Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPB, MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession; monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord stated that he did not intend to apply for an Order of Possession, and that application is, therefore, not being considered at these proceedings.

The Landlord stated that on July 15, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents he submitted to the Residential Tenancy Branch on July 15, 2014 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On July 25, 2014 the Landlord submitted additional documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were served to the Tenant with the other documents mailed on July 15, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On July 31, 2014 the Landlord submitted photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these photographs were served to the Tenant with the other documents mailed on July 15, 2014. The Tenant acknowledged receipt of these photographs and they were accepted as evidence for these proceedings.

The Tenant submitted no documentary evidence.

There was insufficient time to conclude the hearing on January 20, 2014 so it was adjourned. The hearing was reconvened on February 17, 2015 and was concluded on that date.

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

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and lost revenue, and to retain all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit on September 28, 2013; that she agreed to pay monthly rent of $450.00 by the first day of each month; and that she paid a security deposit of $225.00.

The Landlord and the Tenant agree that the Landlord provided the Tenant with a letter, dated May 23, 2014, in which he informed the Tenant he was ending the tenancy "immediately" and that she must vacate the rental unit by June 30th. Witness #4, who is a personal friend of the Landlord`s, stated that she was present when this document was served.

The Tenant stated that on May 23, 2014 she also gave the Landlord written notice of her intent to vacate the rental unit by June 30, 2014. Witness #3, who is the Tenant`s sister, stated that she was present when this notice was handed to the Landlord.

The Landlord stated that he did not receive this written notice, although he did receive verbal notice of the Tenant's intent to vacate the unit by June 30, 2014. The parties agree rent was paid for June of 2014.

The Landlord stated that when he went to the rental unit on June 25, 2014 or June 26, 2014 he noted that the Tenant's vehicle was gone and that many of her items from the yard had been moved. He stated that he looked into the rental unit through the windows and could not see any personal possessions. He stated that on the basis of his observations, he concluded that the rental unit had been abandoned, although they keys had not been returned.

The Tenant stated that she was in the process of moving her belongings on June 25, 2014 and June 26, 2014, although she had not fully vacated the rental unit and she had not returned the keys to the rental unit.

The Landlord and the Tenant agree that a condition inspection report was completed at the start of the tenancy, a copy of which was submitted in evidence. The Landlord and the Tenant agree that a condition inspection report was completed at the end of the tenancy, a copy of which was submitted in evidence. The parties agree that the Tenant did not sign the condition inspection report that was completed at the end of the

tenancy, although she did write on it to indicate she disagreed with the content of the report.

The Landlord and the Tenant agree that a “Furniture List” was completed at the start of the tenancy, a copy of which was submitted in evidence. This list outlines the furniture that was provided with the rental unit. The parties agree that the Landlord has made notations on the list regarding some items that were not returned at the end of the tenancy. The Tenant did not sign or initial the notations regarding the missing items and she does not agree with the notations added.

The Landlord is seeking compensation, in the amount of $65.00, for towing fees. The Landlord stated that he has never given the Tenant permission to park her vehicle at the side of the residential complex. He stated that the location of the vehicle interfered with access to other rental units in the residential complex; that he has asked her on several occasions to move the vehicle from this location; and that on three occasions he directed her, in writing, to remove the vehicle from that location. The Landlord submitted three letters, dated May 08, 2014, May 16, 2014, and May 24, 2014, which he stated were given to the Tenant in regards to the vehicle.

The Tenant stated that she had verbal permission from the Landlord to park her vehicle at the side of the residential complex. She acknowledged receipt of the letters dated May 08, 2014, May 16, 2014, and May 24, 2014. She stated that on various occasions in May she discussed her vehicle with the Landlord and she informed him she would not be moving her vehicle, as she had his verbal permission to park at that location.

The Landlord submitted photographs of the subject vehicle. He stated that the other occupants of the residential complex have to pass the vehicle to access their rental unit if they are accessing their units from the rear laneway. He stated that, given the limited space, the location of the vehicle interferes with the other occupants’ quiet enjoyment of the residential complex. The Tenant did not dispute that other occupants have to pass this vehicle to access the residential complex from the rear laneway.

Witness #1, who is a personal friend of the Tenant, stated that the Tenant typically parked her vehicle on the area beside her rental unit, which she described as being a grassy, rocky area. She stated that she has seen vehicles parked in this location prior to the Tenant moving into this rental unit.

The Landlord stated that he made arrangements to have the vehicle towed on May 26, 2014, for which he was quoted $110.25. He stated that he received a refund of $45.25, which he believes was because it took less time than was anticipated. The Landlord submitted a receipt to show he paid towing fees of $65.00.

The Tenant stated that she was present when the tow truck arrived at the rental unit on May 26, 2014 and she would not consent to have her vehicle towed. She stated that the vehicle was never towed. The Landlord stated that it is entirely possible the vehicle

was not towed on May 26, 2014, as he was not present when the tow truck arrived at the residential complex.

The Landlord is seeking compensation, in the amount of $10.20, for replacing a lock that was cut by the Tenant. The Landlord stated that he went to the residential complex on June 26, 2014 and, after determining that the rental unit had been abandoned, he placed a chain across the area where the Tenant had previously parked her vehicle. He stated that he placed this chain in front of the parking area to prevent anyone from parking at this location. He stated that the Tenant could still move property out of the rental unit by either lifting or stepping over the chain.

The Tenant stated that when she returned to the residential complex on June 26, 2014 there was a chain preventing her from driving onto the residential property. She stated that the chain was placed in a manner that prevented her from driving anywhere onto the property, not just from accessing her former parking space. She stated that she cut the lock securing the chain because it was interfering with her efforts to vacate the rental unit.

Witness #2, who is a personal friend of the Tenant, stated that the chain that was placed on the residential property in June prevented the Tenant from parking in her usual parking space. He stated that the chain was locked to a post that was attached to the residential complex and a post that was attached to the fence on the opposite side of the parking area. He stated that the chain interfered with the Tenant's attempts to move her property, as property had to be carried out to the laneway and had to be lifted over/under the chain

The Landlord is seeking compensation, in the amount of $3.93, for replacing a lock. The Landlord stated that the Tenant was provided with a lock for a personal storage locker at the start of the tenancy and that it was not returned at the end of the tenancy. The Tenant stated that a lock for her personal storage locker was not provided at the start of the tenancy and was, therefore, not returned at the end of the tenancy.

The Landlord is seeking compensation, in the amount of $10.00, for discarding boards and wire from the yard of the rental unit. The Landlord stated that he removed these items on June 25, 2014 or June 26, 2014 after he concluded that the rental unit had been abandoned. The Tenant stated that she intended to move the boards and wire from the yard prior to the end of the tenancy on June 30, 2014.

The Landlord is seeking compensation, in the amount of $220.96, for installing turf. The Landlord and the Tenant agree that during this tenancy the dug out some grass and planted gardens. The Tenant stated that she had verbal permission to plant the gardens and the Landlord stated she did not have permission to plant gardens.

Witness #1 stated that the Tenant informed her that she had permission from the Landlord to plant gardens. Witness #4 stated that the Tenant did not have permission from the Landlord to plant gardens.

The Landlord is seeking compensation, in the amount of $20.00, for discarding sod that the Tenant placed beside the house when she dug out the grass to plant gardens. He stated that he discarded the sod on June 25, 2014 or June 26, 2014 after he concluded that the rental unit had been abandoned. The Tenant stated that she had intended to clean the yard prior to the end of the tenancy on June 30, 2014.

The Landlord submitted photographs of the garden areas. The Landlord stated that he had sod delivered and it was placed in the garden areas. The Landlord submitted a receipt for the cost of the turf, in the amount of $120.96, but he did not submit a receipt of the cost of delivery, which he stated was $100.00. He stated that he paid the delivery charge in cash and did not receive a receipt.

The Landlord is claiming compensation, in the amount of $449.69, for painting the rental unit and compensation for the 75 minutes he spent moving the fridge, stove, and other items in preparation for painting. The Landlord stated:

- that the Tenant painted a tulip on the bathroom wall
- that the Tenant painted all of the ceilings in the rental unit, including a dark trim on the ceiling
- that all of the walls in the rental unit needed to be repainted because there were numerous holes in the walls consistent with hanging art
- that the rental unit has one bedroom, one bathroom and an open kitchen/living room
- that the rental unit was last painted in October or November of 2012.

The Landlord submitted several photographs of the walls/ceilings. The Landlord submitted receipts to establish the painting costs were incurred.

The Tenant stated that she painted the trim on the ceilings; she painted the ceiling in the “main area” and the “sleeping area” and she painted a tulip on the bathroom wall. The Tenant stated that she made some of the holes in the walls for the purposes of hanging art but that many of the holes were present at the start of the tenancy.

The Landlord is claiming compensation, in the amount of $193.14, for repairing exterior siding. The Landlord submitted photographs of the exterior siding which appears to be damaged near the ground. The Landlord speculates this was damaged by the Tenant when she was digging in the area.

The Tenant stated that she weeded in the damaged areas by hand and with a hand trowel. She stated that when she was removing tall grass from the base of the house she observed the damaged siding. She contends it was damaged prior to her weeding the area.

The Landlord stated that the wall was not damaged prior to the start of the tenancy and that he could tell it was not damaged as the grass was kept short. The Tenant stated that the grass beside the house was quite tall at the start of the tenancy and she could not, therefore, notice any damage to the lower part of the siding.

Witness #4 stated that her daughter lived in the residential complex a few years prior to the Tenant moving into the rental unit, so she was frequently at the rental unit during that time. She stated that since her daughter moved she has been on the property about 2 times each year, either to visit a neighbour or to help the Landlord with cleaning. She stated that the siding was not damaged prior to the start of the tenancy.

The Landlord is claiming compensation, in the amount of $45.00, for reattaching the kitchen countertop. The Landlord and the Tenant agree that when the rental unit was inspected at the end of the tenancy the Landlord was able to lift the kitchen countertop from the cabinet. The Tenant stated that she did not notice the kitchen countertop was loose prior to the final inspection and that she did not damage it during her tenancy. The Landlord submitted one photograph of the kitchen countertop, which merely shows that it is no longer attached to the cabinet.

The Landlord is claiming compensation, in the amount of $18.25, for replacing a boot tray, one metal pot, and a silverware tray. The Landlord and the Tenant agree that these items were provided with the rental unit. The Landlord contends they were missing at the end of the tenancy and the Tenant contends they were left in one of the storage lockers.

The Landlord is claiming compensation, in the amount of $1.69, for replacing a battery in the smoke alarm. The Landlord and the Tenant agree that there was a battery in the smoke alarm at the start of the tenancy. The Landlord stated that the battery was missing at the end of the tenancy. The Tenant stated that she does not recall if the battery was intact at the end of the tenancy. The Landlord submitted a receipt that corroborates the claim that a battery was purchased for $1.69.

The Landlord is claiming compensation, in the amount of $30.00, for repairing the carpet. The Landlord and the Tenant agree that the Tenant cut away a piece of carpet near the entry to the rental unit. The Tenant stated that she cut the carpet because water pooled in that area during inclement weather. The Landlord submitted a receipt that corroborates the claim that $30.00 was paid to repair the carpet. The Landlord submitted photographs of the damaged carpet.

The Landlord is claiming compensation as a result of the condition of the rental unit at the end of the tenancy. He stated that he had a new tenant who intended to move into the rental unit on July 01, 2014, who opted not to move in until the rental unit had been painted, the countertop had been reattached; and the carpet had been replaced. The Tenant argued that the new tenant could have moved into the rental unit.

The Landlord submitted a letter from the tenant who wanted to move into the rental unit on July 01, 2014, in which she declared that it was "impossible" for her to occupy the rental unit because of the nature of the paint job; because the countertop was detached; and because the carpet needed to be re-installed.

The Landlord stated that the new tenant moved into the rental unit on July 08, 2014, after the rental unit had been painted and the repairs completed. He stated that he paid the new tenant $125.00 in cash for storing her belongings and that he lost rent for the first seven days of the month, in the amount of $101.60.

The Landlord is claiming compensation, in the amount of $20.00, for purchasing a medicine cabinet plus $15.00 for installing it. The Landlord stated that he spent about 45 minutes replacing the cabinet.

The Landlord and the Tenant agree that the medicine cabinet was removed from the bathroom wall by the Tenant during the tenancy, without the permission of the Landlord. Tenant contends it was left in the storage locker and the Landlord contends he did not locate it in the storage locker. The Landlord stated that he purchased a used cabinet, for which he paid $20.00. A copy of a receipt for the cabinet was submitted.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of $450.00.

On the basis of the undisputed evidence, I find that the Landlord gave the Tenant a letter, dated May 23, 2014, in which he informed the Tenant he was ending the tenancy "immediately" and that she must vacate the rental unit by June 30th. I find that this letter did not serve to end this tenancy, as it does not comply with sections 46, 47, 48, or 49 of the *Residential Tenancy Act (Act*), which specify how a landlord can end a tenancy.

On the basis of the undisputed evidence, I find that the Tenant informed the Landlord that she did intend to vacate the rental unit by June 30, 2014. I have made no finding on whether the Tenant gave proper notice to end the tenancy by June 30, 2014, as that issue is not relevant to the issues in dispute at these proceedings.

I find that the Landlord did not act reasonably when he concluded that the rental unit had been abandoned on June 25, 2014 or June 26, 2014. In reaching this conclusion I was heavily influenced by the undisputed evidence that both parties understood the tenancy was ending by June 30, 2014. Given that rent had been paid for June and the keys had not been returned to the Landlord, I find it presumptuous of the Landlord to conclude that the rental unit had been abandoned, even if he noted that some, or all, of the Tenant's personal belongings had been moved. As it is not uncommon for tenants to move property gradually and to wait until the end of the month to clean the rental unit,

I find that the Landlord should have waited until the end of the June of 2014 before concluding that the Tenant had abandoned her rights to the rental unit.

There is a general legal principle that places the burden of proving a fact on the person who is alleging the fact, not on the person who is denying the fact. In these circumstances, the burden of proving that she has a verbal agreement to park her vehicle at the side of the residential complex rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that she had a verbal agreement to park her vehicle at the side of the residential complex. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates her testimony that there is such an agreement and that refutes the Landlord's evidence that there is no such agreement.

As the Tenant has failed to establish she had permission to park her vehicle at this location, I find that the Landlord acted reasonably when he asked the Tenant to remove the vehicle from this location. In reaching this conclusion I was heavily influenced by the undisputed evidence that other occupants of the residential complex must pass this vehicle to access their rental units and by the photographs submitted in evidence, which show that the location of the vehicle would make it difficult to carry large items past this vehicle.

On the basis of the letter dated May 08, 2014 I find that the Landlord advised the Tenant to "remove the tarp & stuff that is killing the grass under the truck". I find that this letter further directed the Tenant to remove the truck from the property if she was unable to comply with the Landlord's requests.

On the basis of the letter dated May 16, 2014 I find that the Landlord advised the Tenant that he will be towing her vehicle because she has not complied with his direction remove her property from the "other tenants yard" (sic). It is clear in this letter that the Landlord believes the vehicle needs to be removed so the other occupants of the residential complex can enjoy the yard.

On the basis of the letter dated May 24, 2014 I find that the Landlord advised the Tenant that he will be towing her vehicle on May 26, 2014 if it is not removed by that date. It is clear in this letter that the Landlord believes the vehicle and property in the area needs to be removed so he can cut the lawn and so the other occupants of the residential complex can enjoy the yard.

As the Landlord's request for the removal of the vehicle was reasonable and it was made in writing on three occasions, I find that the Landlord acted reasonably when he arranged to have the vehicle towed on May 26, 2014. I find that the Tenant should have complied with the Landlord's request to move the vehicle and that the Landlord is therefore entitled to costs associated to having the vehicle removed. Even if the vehicle was not towed, I find that the Landlord is entitled to compensation for the cost of having the tow truck dispatched to the complex, which appears to be $65.00.

On the basis of the undisputed evidence, I find that the chain the Landlord erected on June 26, 2014 served to prevent the Tenant from parking in the area she had previously parked her vehicle and that it also interfered with the Tenant's access to the rental unit, as it required her to walk over/under the chain while using the residential property.

I find that the Landlord breached section 30(1) of the *Act* when he restricted her access to the residential property by installing a chain. As the Tenant contends the chain interfered with her efforts to move out of the rental unit, I find it was reasonable for her to move the chain by cutting the lock. I therefore dismiss the Landlord's claim for replacing the lock.

When making a claim for damage to the rental unit, a landlord bears 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 was provided with a lock for her personal storage locker at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a notation on the condition inspection report completed at the start of the tenancy, that corroborates the Landlord's testimony that a lock was provided or that refutes the Tenant's testimony that a lock was not provided. As the Landlord has failed to establish that the Tenant was provided with a lock at the start of the tenancy, I find that the Landlord is not entitled to compensation as a result of a lock not being returned at the end of the tenancy.

Section 37 of the *Act* requires a tenant to leave the rental unit reasonably clean at the end of the tenancy. I find that the Tenant was unable to remove the wire, wood, and sod that were left in the yard by the end of the tenancy on June 30, 2014 because the Landlord had already removed them on June 25th or 26th. As the Landlord acted prematurely and thereby prevented the Tenant from complying with section 37 of the *Act*, I find he is not entitled to compensation for removing the sod, wood, or wire from the residential property.

Section 37 of the *Act* requires a tenant to leave the rental unit undamaged at the end of the tenancy, except for reasonable wear and tear. When a tenant alters a rental unit or residential property without authority from the landlord, the tenant is obligated to restore the unit/property to its original condition, even if the tenant believes the alteration is an improvement. The burden of proving the tenant had permission to alter the unit/property rests with the Tenant.

I find that the Tenant submitted insufficient evidence to establish that she had permission to remove grass for the purposes of planting gardens. In reaching this conclusion I was heavily influenced by the absence of direct evidence that corroborates

the Tenant's testimony that she had permission to plant a garden or that refutes the Landlord's testimony that she did not have permission to plant a garden. I therefore find that the Tenant breached section 37 of the *Act* when she did not restore the yard to the original condition.

In determining this matter I have placed no weight on the testimony of Witness #1, who stated that the Tenant told her she had permission from the Landlord to plant gardens nor have I placed any weight on the testimony of Witness #4, who stated that the Tenant did not have permission from the Landlord to plant gardens. I find this contradictory hearsay evidence to be of limited value, as it does not help establish whether an agreement was reached.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord has established that he paid $120.96 for turf but he had failed to establish that he paid $100.00 for delivery of the turf. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's statement that he paid $100.00 for delivery I therefore find that the Landlord is only entitled to compensation for the cost of the turf, which was $120.96.

In the absence of evidence to show that the Tenant had permission to paint the ceiling or to paint a tulip on the bathroom wall, I find that the Tenant breached section 37 of the *Act* when she did not restore the bathroom wall/ceiling to their original condition and that the Landlord is entitled to compensation for repainting these areas.

On the basis of the undisputed evidence, I find that the Tenant made some holes in the wall for the purposes of hanging art. As tenants typically hang art, I find that these holes must be considered normal wear and tear. As tenants are not obligated to repair normal wear and tear, I find that the Tenant is not obligated to paint any walls that required painting as a result of holes of this nature.

The Landlord has submitted receipts to show that he paid $449.69 to paint the entire rental unit. I am not granting compensation for painting the entire unit but I find it reasonable to award compensation of the basis of the number of surfaces painted. The undisputed evidence is that there are a total of 3 rooms, which equates to approximately 12 walls and 3 ceilings. I therefore based the award on my determination that the Landlord is entitled to compensation for painting 3 ceilings and 1 wall, which is approximately 4/15 of the cost of repainting, which is $119.91.

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 <u>not</u> 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 interior paint is four years. The evidence shows that the rental unit was painted in the October or November of 2012. I therefore find that the paint was approximately 1.5 years old at the end of the tenancy and that it had depreciated by 37.5%. I therefore find that the Landlord is entitled to 62.5% of the cost of repainting the ceilings and one wall, which is $74.94.

As compensation has only been granted for painting the ceiling and one wall in the bathroom, I find that the Landlord is not entitled to the time he spent moving the fridge and stove and other miscellaneous preparation work, as that labour is largely unrelated to the cost of painting the ceiling and one bathroom wall.

I find that the Landlord submitted insufficient evidence to establish that the Tenant damaged the exterior siding. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Landlord's testimony that the siding was undamaged at the start of the tenancy or that refutes the Tenant's testimony that the grass beside the house was too high to determine if the siding was damaged when her tenancy began.

In determining that the Landlord submitted insufficient evidence to establish that the Tenant damaged the siding, I was also influenced by the photographs submitted in evidence. In my view, much of the damage to the siding is not consistent with the type of damage that would be expected when siding is struck with a shovel or similar tool, although I cannot speculate on how the damage would have occurred.

In determining that the Landlord submitted insufficient evidence to establish that the Tenant damaged the siding, I placed little weight on the testimony of Witness #4. Even if I accepted her testimony that the siding was not damaged prior to the start of the tenancy, this Witness cannot establish that the siding was not damaged by someone else living or working on the residential property.

Section 32 of the *Act* requires a tenant to repair damage to a rental unit that is caused by the actions or neglect of a tenant. As the Landlord has failed to establish that the Tenant damaged the siding, I find that the Tenant is not obligated to repair the siding.

I find that the Landlord submitted insufficient evidence to establish that the kitchen countertop was damaged during the tenancy as a result of the actions or neglect of the Tenant. While I accept that the countertop is not attached to the cabinet, the Landlord has submitted no evidence to show that physical force has been applied to the countertop/cabinet. In my view, there would be evidence of physical damage to the countertop or the cabinets if physical force had been applied to the countertop. Given there is no evidence of physical force, I find it entirely possible that the countertop was either never attached to the cabinet or it was improperly attached and has simply become detached through normal use. For these reasons I dismiss the claim for repairing the countertop.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant did not return a boot tray, one metal pot, and a silverware tray. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the items were not returned or that refutes the Tenant's testimony that they were returned. As the Landlord has failed to establish that the items were not returned at the end of the tenancy, I dismiss the claim for replacing these items.

On the basis of the testimony of the Landlord and the absence of evidence to the contrary, I find that the battery for the smoke alarm that was provided at the start of the tenancy was missing at the end of the tenancy. I therefore find that the Tenant breached section 37 of the *Act* when she did not replace the battery and that the Landlord is entitled to the $1.69 he paid to replace the battery.

On the basis of the undisputed testimony, I find that the Tenant cut a piece out of the carpet during her tenancy. I therefore find that the Tenant breached section 37 of the *Act* when she did not repair the carpet and that the Landlord is entitled to the $30.00 he paid to repair the carpet. In awarding compensation for this claim I have placed no weight on the Tenant's submission that she cut the carpet because water was pooling in that area. In my view, cutting the carpet is not a reasonable method of remedying this deficiency. Rather than cutting the carpet, the Tenant should have had the Landlord repair the problem with water and, if he refused, she should have filed an Application for Dispute Resolution seeking an Order requiring the Landlord to repair the problem.

I find that the person who intended to move into the rental unit on July 01, 2014 did not have the right to compensation as a result of the colours in the rental unit. When the Tenant viewed the rental unit she should not have agreed to enter into a tenancy agreement if she did not like the paint colours or the tulip that was painted on the wall in the bathroom.

I find that the person who intended to move into the rental unit on July 01, 2014 did not have the right to refuse to move into the rental unit because the countertop needed to be reattached and a small piece of carpet needed to be installed. I find that these are extremely minor repairs that could have been completed while the Tenant was occupying the rental unit.

Although I accept the Landlord's evidence that he compensated the new tenant for not moving into the rental unit on July 01, 2014, I cannot conclude that he was obligated to compensate the new tenant. I therefore find that the Tenant is not obligated to compensate the Landlord for any compensation he paid to the new tenant.

On the basis of the undisputed evidence, I find that the Tenant removed a medicine cabinet from the bathroom wall during the tenancy and that she did not have permission to remove it. Although I accept the Tenant's evidence the cabinet was left in the storage locker, I also accept the Landlord's evidence that he did not locate it in the

storage locker, as it is possible the Landlord discarded it without recognizing it as his cabinet.

I find that the Tenant failed to comply with section 37 of the *Act* when she did not reattach the medicine cabinet to the wall. Had the Tenant reattached the cabinet, as was required, there is no chance it would have been misplaced and a new cabinet would not have been required. I therefore find that the Landlord is entitled to the cost of replacing the cabinet, which was $20.00. I also find the Landlord is entitled to $15.00 in compensation for the time he spent replacing the cabinet.

I note that in determining these matters I have placed little weight on the condition inspection report that was completed at the end of the tenancy, as the Tenant did not agree with the contents of the report. This report therefore, in my view, has no greater value than the testimony provided by the Landlord.

I note that in determining these matters I have placed little weight on the notations made on the "Furniture List" regarding items that were missing at the end of the tenancy, as the Tenant did not agree with the notations. These notations therefore, in my view, have no greater value than the testimony provided by the Landlord.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim of $327.59 in damages and $50.00 in compensation for the fee paid to file this Application for Dispute Resolution, and I grant the Landlord a monetary Order for $377.59. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: February 19, 2015

Residential Tenancy Branch