Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NewDawn Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF, O

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; to recover the fee for filing this Application for Dispute Resolution; and for "other".

The Agent for the Landlord stated that on April 28, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

On May 01, 2014 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were sent to the Tenant, via registered mail, on May 02, 2014.

Legal Counsel for the Tenant stated that the Tenant did receive a large package of evidence from the Landlord, but two of the pages are missing. He stated that the images in the package appear to be black and white photocopies of photographs, which have little detail. The Agent for the Landlord acknowledged that colour photographs were submitted to the Residential Tenancy Branch and black and white photographs were sent to the Tenant.

Legal Counsel for the Tenant requested an adjournment for the purposes of having the Landlord provide the missing documents and colour photographs. The Landlord was given the opportunity to proceed with the hearing with the understanding that the photographs would not be considered as evidence unless the Tenant had been served with identical copies. The Landlord preferred an adjournment. In the interests of procedural fairness, I found it appropriate to grant the request for an adjournment, as the Tenant has the right to view identical copies of all of the documents/photographs submitted in evidence.

The Landlord was directed to serve the Tenant with an identical copy of the evidence package that has been submitted to the Residential Tenancy Branch, including documents that were submitted to the Residential Tenancy Branch on May 07, 2014 and August 12, 2014. At the reconvened hearing on November 04, 2014 the Agent for the Landlord stated that identical copies of these documents were mailed to the Tenant on August 27, 2014. The Tenant acknowledged receipt of this evidence package and it was accepted as evidence.

On September 26, 2014 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. At the reconvened hearing on November 04, 2014 the Agent for the Landlord stated that identical copies of these documents were served to the Tenant on September 25, 2014. The Tenant acknowledged receipt of this evidence package, with the exception of document #10.

The Tenant was advised that document #10 is simply a description of some photographs the Landlord submitted in evidence, which the Landlord described as a "condition report". The parties were advised that the hearing of November 04, 2014 would proceed, as this document has no significant evidentiary value**.**

Although the evidence submitted on September 26, 2014 was submitted after the hearing had begun, I accepted it as evidence for these proceedings, as I determined they may be relevant to the issues in dispute. In determining that it was reasonable to accept these documents I was heavily influenced by the fact the hearing of August 25, 2014 was adjourned to November 04, 2014, giving the Tenant ample time to consider the additional evidence.

At the reconvened hearing on November 04, 2014 the Tenant stated that on October 27, 2014 the Tenant submitted documents and digital evidence to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Landlord on October 28, 2014.

The Landlord acknowledged receipt of these documents but argued that they should not be considered as they were not served to him within the timelines established by the Residential Tenancy Branch Rules of Procedure. The Landlord declined the opportunity for an adjournment for the purposes of considering the documents he received on October 28, 2014. He stated that he does not need more time to consider the documents, he simply believes they should be excluded because they were not served in accordance with the Rules of Procedure. He stated that he opted not to open the digital evidence, as he fears they may have a virus.

At the reconvened hearing on November 04, 2014 the Landlord and the Tenant were advised that I was not in possession of the evidence that was served to the Landlord on October 28, 2014 and that I would be unable to consider it at the hearing on November 04, 2014. The parties were advised that the hearing on November 04, 2014 would proceed; that the Tenant would be given the opportunity to discuss these documents at the hearing; and that an adjournment would be considered during the hearing if the content of the documents was in dispute.

Legal Counsel for the Tenant stated that it is possible that the evidence submitted to the Residential Tenancy Branch may have been inadvertently filed with a separate Application for Dispute Resolution that the Tenant has filed.

There was insufficient time to conclude the hearing on November 04, 2014 so the matter was adjourned. At the conclusion of the hearing Legal Counsel for the Tenant requested permission to resubmit the documents that were served to the Landlord on October 28, 2014**.** For reasons outlined in my interim decision of November 05, 2014, the Tenant was given permission to resubmit these documents.

On November 26, 2014 the Tenant provided the Residential Tenancy Branch with a copy of the evidence that was served to the Landlord on October 28, 2014 and it was accepted as evidence for these proceedings. I note that I will be considering the digital evidence submitted by the Tenant even though the Landlord has opted not to view that evidence.

As we were discussing the photographs at the hearing on January 21, 2015, Legal Counsel for the Tenant described two of the photographs that had been served by the Landlord. The description provided caused me to conclude that the photographs I have may not be precisely the same quality as the photographs that were served to the Tenant. As the photographs in my possession do not appear to be professional photographs, but rather colour images printed on regular paper, I find it entirely possible that the images served to the Tenant after the hearing on November 04, 2014 are not identical in quality to the images in my possession, simply because they were printed at a different time.

As it is imperative that all parties have the opportunity to view images of equal quality, I adjourned the hearing on January 21, 2015 for the purposes of ensuring all parties are viewing similar images. At the hearing the Agent for the Landlord was directed to:

- produce digital images of all the photographs he submitted in evidence
- create a list of all the digital images submitted, which describes each photograph
- number the photographs on the list in a manner that is consistent with the numbers on the photographs already submitted in evidence
- provide a copy of the digital images and the list to the Residential Tenancy Branch by January 31, 2015
- provide a copy of the digital images and the list to Legal Counsel for the Tenant by January 31, 2015.

At the hearing on January 21, 2015 the Agent for the Landlord was directed to re-serve page 10 of his evidence package to Legal Counsel for the Tenant.

I determined it was appropriate to adjourn the hearing on January 21, 2015, in large part, because I have no reason to conclude that the Agent for the Landlord is deliberately attempting to interfere with these proceedings or that he is willfully attempting to misrepresent evidence. I find it more likely that the confusion regarding the photographs arises from his limited experience with the dispute resolution process and the fact that he is not represented by legal counsel in these matters.

An interim decision was written on January 22, 2015 in an effort to ensure the Agent for the Landlord understands the directions provided to him at the hearing on January 21, 2015. In this interim decision the Landlord was clearly informed that the digital images submitted are the only photographs that will be considered when rendering a decision in this matter.

On January 30, 2015 the Landlord submitted three documents to the Residential Tenancy Branch. The documents include a receipt apparently signed by Legal Counsel for the Tenant and two pages which describe digital evidence submitted by the Landlord. I note that the Residential Tenancy Branch Fax Sheet indicates that 12 pages of evidence were submitted however this appears to be an administrative error on the part of a Residential Tenancy Branch employee, who appears to have inadvertently included documents for an unrelated matter.

On February 03, 2015 the Landlord submitted digital evidence to the Residential Tenancy Branch.

At the hearing on February 18, 2015 the Agent for the Landlord stated that the evidence submitted to the Residential Tenancy Branch on January 30, 2015 and February 03, 2015 was delivered to Legal Counsel's office on January 30, 2015. Legal Counsel acknowledged receiving this evidence on January 30, 2015, including page 10 of the Landlord's initial evidence package.

Although the Landlord did not comply with the timelines established for submitting the digital evidence to the Residential Tenancy Branch, he did comply with the timelines for submitting it to the Tenant. As the Tenant was not disadvantaged by the delay in submitting it to the Residential Tenancy Branch and the delay has no real impact on these proceedings, the evidence was accepted, with some provisions.

I note that I have not accepted digital image #036. The Agent for the Landlord stated that this as an enlarged photograph of the image located at page 24 of the Landlord's initial evidence package. As this is not a duplicate of an image that was previously submitted as evidence, it is not accepted as evidence for these proceedings.

I note that I have not accepted the digital image titled "Sarah jpg. The Agent for the Landlord stated that this image is similar to the photograph located at page 35 of the Landlord's initial evidence package but he believes he may have inadvertently submitted a digital image of a different photograph. As this does

not appear to be a duplicate of an image that was previously submitted as evidence, it is not accepted as evidence for these proceedings.

I note that the only images submitted by the Landlord that I will be considering when rendering my decision are the digital images that have been accepted as evidence. I find that it would be unfair to consider any images not submitted in digital format, as I cannot be certain that the Tenant has identical copies of the images. I find this to be reasonable and fair, given the numerous opportunities the Landlord has been given to provide the Tenant with exact duplicates of the images submitted.

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

Preliminary Matter

At the hearing on December 16, 2014 and again on January 21, 2015 Legal Counsel for the Tenant argued that this hearing should not proceed as there is an outstanding monetary Order.

The Landlord and the Tenant agree that the Residential Tenancy Branch granted the Tenant a monetary Order, dated April 09, 2014. The parties agree that the Landlord has not yet paid this money to the Tenant. The file numbers relating to this monetary Order appear on the first page of this decision. Legal Counsel for the Tenant argued that this Application for Dispute Resolution should not proceed as the monetary Order has not yet been paid.

I do not find that this Application for Dispute Resolution is an abuse of the dispute resolution process. Rather, I find that it is a legitimate attempt to claim compensation for losses incurred as a result of the tenancy.

Given that the monetary Order is dated April 09, 2014 and the Landlord filed this Application for Dispute Resolution on April 28, 2014, I find it would be unreasonable to refuse an Application for Dispute Resolution simply because the Landlord did not pay a monetary Order within 19 days of the date it is issued.

I find this to be particularly true when the Landlord's claims include costs associated to a claim that the Tenant failed to comply with an Order of Possession that was also dated April 09, 2014.

I find it is also true when the Landlord is holding a security deposit and pet damage deposit which he is not entitled to apply to damage to the rental unit or to other losses incurred as a result of the tenancy unless the Landlord files an Application for Dispute Resolution.

I find this matter should proceed even though the monetary Order has not been paid.
Section 85(1) of the *Act* provides the Tenant with the means of enforcing the monetary Order. The Tenant's ability to enforce the monetary Order is not impacted by these proceedings and I do not find these proceedings should be used as a means of enforcing the monetary Order.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit; for compensation for bailiff fees; for compensation for additional people occupying the rental unit; for compensation for utilities; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit on July 13, 2012 and that they subsequently entered into a new tenancy agreement for a fixed term, the fixed term of which ended on June 30, 2014. A copy of the tenancy agreement and addendum were submitted in evidence.

The Landlord and the Tenant agree that the Tenant was required to pay monthly rent of $1,400.00, that she paid a security deposit of $600.00, and that she paid a pet damage deposit of $600.00. The parties agree that this was a furnished rental unit.

The Landlord and the Tenant agree that a condition inspection report was completed on July 24, 2012, a copy of which was submitted in evidence.

The Landlord and the Tenant agree that the rental unit was jointly inspected on April 16, 2014. The Agent for the Landlord stated that he completed an inspection report for the unit on that date. The Landlord and the Tenant agree that this report was not shown to the Tenant and she did not sign the report.

The Agent for the Landlord stated that his relationship with the Tenant had deteriorated by the end of the tenancy. He stated that he found her behaviour unpredictable and threatening, so he wanted an independent witness to be present during the final inspection on April 16, 2014. The Agent for the Landlord stated that the Landlord hired the bailiff to be present during the inspection, for which the Landlord is seeking compensation of $143.01. The Tenant argued that the expense was not necessary so she should not be obligated to reimburse the Landlord for this expense.

The Landlord and the Tenant agree that on April 09, 2014 the Landlord was granted an Order of Possession for the rental unit, which declared that the Tenant must vacate the rental unit not later than two days after the Order was served upon the Tenant.

The Agent for the Landlord stated that on April 12, 2014 he placed a copy of the Order of Possession in a vehicle that was occupied by the Tenant. The Tenant stated that she did not read the document that was placed in her vehicle on April 12, 2014.

The Agent for the Landlord stated that on April 15, 2014 the Landlord obtained a Writ of Possession for the rental unit. The Landlord and the Tenant agree that the Writ of Possession was executed on April 16, 2014 and that the Tenant vacated the rental unit on that date.

The Landlord is seeking compensation, in the amount of $120.00, for the cost of obtaining the Writ of Possession. The Landlord submitted a copy of the Writ of Possession and a receipt that corroborates that it cost $120.00 to obtain the Writ of Possession.

The Landlord is seeking compensation, in the amount of $493.01, for the cost of having a bailiff execute the Writ of Possession. The Landlord submitted a copy of an invoice from a bailiff that shows the Landlord was charged $493.01for this service.

The Tenant argued that the bailiff fees of $493.01 are excessive, as the rental unit is not 102 kms from the bailiff's office. The Agent for the Landlord stated that he does not know the distance from the bailiff's office to the rental unit, although it takes approximately 35 minutes to drive to the rental unit from Kelowna. The Agent for the Landlord stated that he does not know how the bailiff's invoice was calculated but the Landlord paid the invoice.

At the hearing the Landlord withdrew the claim of $800.00 for lost revenue.

The Landlord and the Tenant agree that hot water was included in the cost of the rent. The Landlord applied for $460.00 in compensation for excessive use of hot water. At the hearing the Agent for the Landlord reduced the amount of the claim to $212.00.

The Agent for the Landlord stated that there are two 40 gallon hot water tanks in the residential complex, one of which is heated by solar power. He stated that the hot water tanks supply hot water to his residence, to the rental unit, and to another suite in the residential complex. He stated that prior to March of 2014 there had never been a shortage of hot water in the residential complex.

The Agent for the Landlord stated that on almost every day in March of 2014 the hot water in the two tanks was depleted, which he speculates was because the Tenant was pouring hot water down the drain. He stated that he has a water recycling system that recycles bath water and when he examined the plumbing in March he noted that the water waste pipe was hot. He stated that the water shortage sometimes occurred when the occupant of the second suite was not at home and when nobody in his residence was using an excessive amount of water.

The Tenant stated that she did take a lot of baths and did laundry in March of 2014, but she denies purposely draining the hot water tanks. She contends that there were a variety of problems with the water during her tenancy, which may account for the absence of hot water in March, and that she ran out of hot water approximately two times per month. The Agent for the Landlord stated that the water system has been repaired and/or maintained on occasion during the tenancy, but none of those issues can be responsible to the lack of hot water in March of 2014.

The Landlord is seeking $1,965.00 in compensation for additional people living in the rental unit. The Agent for the Landlord stated that the Tenant had additional occupant(s) in the rental unit for 131 days. The Tenant stated that she has had company but nobody was living in the rental unit with her. The Agent for the Landlord stated that there is nothing in the tenancy agreement that requires the Tenant to pay additional rent if more than one person occupies the rental unit.

The Landlord is seeking compensation of $34.60 for replacing a bracket for a television. The Agent for the Landlord stated that the Tenant used his wall bracket to install her television on the wall and that she took it with her at the end of the tenancy. The Tenant stated that the wall bracket belonged to her so she took it with her at the end of the tenancy.

The Tenant submitted a digital copy of a letter, which she stated was from a friend who helped her remove this bracket from her previous residence and install it at the rental unit. As the Residential Tenancy Branch Rules of Procedure do not allow parties to submit printable documents digitally, I have not considered this document when determining this matter, although I acknowledge the Tenant's testimony in regards to the content of the document.

The Landlord is seeking compensation of $225.00 for repairing a screen door. The Landlord contends that the Tenant's dog damaged the screen door. The Tenant stated that the Agent for the Landlord's dog caused the damage.

The Landlord submitted digital image #22, which is an image of a screen door with a tear in it. He stated this photograph was taken on April 16, 2014. The Tenant does not dispute this testimony.

The Landlord and the Tenant agree that the Landlord's dog periodically came to this screen door. The Agent for the Landlord stated that he does not believe his dog would have caused the damage as his dog, although it is large, is not rambunctious. The Tenant stated that the Agent for the Landlord's dog often scratched at the screen when the dog came to this door, and that she witnessed the dog damage the door.

The Tenant submitted a digital image of the Landlord's dog at her door. The Landlord could not respond to this image, as he has opted not to view the Tenant's digital evidence.

The Landlord submitted a letter, dated March 13, 2014, in which the author stated that while he was a guest in the Tenant's home between June and September of 2013 he observed "dogs" running freely on the residential property.

The Landlord submitted an estimate for repairing the screen door, which the Agent for the Landlord stated has not yet been repaired. The Tenant argued that the quote is for repairing a "custom" screen door and that the damaged door was not a "custom" door.

The Landlord is seeking compensation of $7.99 for replacing a kitchen drain plug. The Agent for the Landlord stated that the plug was missing at the end of the tenancy and the Tenant stated that it was left in the rental unit at the end of the tenancy.

The Landlord is seeking compensation for repairing a bedframe, which the Landlord contends was damaged during the tenancy. The Landlord and the Tenant agree that during this tenancy the Tenant temporarily vacated the rental unit for two weekends, at which time the Landlord rented the rental unit to a third party. The Tenant stated that she noticed the damage to the frame after she vacated the rental unit for the purposes of a third party renting the unit from the Landlord.

The Landlord is seeking compensation for repairing the couch, which the Landlord contends was damaged during the tenancy. The Landlord submitted digital image #28 which shows there is a tear in a seam of the hide-a-bed. The Landlord and the Tenant agree that the damage was reported to the Landlord. The Agent for the Landlord stated that the damage was not repaired as he believed the Tenant's dog caused the damage.

The Landlord is seeking compensation for replacing a space heater. The Landlord submitted digital image #41 of the space heater, which indicates it has marks that could be rust stains. The Agent for the Landlord stated that the Tenant left the heater outside, which caused it to rust.

The Agent for the Landlord stated that the photograph of the heater was taken on April 16, 2014. The Tenant contends that this photograph was taken sometime prior to April 16, 2014.

The Tenant stated that she did periodically leave the space heater outside. She stated that the photograph submitted by the Landlord was taken before she cleaned the heater and that she cleaned the space heater at the end of the tenancy. The Tenant submitted a digital video recording which she contends shows the heater is in clean condition.

The Landlord submitted an online advertisement for a space heater, which he stated has not yet been replaced. The Tenant argued that the space heater advertised is different than the heater provided with the tenancy.

The Landlord is seeking compensation for replacing bedding that the Landlord contends was ripped during the tenancy. The Agent for the Landlord stated that the Tenant permitted her dog to lie on the bed, which he speculates was the cause of the damage.

The Landlord submitted digital image #37 of the ripped bedding, which he stated was taken on April 16, 2014. The Tenant stated that she does not believe digital image #37 was taken on April 16, 2014, as she left this bedding in a closet, rather than on the bed.

The Tenant stated that the bedding was torn when she washed it in the washing machine. The Landlord and the Tenant agree that the Tenant informed the Landlord that the washing machine had torn the bedding and some personal clothing. The Agent for the Landlord submitted a document from a refrigeration repair person who declared that he could find no issues with the washer or dryer in the rental unit.

The Landlord submitted a receipt that indicates a new duvet cover was purchased for $180.90. The Landlord submitted an advertisement, which shows a duvet can be purchased for $140.00. The Tenant stated that the damaged bedding was not a duvet/duvet cover, but simply a filled comforter.

The Landlord is seeking compensation for replacing bedding that the Agent for the Landlord alleges was so dirty it needed to be replaced. The Tenant stated that she cleaned all the bedding at the end of the tenancy and that it did not need replacing.

Both parties submitted digital images of the bedding. Digital images 30 and 33 show some hair on bedding. The Landlord stated that he took these two photographs on April 16, 2014. The Tenant does not dispute that the photographs were taken on April 16, 2014.

The Landlord submitted an online advertisement for a mattress cover. The Tenant argued that the mattress cover is larger and of better quality than the cover that was provided with the tenancy.

The Landlord submitted a receipt for a duvet cover and an online advertisement for a duvet. The Tenant argued that the bedding was a prefilled comforter and not a duvet and cover, which are typically more expensive.

The Landlord is seeking compensation for replacing a foot stool that the Landlord contends was damaged during the tenancy. The Tenant stated that there are marks on the stool which were caused by a water jug she stored on the stool. The Agent for the Landlord stated that some of the dents disappeared from the stool but some of the marks are still on the stool.

Both parties submitted digital images of the footstool, which appears to have numerous small nicks/dents on it. The Landlord stated that his digital image #23 was taken on April 16, 2014, which the Tenant does not dispute.

The Agent for the Landlord stated that he was able to find an estimate of $400.00 to replace this footstool, although he stated he only paid approximately $100.00 for the item. He stated the stool has not yet been replaced.

The Landlord is seeking compensation of $65.00 for replacing an ornamental bird cage that the Landlord contends was missing at the end of the tenancy. The Tenant acknowledged this was broken during her tenancy.

The Landlord submitted an online estimate for replacing the bird cage, in the amount of $65.00. The Agent for the Landlord stated that the bird cage was purchased for approximately $75.00 in 2011 and that it was of similar quality to the one in the online estimate. The Tenant contends that the online estimate is for a better quality bird cage than the one she broke.

The Landlord is seeking compensation for replacing a propane tank for a barbecue. The Agent for the Landlord stated that a propane tank was provided with the rental unit and was missing at the end of the tenancy. The Tenant stated that she had to use her own tank as one was not provided with the unit.

The Landlord is seeking compensation for repairing the wall where the Tenant's television was mounted. The Agent for the Landlord stated that he spent approximately 2 hours repairing the wall. The Tenant contends the damage to the wall was normal wear and tear.

The Landlord submitted a digital image #21 which depicts the nature of the damage to the wall, which he stated was taken on April 16, 2014. The Tenant does not dispute the date the photograph was taken.

The Landlord is seeking compensation for cleaning the rental unit. The Tenant contends that she cleaned the rental unit prior to vacating and that her video demonstrates the unit was clean.

At the hearing on January 21, 2015 the Agent for the Landlord estimated that he spent 3-4 hours cleaning the rental unit, which included removing pet hair from furniture, bedding, and drapes, washing the walls with bleach to sanitize the unit as a result of the pet hair, cleaning the oven, and power washing the patio.

At the hearing on February 18, 2014 the Agent for the Landlord estimated that he spent 30 minutes cleaning the oven; 60 minutes power washing the patio; and 3 or 3.5 hours cleaning pet hair from the walls, bedding, furniture, and drapes.

The Tenant argued that it should not have taken an hour to power wash a patio that is approximately 8'X10'. The Agent for the Landlord stated that his estimate of time included setting up the power washer and cleaning the power washer at the end of the job.

The Tenant argued that it should not have taken 3 hours to clean the pet hair shown in the digital images, as it simply needed to be vacuumed. The Agent for the Landlord stated that his estimate of time included time he spent attempting to clean the hair from the bedding before it was discarded.

Legal Counsel for the Tenant argued that I should draw a negative inference on the fact that the Agent for the Landlord's estimate of the time it took to clean that he provided on January 21, 2015 was different than the estimate he provided on February 18, 2015.

The Landlord submitted digital images #28, 29, 30, and 73, which show pet hair on furniture and bedding. The Agent for the Landlord stated that all of these photographs were taken on April 16, 2014. When the digital images were individually discussed at the start of the hearing on February 18, 2015 the Tenant did not disputed that these photographs were taken on April 16, 2014 however much later in the hearing she argued that they were taken two weeks after the tenancy ended. It is unclear to me how she would know they were taken two weeks after the tenancy ended.

The Tenant stated that there was no hair on the walls or drapes. The Agent for the Landlord acknowledged that he has submitted no images to show there was pet hair on the walls or drapes.

The Tenant contends that some of the pet hair may have been deposited when the Tenant temporarily vacated the rental unit for two weekends for the purposes of the Landlord renting it to a third party. The Agent for the Landlord stated that neither of the third parties was given permission to have a pet in the rental unit, although he acknowledged that he was not at the residential complex on one of the weekends so it is possible those guests had a pet without his knowledge/consent.

The Agent for the Landlord stated that he personally cleaned the rental unit after one of the weekends the unit was occupied by a third party and that he had it professionally cleaned after the weekend the unit was occupied by a third party. He stated he did not inspect the rental unit after it was professionally cleaned.

The Tenant argued that a chair in the rental unit appears to have been damaged by a cat, which indicates there were animals in the rental unit either prior to, or during, her tenancy. The Agent for the Landlord stated that there he does not believe there have ever been pets in the rental unit, with the exception of the Tenant's dog; that the chair was used when he purchased it; and that the chair was damaged when he purchased it.

The Tenant argued that the pet hair could have been deposited by the Agent for the Landlord's dog, who she cared for on occasion during the tenancy. The Agent for the Landlord stated that he did not ask the Tenant to care for his dog inside her rental unit and that if his dog was inside her unit it was at the invitation of the Tenant. The Tenant acknowledged that the Agent for the Landlord did not ask her to allow his dog inside the rental unit; that she did allow his dog inside the rental unit; and that she could have cared for his dog without allowing the dog inside the rental unit.

The Agent for the Landlord stated that the oven needed additional cleaning. The Landlord submitted a digital image #31 of the oven door, which shows some dirt on the glass of the oven door. The Agent for the Landlord stated that this photograph was taken on April 16, 2014, which the Tenant does not dispute.

The Tenant stated that she cleaned the oven at the end of the tenancy and she does not recall there being spots on the glass of the oven door. She contends that her video shows the oven is clean.

The Agent for the Landlord stated that the concrete patio was stained at the base of a post where the Tenant's dog frequently urinated. The Tenant stated that her dog did regularly urinate at the base of the post; that the Agent for the Landlord's dog also urinated in this area; that she frequently cleaned the area; and that she cleaned it at the end of the tenancy. The Agent for the Landlord stated that is dog did not urinate in this area.

The Landlord submitted a digital image #42, which shows a stain on the concrete. The Agent for the Landlord stated that this photograph was taken on April 16, 2014. At the hearing on January 21, 2015 the Tenant argued that this photograph was taken during her tenancy, as her dog's paw can be seen in the photograph. The Landlord stated that the photograph was taken while the bailiff was present, before the Tenant's dog left the property. At the hearing on February 18, 2015 the Tenant did not dispute that the photograph was taken on April 16, 2014.

The Landlord stated that he does not have receipts for any of the items he originally purchased for the rental unit, as he did not claim them as business expenses at that time and did not retain them for that purpose.

The Tenant stated that the Agent for the Landlord offered to give her $200.00 if she would agree to allow him to keep the security deposit and agree not to enforce the monetary Order that she was awarded on April 09, 2014. The Agent for the Tenant stated that he offered the Tenant $600.00 if she would agree not to enforce the monetary Order that she was awarded on April 09, 2014. The parties agree that the Agent for the Landlord advised the Tenant he would file an Application for Dispute Resolution if she did not agree to his settlement offer.

Legal Counsel for the Tenant argued that the Landlord was attempting to coerce the Tenant, who has some emotional and physical challenges, into accepting the settlement offer. The Agent for the Landlord argued that this claim was not filed out of spite or vindictiveness, although he believes the Tenant filed her previous Application for Dispute Resolution for vindictive reasons.

Legal Counsel for the Tenant argued that a negative inference should be drawn from the fact the Landlord is claiming compensation for items that have not actually been replaced.

Legal Counsel for the Tenant argued that the Agent for the Landlord should not be considered a credible witness, as some of his evidence was inconsistent; including when photographs were taken and how many hours he spent cleaning the unit.

Analysis

On the basis of the undisputed evidence, I find that on April 12, 2014 the Agent for the Landlord placed a copy of the Order of Possession in a vehicle that was occupied by the Tenant. Although the Tenant stated that she did not read the document that was placed in her vehicle, she does acknowledge that a document was placed in her vehicle on that date. I find that this document was served to her on April 12, 2014, in accordance with section 71(2)(b) of the *Residential Tenancy Act (Act).* I find that the Tenant cannot avoid her legal obligations by simply refusing the read a document that is provided to her.

On the basis of the undisputed evidence, I find that the aforementioned Order of Possession declared that the Tenant must vacate the rental unit not later than two days after the Order was served upon her. As the Order was served to the Tenant on April 12, 2014, I find that she was required to vacate the rental unit by April 14, 2014.

On the basis of the undisputed evidence, I find that the Tenant did not vacate the rental unit by April 14, 2014. Section 57(2) of the *Act* stipulates that a landlord may not take actual possession of a rental unit

occupied by an overholding tenant unless the landlord has a Writ of Possession. As the Tenant did not vacate the rental unit on April 14, 2014, I find that the Landlord acted reasonably and responsibly when the Landlord obtained and executed a Writ of Possession.

As the Tenant did not comply with the Order of Possession that required her to vacate the renal unit by April 14, 2014, I find that the Tenant must pay the costs of the Landlord obtaining and executing the Writ of Possession, which is $120.00 for court costs and $493.01 for bailiff fees.

In determining this matter I have placed little weight on the Tenant's submission that the bailiff fees were excessive. Even if I were to accept that a round trip to the rental unit from the bailiff's office is less than 102 kms, I find it entirely possible that the distance included a trip to/from the court house, which would account for the additional mileage charged. In the absence of evidence that clearly shows the fees were excessive, I cannot conclude that a court appointed bailiff is charging unreasonable fees.

A landlord is required to complete a condition inspection report at the end of a tenancy. I am aware of nothing in the *Act* that requires a tenant to compensate the landlord for the cost of completing that report. In the event the Landlord determined it was necessary to have an independent witness present during the final inspection that was conducted on April 16, 2014, I find that the Landlord is responsible for paying for the costs of that witness.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if damage or loss results from the tenant not complying with the *Act* or the tenancy agreement. I am not aware of any section of the *Act* that requires a tenant to treat a landlord with courtesy or respect during a tenancy. I would therefore be unable to conclude that the Tenant breached the *Act* even if I concluded that the Tenant was abusive or threatening toward the Landlord during the tenancy. As I have been unable to conclude that the Landlord needed to hire a witness to be present during the final inspection as a result of the Tenant breaching the *Act*, I dismiss the claim of $143.01 for having a bailiff present during the final inspection.

I am aware of nothing in the *Act* that requires a tenant to compensate a landlord for using an excessive amount of hot water or electricity when those utilities are included with the monthly rent payment.

In an addendum to the tenancy agreement there is a term that requires the Tenant to "exercise conservation" in relation to hot water usage. Section 6(3)(c) of the Act stipulates that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. I find that the term of the tenancy agreement that requires the Tenant to "exercise conservation" of hot water is not enforceable, as it does not clearly communicate the consequences of the Tenant using a large quantity of hot water.

As there is nothing in the *Act* that requires a tenant to compensate a landlord for using an excessive amount of hot water when it is included in the rent and the tenancy agreement does not inform the Tenant of the consequences of using an excessive amount of hot water, I would be unable to conclude that the Tenant breached the *Act*/tenancy agreement even if I concluded that the Tenant intentionally used an excessive amount of hot water. I therefore dismiss the Landlord's claim of $212.00 for excessive use of hot water.

Section 13(2)(iv) of the *Act* stipulates that a tenancy agreement must specify if the rent varies with the number of occupants and, if it does, the agreement must specify the amount by which it varies. On the basis of the testimony of the Agent for the Landlord, I find that there is nothing in the tenancy agreement that requires the Tenant to pay additional rent if more than one person occupies the rental unit.

Section 40 of the *Act* authorizes a landlord to increase the rent when additional occupant(s) are living in the rental unit, only if there is a term in the tenancy agreement that authorizes this rent increase. As there is nothing in the agreement that requires the Tenant to pay additional rent if more than one person occupies the rental unit, I find that the Landlord would not have the right to seek additional rent even if I concluded that the

Tenant was permitting another person to live with her in the rental unit. I therefore dismiss the Landlord's claim for compensation for additional people living in 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.

Section 37 of the *Act* requires tenants to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear.

I find that the Landlord submitted insufficient evidence to establish that the Landlord provided the Tenant with a bracket to mount her television to the wall. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Agent for the Landlord's testimony that he provided her with a bracket or to refute the Tenant's testimony that the bracket belonged to her. As the Landlord has failed to meet the burden of proving the loss, I dismiss the claim for replacing this bracket.

I find that the Landlord submitted insufficient evidence to establish that the Tenant's dog damaged the screen door**.** In reaching this conclusion I was influenced by the undisputed evidence that the Landlord's dog did periodically come to the door of the rental unit. I was further influenced by the absence of evidence to corroborate the Agent for the Landlord's speculation that the Tenant's dog damaged the door or to refute the Tenant's testimony that she saw the Landlord's dog damage the door. As the Landlord has failed to meet the burden of proving the Tenant's dog damaged the door, I dismiss the claim for repairing the screen door.

I find that the Landlord submitted insufficient evidence to establish that a kitchen drain plug was missing at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Agent for the Landlord's testimony that it was missing or to refute the Tenant's testimony that it was left in the rental unit. As the Landlord has failed to meet the burden of proving the loss, I dismiss the claim for replacing the drain plug.

On the basis of the undisputed evidence, I accept that the bedframe was scratched during the tenancy. As the rental unit was not inspected immediately before and immediately after the Tenant temporarily vacated the rental unit for two weekends for the purposes of the Landlord renting the rental unit to a third party, I find it entirely possible that the bedframe was damaged by another person occupying the rental unit. As the Landlord has submitted insufficient evidence to show that the Tenant damaged the bedframe, I dismiss the Landlord's claim for repairing the bedframe.

On the basis of the undisputed evidence, I find that a seam in the hide-a-bed was ripped. On the basis of the photographs submitted in evidence, I find that damage of this nature can occur through normal use and is not indicative of abuse or neglect. As tenants are not obligated to repair damage arising from normal wear and tear, I dismiss the Landlord's claim for repairing the hide-a-bed.

On the basis of the video evidence submitted by the Tenant, I find the heater was reasonably clean at the end of the tenancy. Although the video of the heater is not taken from particularly close range, it does show that the heater was left in reasonably clean condition. Even if I were to conclude that there the few stains on the heater, as depicted by the Landlord's photographs, were present at the end of the tenancy, I would dismiss the claim for replacing the heater, as there is no evidence that the heater needed replacing as a result of those minor stains.

On the basis of the undisputed evidence, I find that bedding was torn during this tenancy. Even if I were to accept the Tenant's explanation that the bedding was damaged by the washing machine, I find it most likely that the damage was the result of operator error than a problem with the washing machine. In reaching this conclusion I was influenced, in part, by the declaration of the service technician who could

find nothing wrong with the washing machine. In reaching this conclusion I was influenced, in part, by my personal knowledge that overloading a washing machine can result in damage to clothing, etc.

I find that the Tenant failed to comply with section 37 of the *Act* when she failed to repair the damaged bedding. 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 failed to establish the true cost of replacing the damaged bedding.

In determining the true cost of the bedding has not been established I was influenced by the testimony of the Tenant, who stated that the bedding was a prefilled comforter, rather than a duvet, and by the photographs of the bedding which corroborates that testimony. As prefilled comforters are typically less expensive than duvets and duvet covers, I find the costs related to a duvet and duvet cover that were submitted in evidence have little probative value. As the Landlord has submitted insufficient evidence to establish the cost of replacing a prefilled comforter, I award nominal damages in the amount of $20.00.

After viewing the digital images of the bedding submitted in evidence by both parties, I find that although there may have been some dog hair on the bedding, it was not so dirty that it needed replacing. I find that with reasonable effort the bedding could have been cleaned and rendered usable. In determining this matter I note:

- that the image of the torn bedding submitted in evidence demonstrates that this item is clean
- that some of the images of the bedding submitted in evidence by the Landlord are of very poor quality and do not establish that a large amount of hair was left in the bedding
- that one image submitted by the Landlord shows hair in the protective cover of the hide-a-bed, however this item does not appear to have been cleaned prior to the photograph being taken.

As I have determined the bedding could likely have been cleaned, I dismiss the claim for replacing the “dirty” bedding.

I find that the Tenant failed to comply with section 37 of the *Act* when she failed to repair the damage to the footstool. On the basis of the undisputed evidence, I find that the stool was damaged as a result of the Tenant storing a water jug on it. As the stool is not designed for supporting a water jug, I find that the damage exceeds normal wear and tear.

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. Given that the Landlord was only able to find evidence of the price of a footstool that cost 400% more than the damaged footstool, I find that this evidence has little probative value. As the Landlord has submitted insufficient evidence to establish the cost of replacing the footstool, I award nominal damages in the amount of $20.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37 of the *Act* when she failed to repair or replace the birdcage that was broken during her tenancy. On the basis of the testimony of the Landlord and the online advertisement, I accept that the birdcage cost more than $65.00 when it was purchased and that it could be replaced for $65.00. I therefore find that the Landlord is entitled to compensation of $65.00 for the birdcage.

In determining this matter I have placed little weight on the Tenant’s submission that the birdcage is not worth $65.00, as her testimony is speculative and not based on personal knowledge of the cost of the item.

I find that the Landlord submitted insufficient evidence to establish that a propane tank was provided with the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Agent for the Landlord’s testimony that one was provided, such as a detailed condition

inspection report, or to refute the Tenant's testimony that one was not provided. As the Landlord has failed to meet the burden of proving the loss, I dismiss the claim for replacing the propane tank.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37 of the *Act* when she did not repair the holes in the wall that were the result of her television being mounted on the wall. I find that holes caused by hanging art on a wall is normal wear and tear but holes caused by hanging heavy objects, such as televisions, exceeds normal wear and tear. I based this conclusion, in part, on the digital image submitted by the Landlord, which shows the holes were of a significant size. I therefore find that the Landlord is entitled to compensation of $40.00 for the approximately 2 hours spent repairing the damage, at a rate of $20.00 per hour.

On the basis of the digital images submitted in evidence by the Landlord, I find that additional cleaning was required to remove pet hair from the furniture and bedding.

I find that the Tenant has submitted insufficient evidence to show that any other pets occupied the rental unit with the knowledge and consent of the Landlord. Although it is possible that a third party who occupied the rental unit for a weekend during this tenancy could have had a pet in the rental unit without the knowledge/consent of the Landlord, there is no evidence to support that speculation.

I find that even if the third party had a pet in the rental unit for one weekend, it is highly unlikely that this pet would have deposited the amount of hair shown in the digital images. The amount of hair that can be seen in the image is not consistent, in my view, with the amount of hair that would be deposit by a pet that was in the rental unit for a brief period. I find, on the balance of probabilities, that the majority of pet hair in the rental unit at the end of the tenancy was left by the Tenant's pet or pets she permitted into the rental unit.

I find that even if the photographs of the pet hair were taken 2 weeks after the end of the tenancy, as the Tenant contends, or they were taken on April 16, 2014, I would still conclude that the pet hair had accumulated during the tenancy, as I find it highly unlikely this amount of hair would have accumulated in the two weeks after the tenancy ended.

On the basis of the undisputed evidence that the Agent for the Landlord's testimony that he did not ask the Tenant to care for his dog and that she could have cared for his dog without allowing it inside the rental unit, I find that the Tenant was responsible for cleaning any hair left in the rental unit by the Agent for the Landlord's dog.

I find that the Agent for the Landlord provided a reasonable explanation for how the chair in the rental unit was damaged and that the damage does not establish that a cat has been in the rental unit.

I find that the Landlord submitted insufficient evidence to show there was pet hair on the walls or drapes. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that there was hair on the walls/drapes or that refutes the Tenant's testimony that there was no hair on the walls/drapes. I therefore find that the Landlord is not entitled to compensation for cleaning the walls/drapes.

On the basis of the digital image submitted by the Landlord, I find that the oven door required additional cleaning. In determining the cleanliness of the oven, I have placed no weight on the digital recording submitted by the Tenant. The digital images of the oven submitted by the Tenant are of poor quality and do not, in my view, establish that the oven door was properly cleaned.

Although I find that the Tenant's video does show that the rental unit was left in generally clean condition, it does not establish that the furniture and bedding did not have pet hair on them. This is largely due to the fact the areas in need of cleaning were not recorded at close proximity.

I find that the Tenant failed to comply with section 37 of the *Act* when she did not remove all the pet hair from the furniture and bedding provided with the rental unit and when she did not fully clean the oven. I therefore find that the Agent for the Landlord is entitled to compensation for the time he spent cleaning these areas.

I find that the Landlord submitted insufficient evidence to establish that the Tenant was entirely responsible for the stain on the patio concrete. Although the Agent for the Landlord contends that his dog never urinates on this spot, I find that to be unlikely, given the Tenant has cared for the Agent for the Landlord's dog and dogs are prone to urinating in areas other animals have marked. As the Landlord has failed to establish that the Tenant's dog is solely responsible for the stain on the concrete, I find that the Landlord is not entitled to compensation for cleaning this area.

On the basis of the testimony provided by the Agent for the Landlord I find that he spent approximately 30 minutes cleaning the oven. Given the photograph of the condition of the oven I find this to be a reasonable estimate. I therefore find that the Landlord is entitled to compensation of $10.00 for the 30 minutes the Agent for the Landlord spent cleaning the oven, at an hourly rate of $20.00.

On the basis of the testimony provided by the Agent for the Landlord and in the absence of any direct evidence to the contrary, I find that he spent approximately 3 hours cleaning the walls, bedding, drapes, and furniture. As I am only granting compensation for cleaning the bedding and the furniture, I find it reasonable to grant compensation of $30.00, which represents 90 minutes at an hourly rate of $20.00.

In determining the amount of compensation awarded for cleaning, I have not drawn a negative inference on the fact that the Landlord's estimate of the time it took for cleaning changed between the hearing on January 21, 2015 and February 18, 2015. During both hearings the Agent for the Landlord was asked to estimate the amount of time he spent cleaning, as there is no evidence that he recorded the hours he spent cleaning in April. I find the estimates provided on February 18, 2015 are likely more accurate, as those estimates were provided after he considered the amount of time he spent completing specific tasks.

I have not drawn a negative inference from the fact the Agent for the Landlord filed this Application for Dispute Resolution after the Tenant declined his offer of money in exchange for her not enforcing the monetary Order that she was awarded on April 09, 2014. In my view it is entirely reasonable to attempt to settle a dispute prior to filing an Application for Dispute Resolution and to subsequently file an Application for Dispute Resolution if an agreement cannot be reached. I do not find that this establishes the Landlord acted vexatiously, particularly since it is clear that he is entitled to some compensation.

I have not drawn a negative inference from the fact the Agent for the Landlord has claimed compensation for items that have not yet been replaced. I find that the Landlord readily acknowledged that some items for which compensation has been claimed have not yet been replaced. I find it reasonable for a party to delay replacing damaged items until the party receives compensation for the damaged item, as the ability to replace the item may be entirely dependent upon receiving compensation.

I note that I did not find the Agent for the Landlord to be an entirely reliable witness, as he did provide some inconsistent evidence regarding when photographs were taken and he had significant difficulty providing the Residential Tenancy Branch and the Tenant with identical packages of evidence. I contribute this to a lack of familiarity with the dispute resolution process and a lack of legal representation, rather than a deliberate attempt to mislead or delay these proceedings.

While the Agent for the Landlord's testimony could not be wholly relied upon for precise details, such as dates, I do not find his limited recall damages his credibility entirely. I specifically note that the Agent for the Landlord's testimony regarding substantive matters, such as the nature of the damaged items and the dates relating to the rental unit being vacated, was consistent. I therefore find it reasonable to rely upon his testimony where it is undisputed or is supported by documentary evidence.

Although I found the Tenant to be highly argumentative at times during the proceedings, her testimony regarding substantive matters was also consistent.

I find that the Landlord's application 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, in the amount of $848.01, which is comprised of $613.01 in court costs/bailiff fees, $40.00 in nominal damages, $145.00 in damages, and $50.00 in compensation for the fee paid to file this Application for Dispute Resolution**.** Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the security deposit/pet damage deposit being held by the Landlord.

As the Landlord has failed to establish it is entitled to retain the entire security deposit/pet damage deposit, I find that the remaining $351.99 must be returned to the Tenant. Based on these determinations I grant the Tenant a monetary Order for the amount $351.99. 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: February 23, 2015

Residential Tenancy Branch