



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On January 31, 2014 the Landlord submitted a large amount of documents/photographs to the Residential Tenancy Branch. The Landlord stated that these documents were personally served on January 31, 2014. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

Given that the Landlord filed this Application for Dispute Resolution on October 29, 2013 and the Landlord did not submit any evidence to the Tenant until January 31, 2014, the Tenant was given the opportunity to request an adjournment for the purposes of considering the documents submitted as evidence, which the Tenant declined.

On February 03, 2014 the Tenant submitted documents to the Residential Tenancy Branch. The Agent for the Tenant stated that these documents were personally served on February 03, 2014. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Landlord expressed concern about the timing of the evidence provided to her by the Tenant; however she declined the opportunity to request an adjournment for the purposes of considering the documents submitted as evidence. Given that there was a significant delay in serving of the Landlord's evidence and the Landlord declined the opportunity for an adjournment, I can find no reason to exclude the Tenant's evidence.

No evidence submitted after the start of these proceedings on February 11, 2014 has been considered, as it was submitted after the start of the proceedings.

With the consent of both parties the male Respondent was removed from the Application for Dispute Resolution, as he was not a tenant of the rental unit.

There was insufficient time to conclude the hearing on February 11, 2014 so the matter was adjourned to April 10, 2014. There was insufficient time to conclude the hearing on April 10, 2014 so the matter was adjourned to June 16, 2014, and was concluded on that date.

Both parties were represented at the first two hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord was not represented at the hearing on June 16, 2014 and the hearing proceeded in the absence of the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to retain all or part of the security deposit paid by the Tenant?

Background and Evidence

The Landlord and Tenant agree that this tenancy began on September 03, 2012; that the Tenant agreed to pay monthly rent of \$1,900.00 by the first day of each month; that the Tenant paid a security deposit of \$950.00; and that the Tenant paid a pet damage deposit of \$950.00.

The Landlord and the Tenant agree that the rental unit was jointly inspected on August 30, 2012, at which time a condition inspection report was completed.

The Landlord stated that after the report was completed on August 30, 2012 she took it with her so she could copy the report; that she made two copies of the report; that she signed and dated the report on September 02, 2012; that she provided both reports to her father-in-law and mother-in-law; that her father-in-law and mother-in-law met with the Tenant on September 02, 2012 and provided her with the keys to the rental unit; that a few notes were added to the condition inspection report on September 02, 2012, which were initialled by her father-in-law and the Tenant; and that the Tenant was provided with a copy of the condition inspection report on September 02, 2012.

The Tenant stated that she was not provided with a copy of the condition inspection report that she signed on September 02, 2012 until September 30, 2013. The Landlord and the Tenant agree that on September 15, 2013 the Agent for the Tenant informed the Landlord that the Tenant had not received a copy of the initial condition inspection report; that the Landlord informed him one had been provided; and that on September 30, 2013 the Landlord provided the Tenant with a copy of the report, which the Landlord contends was the second time the report was provided.

The Tenant contends that the Landlord has extinguished the right to claim against the security deposit for damage to the rental unit because the Landlord did not provide the Tenant with a copy of the condition inspection within seven days of the report being completed.

The Landlord and the Tenant agree that this tenancy ended on October 15, 2013; that a condition inspection report was completed on October 15, 2013; and that the Agent for the Landlord signed this report and noted that he did not agree that the report fairly represents the condition of the rental unit.

The Landlord and the Tenant agree that the Tenant provided the Landlord with her forwarding address, in writing, on the final condition inspection report; and that a copy of that report was provided to the Tenant, via email, on October 15, 2013. A copy of this report was submitted in evidence.

The Landlord is seeking compensation, in the amount of \$106.04, for replacing a dishwasher door. The Landlord and the Tenant agree that the door was in good condition at the start of the tenancy.

The Landlord stated that there were marks on the dishwasher door at the end of the tenancy; that her husband made some attempts to clean the door, but stopped the cleaning when they determined the attempts to clean was causing additional damage; that the dishwasher has since been replaced; and that the Landlord hopes to sell the dishwasher, as it is still functional.

The Landlord submitted photographs of the damaged dishwasher door. There is a notation on the condition inspection report that was completed at the end of the tenancy, which shows the door is damaged.

The Agent for the Tenant stated that the male Landlord did tell him during the final inspection that the dishwasher door was scratched; that he looked at the door; and that he could not see any scratches. He contends that the damage depicted in the photograph likely occurred when the Landlord cleaned the door, perhaps because the Landlord was using an improper cleaning substance.

The Tenant submitted a letter from a professional cleaner who cleaned the rental unit at the end of the tenancy. In the letter the cleaner declared that the dishwasher was not damaged when she cleaned the unit; that the photograph of the dishwasher door does not represent the condition of the door at the end of the tenancy; and that the dishwasher door had a sticker on it that could have been easily removed with the appropriate product.

The Landlord is seeking compensation, in the amount of \$711.90, for replacing a bathroom countertop. The Landlord stated that countertop was stained and "bubbled" at the end of the tenancy. The Landlord stated that the countertop was new in 2004.

The Tenant stated that the countertop was not stained at the end of the tenancy but that it did "bubble" after peroxide was spilled on the countertop.

The Landlord and the Tenant agree that the Tenant offered to replace the countertop and the Landlord declined the offer. The Agent for the Tenant stated that he intended to purchase the counter top and to have it installed without the use of a paid professional. The Landlord stated that the Landlord wanted the countertop to be professionally installed so the workmanship was guaranteed.

The Landlord submitted an estimate for replacing the countertop, in the amount of \$711.90, which includes installation. The Landlord submitted an estimate for purchasing a countertop, in the amount of \$344.40, which does not appear to include the cost of installing the sink/plumbing.

The Landlord is seeking compensation, in the amount of \$336.00, for repairing a window frame that was burned during the tenancy. The Landlord stated that she does not know how the window frame was burned. The Tenant stated that the window frame was burned when the sun reflected from a mirror she had left on the counter.

The Landlord submitted an estimate for repairing the window frame, in the amount of \$695.00 plus GST, and the Tenant submitted an estimate for repairing the window frame, in the amount of \$156.00.

The only claim discussed at the hearing on April 10, 2014 was the Landlord's claim for repairing the walls, in the amount of \$682.50. The Landlord and the Tenant agree that the walls of the rental unit were in good condition at the start of the tenancy and that many of the rooms had been newly painted. The Landlord submitted several photographs of the rental unit at the start of the tenancy, in which the walls look to be in good condition.

The Landlord stated that they obtained an estimate for repairing and repainting the wall damage depicted in the photographs. A copy of this estimate, in the amount of \$682.50, was submitted in evidence. The Landlord stated that the entire rental unit was subsequently repainted, at a cost of over \$5,000.00.

The Landlord stated that she did not have copies of the Landlord's photographs with her at the time of the hearing, although she stated that the photographs submitted represent the condition of the walls at the end of the tenancy. She stated that the damage and marks depicted by the photographs all occurred during this tenancy.

The Agent for the Tenant stated that he is a professional drywaller and that he repaired some damage to the walls. He stated that his repairs can be seen in the Landlord's "after" photographs numbered 17, 23, 27, 28, 38, 51, 71, 73, 74, 79, 135, 159-163, 175-179, 184-186, and 189. The Landlord agrees that some damage was repaired, but the repairs were not repainted.

The Agent for the Tenant stated that he did not repaint any of his repairs because the Landlord told him not to paint when the unit was inspected on September 15, 2013. He stated that he informed the Landlord he would "touch up" his repairs and that both the male Landlord and the female Landlord told him not to paint the repairs. He stated that both Landlords were present during the discussion regarding painting.

The Landlord stated that she did not tell the Agent for the Tenant or the Tenant that the repairs did not need to be repainted when the unit was inspected on September 15, 2013. She stated that she did not hear her husband tell the Agent for the Tenant that the repairs did not need to be repainted, and she does not believe her husband told anyone the repairs did not need repainting.

The Landlord stated that when the unit was inspected on October 15, 2013 the parties discussed the damage to the walls, at which point the Agent for the Tenant indicated that he would complete more repairs. She stated that he believed he had three days to complete those repairs. She stated that at that time he was informed that no further repairs could be made, as the tenancy had ended.

The Landlord stated that the Landlord is not seeking compensation for repairing the damaged areas that the Agent for the Tenant has partially repaired. She stated that the Landlord is seeking compensation for repainting those repaired areas and for repairing/repainting any damage to the walls that had not been repaired by the Tenant.

The Landlord argued that even if her husband did tell the Agent for the Tenant that the repairs did not need to be repainted, "touching up" the walls would have been inadequate. She stated that there were so many areas that needed to be repaired that touching up those areas would have been an unsatisfactory repair.

The Agent for the Tenant stated that he either does not recognize the mark/damages depicted in the Landlord's "after" photographs numbered 1-8, 12-16, 18, 20-22, 24, 26, 32, 33, 36, 37, 43, 44, 49, 50, 65, 68, 69, 72, 75-78, 80-84, 86, 87, 89-91, 93, 96, 99, 100, 102-106, 109-112, 120, 122, 128-133, 157, 158, 180-183, 187, 188, and 190; or he considers them to be simply scuff marks. He stated that the walls would have been repaired in these areas if he had noticed the damage, although he overlooked one hole in the wall and he did not, therefore, repair that damage.

The Agent for the Tenant stated that he does recall the blue marks depicted in Landlord's "after" photographs numbered 92 and 107. He stated that he also recognizes the marks/damage in Landlord's "after" photographs numbered 166, 167, 170, 171, 172, 173, and 174. He stated that this damage was not repaired because the areas simply needed to be painted and the Landlord told him he was not allowed to paint.

The Landlord and the Tenant agree that some of the nails/screws were in the walls at the start of the tenancy. The Landlord stated that they were left at some locations where an occupant would typically hang art, and the Landlord is not seeking

compensation for repairing that damage. Specifically, the Agent for the Tenant stated that the holes/nails depicted in the Landlord's "after" photographs numbered 30 were present at the start of the tenancy. He also stated that the holes/nails depicted in the Tenant's photographs numbered 11 and 12 were present at the start of the tenancy. The Landlord agreed that this damage was present at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$225.23, for cleaning blinds. At the hearing on June 16, 2014 the Agent for the Tenant stated that the blinds did not require cleaning at the end of the tenancy. The Landlord did not attend this hearing in support of this claim.

The Landlord is seeking compensation, in the amount of \$337.50, for cleaning. At the hearing on June 16, 2014 the Agent for the Tenant stated that the rental unit did not require cleaning at the end of the tenancy. The Landlord did not attend this hearing in support of this claim.

The Landlord is seeking compensation, in the amount of \$35.47, for replacing a pole used to change light bulbs. At the hearing on June 16, 2014 the Agent for the Tenant stated that the pole was left in the rental unit at the end of the tenancy. The Landlord did not attend this hearing in support of this claim.

The Landlord is seeking compensation, in the amount of \$100.00, to repair a cabinet drawer. At the hearing on June 16, 2014 the Agent for the Tenant stated that he believes this claim relates to some paint rippling inside one of the cabinet drawers. He stated that he does not know how this damage occurred and it could have occurred prior to the start of the tenancy. The Landlord did not attend this hearing in support of this claim.

The Landlord is seeking compensation, in the amount of \$400.00, for repairing laminate flooring. At the hearing on June 16, 2014 the Agent for the Tenant stated that he believes this claim relates to damage to the basement flooring and to flooring in the first floor alcove, which was not damaged at the end of the tenancy. The Landlord did not attend this hearing in support of this claim.

The Landlord is seeking compensation, in the amount of \$700.00, for repairing damaged carpet. At the hearing on June 16, 2014 the Agent for the Tenant stated that the carpet was not damaged during the tenancy. The Landlord did not attend this hearing in support of this claim.

Analysis

Section 23(1) of the *Residential Tenancy Act (Act)* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. On the basis of the undisputed evidence, I find that the parties complied with this obligation when the rental unit was inspected on August 30, 2012.

Section 23(4) of the *Act* stipulates that the landlord must complete a condition inspection report in accordance with the regulations. On the basis of the undisputed evidence, I find that the Landlord complied with this obligation. I note that the inspection report was very detailed.

Section 23(5) of the *Act* stipulates that the landlord and the tenant must both sign the condition inspection report and that the landlord must give a copy of the report to the tenant, in accordance with the *Residential Tenancy Regulation*. The *Residential Tenancy Regulation* requires the landlord to provide the copy within seven days of the report being completed.

There is a general legal principle that places the burden of proving a fact on the person who is alleging the fact where a given allegation forms an essential part of the party's claim. As the Tenant is alleging that the Landlord's right to claim against the security deposit has been extinguished because a copy of the inspection report was not provided to the Tenant within seven days of it being completed on August 30, 2013, the burden of proving this allegation rests with the Tenant.

I find that I have insufficient evidence to determine whether the Landlord complied with the Landlord's obligation to provide the Tenant with a copy of the inspection report within seven days of completing the report. In the absence of evidence that clearly corroborates the Tenant's claim that it was not personally handed to her on September 02, 2012 or that refutes the Landlord's claim that it was personally provided to the Tenant on September 02, 2012, I find that I cannot, with any degree of accuracy, make a determination on that matter.

While I do not find that the Tenant was attempting to mislead me when she declared that she was not provided with a copy of the condition inspection report on September 02, 2012, I am cognizant of the possibility that she simply does not recall being provided with a copy.

In determining this matter I was influenced, to some degree, by the undisputed evidence that a representative of the Landlord returned to the rental unit on September 02, 2012 with at least one copy of the inspection report that was completed on August 30, 2012. I find this fact supports the Landlord's testimony that a copy was provided to the Tenant on that date, as I can think of no reason why an individual would return to the rental unit with a completed condition inspection report, unless the intent was to provide a copy to the Tenant.

In determining this matter I was influenced, to a small degree, by the quality of the condition inspection report that was completed at the start of the tenancy and the conditions under which as it was completed. The report was completed prior to the start of the tenancy, which indicates the Landlord understands and is compliant with the legislation in regards to this report. The report was also very detailed, which indicates that the Landlord takes the obligation to complete a report very seriously. Given that

the Landlord fully complied with these obligations, I find it reasonable to conclude that the Landlord would also comply with other obligations in regards to the report, including providing the Tenant with a copy of the report.

As I am unable to determine, with any degree of certainty, that the Landlord did not comply with section 23(5) of the *Act*, I cannot conclude that the Landlord has extinguished the right to claim against the security deposit for damage to the rental unit.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant damaged the dishwasher door. In reaching this conclusion I was influenced by the testimony of the Agent for the Tenant, who stated that the door was not damaged at the end of the tenancy, and by the written document submitted by the individual who cleaned the rental unit, who noted that the dishwasher door was not damaged, with the exception of a sticker on the door. I was also influenced by the testimony of the Landlord, who stated that the male Landlord's attempt to clean the door was causing damage to the door. I therefore find it possible that at least some of the damage to the dishwasher door, as shown in the photograph, was caused by the Landlord cleaning the door. As the Landlord has failed to establish that the damage to the door was caused by the Tenant, I dismiss the claim for replacing the door.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace or repair the damaged countertop. I find that the Tenant was simply required to ensure the countertop was replaced or repaired and was under no obligation to have it installed by a professional. In the event that countertop was improperly installed by the Tenant, the Landlord would have the right to seek compensation for any repairs that were necessary.

As the Agent for the Tenant declared that he could have had the countertop installed at no cost and did not do so simply because the Landlord told him not to, I find that the Tenant is not obligated to pay installation costs. I do find that the Tenant is obligated to pay for at least a portion of the cost of purchasing the countertop. On the basis of the estimate submitted in evidence by the Landlord, I find that a new countertop could be purchased for \$344.40.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of a countertop is 25 years. The evidence shows that the countertop was approximately 9 years old at the end of the tenancy. I therefore find that the countertop has depreciated by 9/25 and that the Landlord is entitled to 16/25 of purchasing a new countertop. 16/25 of \$344.40 is \$220.42 and I find that the Tenant must pay this amount to the Landlord.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the window frame which was accidentally damaged during the tenancy. Although the damage was not intentional, I find that the damage was caused by the actions of the Tenant and cannot be considered normal wear and tear. On the basis of the estimate submitted in evidence by the Tenant, I find that the damage could be repaired for \$156.80 and that the Tenant is obligated to compensate the Landlord in this amount.

On the basis of the photographs submitted in evidence by the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to fully repair the walls/mouldings that were damaged during this tenancy. I find that these photographs fairly represent the condition of walls/moulding in the rental unit at the end of the tenancy. In reaching this conclusion I was heavily influenced by the Landlord's testimony that the photographs were taken on October 15, 2013 and by the absence of any evidence that refutes that testimony. Although the Agent for the Landlord stated that he did not see the photographs being taken, that is not cause to conclude that the photographs were not taken on that date.

Although the Agent for the Tenant does not specifically recall seeing the marks/damage on many of the photographs submitted by the Landlord, I find that the photographs clearly show the walls/moulding are marked, scratched, or dented in several areas. I find it possible that the Agent for the Tenant did not recall or recognize the marks as "damage" because he considered the marks to be minor.

While I agree that many of the marks/damages are relatively minor, I find that the number of marks/damages cause me to conclude that the damage exceeds normal wear and tear. I therefore find that the Tenant should have repaired all of the damage to the walls/mouldings and that the Landlord is entitled to compensation for repairing/repainting that damage.

I find that the estimate for repairing/repainting the areas not already repaired by the Agent for the Tenant, in the amount \$682.50, is a reasonable estimate to repair the damage depicted by the photographs. I note that repainting two entire rooms was included in this estimate so depreciation costs should be considered.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. The evidence shows that most of the rental unit was newly painted at the start of the tenancy and was approximately one year old at the end of the tenancy. I therefore find that the paint has depreciated by 25% by the end of the

tenancy and that the Landlord is entitled to 75% of the cost of these repairs. 75% of \$682.50 is \$511.87 and I find that the Tenant must pay this amount to the Landlord.

In determining this matter I have placed little weight on the argument that the repairs/damage were not painted because the Landlord told the Agent for the Tenant that he should not paint over his repairs or damaged areas. In reaching this conclusion I was heavily influenced by the absence of independent evidence that corroborates the Agent for the Tenant's testimony in this regard or that refutes the Landlord's testimony in this regard. Whenever a tenant alleges that required repairs were not made because of instructions provided by the landlord, the burden of proving the instructions were provided rests with the tenant.

In determining this matter I find that even if the Tenant did offer to repaint the areas that had been repaired by the Agent for the Tenant, the repair to the walls would have been inadequate. In addition to repainting the repaired areas I find that the Tenant should also have repainted the numerous scratches and marks on the walls that the Agent for the Tenant stated that he does not recall seeing or that he considered to be minor. As the Tenant did not acknowledge during the hearing that these areas needed "repair", I find that it is highly unlikely that these areas would have been touched up with paint.

In determining this matter I find that even if the Tenant did touch up all of the marks/damage on the walls/moulding, the repair would have been inadequate. In my view "touching up" this much damage would have looked extremely unprofessional and that only acceptable repair would be to fully repaint many of the walls/moulding.

I find that the Landlord submitted insufficient evidence to show that the cleaning was required at the end of the tenancy, and I therefore dismiss the claim for cleaning. In reaching this conclusion I was heavily influenced by the testimony of the Agent for the Tenant who stated that the rental unit/blinds did not require cleaning and by the absence of testimony from the Landlord in regards to this claim.

I find that the Landlord submitted insufficient evidence to show that a pole used for changing light bulbs was missing at the end of the tenancy, and I therefore dismiss the claim for replacing this pole. In reaching this conclusion I was heavily influenced by the testimony of the Agent for the Tenant who stated that the pole was left in the rental unit at the end of the tenancy and by the absence of testimony from the Landlord in regards to this claim.

I find that the Landlord submitted insufficient evidence to show that the inside of a cabinet drawer was damaged during the tenancy, and I therefore dismiss the claim for repairing the drawer. In reaching this conclusion I was heavily influenced by the testimony of the Agent for the Tenant who stated that the damage may have been present prior to the start of the tenancy and by the absence of testimony from the Landlord in regards to this claim.

I find that the Landlord submitted insufficient evidence to show that the laminate flooring was damaged at the end of the tenancy. In reaching this conclusion I was heavily influenced by the testimony of the Agent for the Tenant who stated that the damage was not present at the end of the tenancy and by the absence of testimony from the Landlord in regards to this claim.

I find that the Landlord submitted insufficient evidence to show that the carpet was damaged at the end of the tenancy. In reaching this conclusion I was heavily influenced by the testimony of the Agent for the Tenant who stated that the carpet was not damaged during the tenancy and by the absence of testimony from the Landlord in regards to this claim.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$939.09, which is comprised of \$889.09 for damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the \$950.00 security deposit paid by the Tenant, leaving a balance of \$10.91.

The Landlord must return the remaining \$10.91 of the security deposit and the \$950.00 pet damage deposit. Based on these determinations I grant the Tenant a monetary Order for the amount \$961.91. 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: June 18, 2014

Residential Tenancy Branch

