



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: **MND, MNSD, 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, to retain the pet and 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 oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord submitted late evidence; a copy of the tenancy agreement. During the hearing the parties did agree to the terms of the agreement.

The tenant was given copies of receipts that supported the landlord's claim. The landlord testified that the Residential Tenancy Branch was served with copies of the receipts and a breakdown of the claim; however, those documents were not before me. I agreed to proceed based upon the acknowledgment of the tenants that they were in possession of the receipts.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages in the sum of \$550.00?

May the landlord retain the deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced on January 1, 2010, rent was \$860.00 due on the first day of each month. A pet deposit and security deposit in the sum of \$120.00 and \$430.00 respectively, were paid at the start of the tenancy. No move-in or move-out condition inspection reports were completed. The agreement included terms requiring the tenants to have the couch professionally cleaned and the carpets steam cleaned.

The tenants vacated the unit on June 30, 2011; within 15 days the landlord applied to retain the deposits.

The landlord has made the following claim:

Cleaning	168.00
Blinds	40.00
Paint supplies	59.67
Paint	94.37
Chair	30.00
TOTAL	649.64

The landlord has claimed only up to the total amount of the deposits.

The tenant acknowledged damage cause by his cat and agreed to compensation for the blinds, the chair and up to \$65.00 for steam cleaning costs.

The landlord stated that the unit was not clean and that a professional cleaning company was hired to clean the oven, bathroom and to do general cleaning.

The tenant confirmed that at the end of the tenancy the landlord was at the home, steam cleaning the carpets. The landlord stated that she could not remove the stains and had to hire a professional company to clean the carpets again and to clean the couch. The tenant confirmed they did not have the couch professionally cleaned.

The tenant confirmed that there were some marks on the walls and that they did place some duct tape above windows. The landlord testified that the unit was newly painted

at the start of the tenancy and that the damage caused by the tape and blue scuff marks throughout the unit required sanding and painting.

There was no dispute in relation to the reliability of the receipts each party had before them.

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.

I find, based on the agreement that carpet cleaning and cleaning of the couch were terms of the tenancy agreement, that the landlord is entitled to costs in the sum of \$257.60; supported by the invoice each party had before them during the hearing.

Based on agreement by the tenant I find that the landlord is entitled to costs for damage caused by the pet to the chair and blinds in the sum of \$30.00 and \$40.00 respectively.

In the absence of condition inspection reports setting out the state of the unit at the start and end of the tenancy and, as a result of the disputed testimony, I dismiss the landlord's claim for cleaning costs.

The tenant acknowledged causing some damage to the walls, by placing tape on the windows. Therefore, in the absence of evidence supporting the total claim for painting materials and paint, I find that the landlord is entitled to a nominal amount of compensation in the sum of \$20.00.

The balance of the landlord's claim is dismissed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Carpet cleaning/couch	257.60	257.60
Blinds	40.00	40.00
Paint supplies	59.67	10.00
Paint	94.37	10.00

Chair	30.00	30.00
TOTAL	649.64	347.60

I find that the landlord's application has partial merit and that landlord is entitled to recover one half of the \$50.00 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 and pet deposit in the sum of \$372.60 in satisfaction of the monetary claim.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposits any balance should be Ordered to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenants are entitled to the balance of the deposit in the sum of \$177.40.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$372.60, which is comprised of \$347.60 in damage to the rental unit and \$25.00 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 and pet deposits in the amount of \$372.60 in satisfaction of the monetary claim.

Based on these determinations I grant the tenants a monetary Order for the balance of the deposits in the amount of \$177.40. 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.

The balance of the landlord's claim is dismissed.

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: October 19, 2011.

Residential Tenancy Branch