for drywall repairs and painting, and a \$300.00 receipt for cleaning costs.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Items 1 and 2 – Based on the evidence before me, section 37 of the *Act* applies and states:

Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[My emphasis added]

Given the above, I find the tenant breached section 37(2)(a) of the *Act* as I find the tenant failed to leave the rental unit reasonably clean and that the tenant damaged the wall beyond reasonable wear and tear. Therefore, I find the landlord has met the burden of proof and I find the landlord is entitled to the maximum amount of **\$725.00** as claimed. I find that I do not need to consider any of the other items submitted as the landlord is not entitled to claim more than \$725.00 based on the reasons I have stated above.

As the landlord's claim had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

Monetary order – Based on the above, **I find** the landlords have established a total monetary claim as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
Items 1 and 2	\$725.00
Recovery of the cost of the filing fee	\$100.00
Subtotal	\$825.00
<i>Less \$725.00 in combined security deposit and pet damage deposit.</i>	<i>-\$725.00</i>
TOTAL AMOUNT OWING BY TENANT TO LANDLORD	\$100.00

As the landlord continues to hold the tenant's combined deposits of \$725.00 **I authorize** the landlord to retain the tenant's full security deposit of \$575.00 and full pet damage deposit of

\$150.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$100.00** for the balance owing by the tenant to the landlord.

Conclusion

The landlord's claim has merit.

The landlord has established a total monetary claim of \$825.00. The landlord has been authorized to retain the tenant's combined deposits of \$725.00 in partial satisfaction of the landlord's monetary claim.

The landlord is granted a monetary order pursuant to section 67 of the *Act* in the amount of \$100.00 for the balance owing by the tenant to the landlord. The tenant must be served with the monetary order which may also be enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 18, 2017

Residential Tenancy Branch