



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 hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit, compensation for damage of loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The tenant testified that she did not receive a copy of the quote for repairs until August 22, 2011. The landlord believed a copy of the quote had been served as part of the Notice of hearing package; however, the tenant was able to respond to the items claimed and made a written submission prior to the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$733.60?

Is the landlord entitled to compensation in the sum of \$100.00 for damage or loss?

May the landlord retain the deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 1, 2009, a security deposit in the sum of \$400.00 was paid; a \$100.00 pet deposit has been returned to the tenant. Rent was \$800.00 per month, due on the first day of each month. The tenant vacated the unit on March 1, 2011, after giving the landlord notice. There was a written tenancy agreement; a copy was not supplied as evidence.

The parties agreed that neither a move-in or move-out condition inspection report was completed. The unit was new at the start of the tenancy.

The landlord has made the following claim within 15 days of receiving the tenant's written forwarding address:

Carpet cleaning	84.00
Remove shelves above stairs	125.00
Replace kitchen cupboard	255.00
Repair bathroom counter	75.00
Remove shelf in bedroom/paint	125.00
HST	69.60
TOTAL	833.60

The tenant offered to pay \$50.00 for motorcycle storage; the landlord accepted this amount, which will be deducted from the deposit.

The landlord did not supply any verification of the carpet cleaning costs. The tenant's written submission indicated that she agreed to have carpet cleaning costs deducted from her deposit; the tenant did not mention this during the hearing when I determined that the landlord had failed to provide verification of the cost; thus resulting in dismissal of that portion of the claim.

The landlord supplied a copy of an unsigned quote issued on May 16, 2011, for the repairs that have yet to be completed. The tenant agreed that she installed shelves in a stairway area, without the prior consent of the landlord. When the landlord saw the shelves the tenant did admit she should have requested permission to install them, as the landlord was not pleased. The landlord had said they would paint the shelves. A photograph of the shelving was supplied as evidence; indicating they are being used by the current occupant. The landlord does not want the shelves and wishes to remove them.

The tenant acknowledged that she installed a metal wine rack on the end of a section of kitchen cupboards; a photograph of the wine rack was supplied as evidence. The tenant's written submission indicated that the landlord told her the tenancy agreement did not allow her to install such items; however, the tenant stated she had not been given a copy of the contract. The landlord stated the whole cabinet unit requires replacement as the end portion cannot be replaced. The tenant responded that the

landlord was in her unit on a number of occasions, saw the wine rack and never asked her to remove the item.

A photograph of a shelf over the toilet was supplied as evidence. The landlord stated this was a brand new shelf and that the tenant must have placed heavy items on the shelf, as it is now pulling away from the wall. The tenant stated that she placed nothing on the shelf that was bigger than a large container of hand lotion; that the shelf was caulked but not supported properly and began to fall from the wall.

The tenant acknowledged installing a shelf over the window of a bedroom. A photograph of the shelf was supplied as evidence. The landlord wishes to remove this shelf.

The landlord stated they had conversations with the tenant about removal of the shelves; the tenant testified that the landlord had never asked her to remove any of the shelving or the wine rack until after the tenancy had ended. The tenant stated if the landlord had asked her to remove these items she would have complied.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of verification of the cost of carpet cleaning, I considered this portion of the claim during the hearing as unsupported. However, after considering the tenant's written submission I find that the landlord is entitled to compensation in the sum of \$84.00 for carpet cleaning, as the tenant's evidence indicated she had previously agreed to this deduction from her deposit; eliminating the need of the landlord to provide verification of the cost.

The tenant agreed to a \$50.00 deduction from her deposit for storage of her motorcycle.

In relation to the bathroom shelf, there is no evidence before me that the tenant was negligent or intentionally caused damage and I find, on the balance of probabilities, that the repair is not the responsibility of the tenant, but is one of normal wear and tear or construction deficiency.

In the absence of condition inspection reports the landlord must provide a preponderance of evidence in relation to a claim for damage to the unit and any loss suffered as a result.

Residential Tenancy Branch policy suggests:

1. *Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.*
2. *If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and **claim the costs** against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord **may claim the amount by which the value of the premises falls short of the value it would otherwise have had.***

(Emphasis added)

The tenant maintained the landlord had not directed her to return the unit to its original condition. The landlord denied this and stated that the tenant had been told to remove these installations.

If the landlord had viewed the shelving as having contributed to a loss of value of the premises, I would expect the tenant to have been given explicit instructions to remove them. The landlord did not provide the tenant with a written final opportunity to complete a move-out inspection, during which time these issues could have been recorded.

I find that the absence of any written direction that the tenant remove the shelves, fails to support the claim that the alterations resulted in a loss of value to the landlord. The photograph of the shelves over the stairway show them full of the current tenant's belongings; which I find demonstrates some value and use to that new occupant.

In relation to the wine rack, I find that the landlord has failed to demonstrate that the alteration, although not pre-approved, diminished the value of the premises, resulting in a loss to the landlord. Further, the landlord has not incurred costs to repair and despite the submission that they are unable to afford any alterations, if the tenant had been given written direction to rectify the alterations during the tenancy the alterations could have been made by the tenant before the tenancy ended. There is only disputed testimony in relation to what, if any discussion took place in relation to the items installed; therefore, on the balance of probabilities, I find that the tenant was not instructed to make alterations and that during the tenancy the landlord implied they had accepted the alterations.

Therefore, the landlord is entitled to \$50.00, by agreement, for storage of the tenant's motorcycle; plus \$84.00 for carpet cleaning. The balance of the claim is dismissed.

I find that the landlord's application has some merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$184.00, in satisfaction of the monetary claim. The tenant is entitled to return of the balance of the deposit in the sum of \$216.00.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$184.00, which is comprised of carpet cleaning and agreement in relation to storage costs; plus \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$184.00, in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary Order for the balance of the deposit in the sum of \$216.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province 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: August 31, 2011.

Residential Tenancy Branch