# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This hearing was convened in response to cross applications.

On September 15, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on September 23, 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 October 22, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on October 22, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On October 14, 2014 the Landlord submitted documents and photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that this evidence was served to the Tenant by registered mail on October 12, 2014. The Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On November 03, 2014 the Landlord submitted a photocopy of a cheque and an envelope to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that this document was served to the Tenant by regular mail in late September or early October of 2014. The Tenant stated that this evidence was not received.

As the Tenant did not acknowledge receiving the evidence submitted on November 03, 2014 and the Landlord has no proof that it was mailed, it was not accepted as evidence

for these proceedings. The Landlord was given the opportunity to introduce this evidence orally.

On April 10, 2015 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally delivered to Landlord's place of business on April 10, 2015. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, 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?
Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Landlord and the Tenant agree:

- that this tenancy began on January 01, 2013;
- that a condition inspection report was completed on January 07, 2013;
- that a security deposit of $2,100.00 was paid;
- that this tenancy ended on August 30, 2014 or August 31, 2014;
- that the parties met on September 03, 2014 to inspect the rental unit but a condition inspection report was not completed
- that the tenant provided a forwarding address, in writing, on September 03, 2014; and
- that the Tenant did not authorize the Landlord to retain any portion of the security deposit.

The Agent for the Landlord stated that on October 12, 2014 he mailed a cheque to the Tenant, in the amount of $425.62, which represented a partial refund of the security deposit. The Tenant stated that this cheque was never received. The Agent for the Landlord stated that the cheque was not returned to the Landlord by Canada Post and that it has not been cashed.

The Agent for the Landlord stated that he did not apply to retain the security deposit when he filed an Application for Dispute Resolution, as he did not understand it was necessary to do so.

The Landlord is seeking compensation, in the amount of $80.00, for rekeying the lock on the patio door. The Landlord and the Tenant agree the key to this door was not returned at the end of the tenancy. The Landlord submitted a quote to show that it will cost $80.00 to rekey the door.

The Agent for the Landlord stated that the Tenant was given the only key to the lock so the lock had to be rekeyed, rather than simply copying a key kept by the Landlord. The Tenant argued that he should only be responsible for the cost of copying a key, as the Landlord should have kept a spare key.

The Landlord is seeking compensation, in the amount of $20.00, for replacing the wheel of a sliding patio door screen. The Landlord stated that the screen is approximately 2.5 years old and that the wheels were damaged during the tenancy. The Tenant stated that the wheels were damaged during the tenancy as a result of normal use.

The Landlord is seeking compensation, in the amount of $50.00, to repair the mechanism that opens a set of blinds. The Agent for the Landlord stated that the mechanism was working at the start of the tenancy but was not working at the end of the tenancy. He stated that the blinds were installed in 2008. The Landlord submitted a quote that indicates it will cost $70.00 to repair the blind.

The Tenant stated that the mechanism was broken at the start of the tenancy and the rod that operates the mechanism was found on a shelf at the start of the tenancy. He stated that he did not ask the Landlord to note the damage on the condition inspection report as he did not consider it important. The condition inspection report that was completed at the start of the tenancy, which was submitted in evidence, indicates that all of the window coverings were in good condition.

The Landlord is seeking compensation, in the amount of $741.44, to repair the panels on the refrigerator doors. The Agent for the Landlord stated that the doors were “warped” at the start of the tenancy, but they were not dented. The Agent for the Landlord stated that there were 10 or 15 small dents in the doors at the end of the tenancy.

The Landlord submitted a receipt to show that the refrigerator was purchased in 2008 for $1,899.98. The Agent for the Landlord stated that the Landlord is selling the rental unit; that the Landlord does not intend to repair the refrigerator; and that the Landlord expects to reduce the selling price in compensation for the damaged doors.

The Tenant stated that the refrigerator was dented at the start of the tenancy; that he pointed out the dents to the Agent for the Landlord; and that the Agent for the Landlord simply noted the refrigerator was “warped” on the condition inspection report.
The condition inspection report that was completed at the start of the tenancy indicates that the refrigerator is “warped”, but there is no mention of the refrigerator being dented.

The Landlord submitted photographs of the refrigerator doors, in which the door panels appear “warped” and in which several dents are visible.

The Landlord is seeking compensation, in the amount of $782.88, to replace the exhaust hood above the stove. The Agent for the Landlord stated that the exhaust hood was not damaged at the start of the tenancy and that there were two small dents on the exhaust hood at the end of the tenancy.

The Landlord submitted a receipt to show that the exhaust hood was purchased in 2008 for $749.98. The Agent for the Landlord stated that the Landlord is selling the rental unit; that the Landlord does not intend to repair the exhaust hood; and that the Landlord expects to reduce the selling price in compensation for the damaged exhaust hood.

The Tenant stated that the exhaust hood was dented at the start of the tenancy and that it was not noted on the condition inspection report because he did not notice the damage until after the report was completed.

The condition inspection report that was completed at the start of the tenancy indicates that the exhaust hood is in good condition. The Landlord submitted a photograph of the exhaust hood, in which two small dents are visible.

Analysis

On the basis of the testimony of the Agent for the Landlord, I accept that a refund cheque of $425.62 was mailed to the Tenant on October 12, 2014. On the basis of the testimony of the Tenant, I accept that this cheque was not received by the Tenant. I find that the testimony of both parties could be true; as it is possible the cheque was lost or improperly delivered by Canada Post.

Section 38(1) of the *Residential Tenancy Act (Act*) stipulates that within fifteen days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full amount of the security deposit or filed an Application for Dispute Resolution to keep the security deposit and more than fifteen days has passed since the tenancy ended and the forwarding address was received.

In determining that the Landlord failed to comply with section 38(1) of the *Act,* I did consider that the Landlord filed an Application for Dispute Resolution on September 15, 2014. In that Application the Landlord applied for $1,674.32 in damages. The Landlord did not indicate that it is seeking to retain the security deposit nor did it make any reference to the security deposit on the Application for Dispute Resolution or in the

documents that were accepted as evidence. I therefore cannot conclude that the Landlord applied to retain the security deposit with the Application was filed.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit, which is $4,200.00.

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.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(b) of the *Act* when he failed to return the key to the patio door. I therefore find that the Landlord is entitled to compensation for rekeying the lock, which was $80.00.

In determining that the Tenant is entitled to recover the cost of rekeying the lock, rather than simply the cost of copying a key, I was influenced by the fact that the Tenant would still have the ability to access the rental unit if the Landlord simply made a duplicate key. One of the reasons a tenant is required to return all means of accessing the rental unit is to provide a landlord with confidence that the rental unit is secure. When all keys are not returned I find it reasonable for the Landlord to rekey the lock even if the Landlord has additional keys to the lock.

On the basis of the undisputed evidence, I find that the wheels on the screen for the sliding patio door were damaged during the tenancy. Section 37(2)(a) of the *Act* requires tenants to leave a rental unit undamaged at the end of a tenancy, except for reasonable wear and tear. In the absence of evidence to show the screen door was abused or was used for a purpose for which it was not intended, I find that the Landlord had failed to establish that the wheels did not malfunction due to normal wear and tear. I therefore find that the Tenant is not obligated to pay for repairing the screen door.

In determining this matter I was guided by section 21 of the *Residential Tenancy Regulation,* which stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report completed at the start of the tenancy indicates that all of the blinds were in good condition at the start of the tenancy and the Tenant has not submitted evidence that

corroborates his testimony that they were damaged at the start of the tenancy, I find that I must rely on this report.

On the basis of the condition inspection report that was completed at the start of the tenancy, I find that all of the blinds were in good condition at the start of the tenancy. On the basis of the undisputed evidence, I find that the mechanism that operates one set of blinds was damaged at the end of the tenancy. I therefore must conclude that the blinds were damaged during the tenancy.

In the absence of evidence to show the blinds were abused or used for a purpose for which they were not intended, I find that the Landlord had failed to establish that the mechanism did not malfunction due to normal wear and tear. I therefore find that the Tenant is not obligated to pay for repairing the blinds.

As the condition inspection report completed at the start of the tenancy indicates that the refrigerator was "warped" but not dented at the start of the tenancy and the Tenant has not submitted evidence that corroborates his testimony that the refrigerator was dented at the start of the tenancy, I find that the refrigerator doors were not dented at the start of the tenancy. This conclusion was heavily influenced by section 21 of the *Residential Tenancy Regulation.*

On the basis of the photographs submitted in evidence, I find that the door of the refrigerator does appear to be "warped", which supports the entry on the condition inspection report.

On the basis of the undisputed evidence, I find that the refrigerator doors were dented at the end of the tenancy. As I have concluded the doors were not dented at the start of the tenancy, I must conclude that the doors were damaged during the tenancy. I therefore find that the Tenant failed to comply with section 37(2)(a) of the *Act* when he failed to repair the damaged refrigerator and that the Landlord is entitled to compensation for the damage.

When a landlord makes a claim for damage to property, the normal measure of damage is the lesser of the cost of repairs or replacement, less depreciation. Where a landlord chooses not repair the damage, the landlord is typically entitled to compensation in an amount by which the value of the rental unit is reduced as a result of the damage. In these circumstances, the Landlord has opted not to repair the refrigerator.

Residential Tenancy Branch Policy Guideline #40 stipulates that the useful life of a refrigerator is 15 years. The evidence shows that the refrigerator was six years old at the end of this tenancy and I therefore find that the refrigerator has depreciated by forty percent. The evidence shows that the Landlord paid $1,899.98 to purchase the refrigerator. As the refrigerator has depreciated by forty percent, I find the current value of the refrigerator is $759.99.

Although the Landlord has opted not to replace the refrigerator and the Landlord still has a fully functional refrigerator, I find that the Landlord is entitled to compensation for the reduced value of the refrigerator due to the cosmetic damage. An award such as this is always subjective. After considering the age of the refrigerator; the nature of the damage; and the fact that the damage is purely cosmetic, I find that the Landlord is entitled to compensation of $200.00 for the damage to the doors.

As the condition inspection report completed at the start of the tenancy indicates that the exhaust hood above the oven was in good condition at the start of the tenancy and the Tenant has not submitted evidence that corroborates his testimony that the exhaust hood was dented at the start of the tenancy, I find that the exhaust hood was not dented at the start of the tenancy. This conclusion was heavily influenced by section 21 of the *Residential Tenancy Regulation.*

On the basis of the undisputed evidence, I find that the exhaust hood was dented at the end of the tenancy. As I have concluded the exhaust hood was not dented at the start of the tenancy, I must conclude that the exhaust hood was damaged during the tenancy. I therefore find that the Tenant failed to comply with section 37(2)(a) of the *Act* when he failed to repair the exhaust hood and that the Landlord is entitled to compensation for the damage.

In these circumstances, the Landlord has opted not to repair the exhaust hood.

Residential Tenancy Branch Policy Guideline #40 stipulates that the useful life of a stove is 15 years. I find it reasonable to conclude that an exhaust hood for a stove has a similar life expectancy. The evidence shows that the exhaust hood was six years old at the end of this tenancy and I therefore find that it has depreciated by forty percent.

The evidence shows that the Landlord paid $749.98 to purchase the exhaust hood. As the exhaust hood has depreciated by forty percent, I find the current value of the exhaust hood is $299.99.

Although the Landlord has opted not to replace the exhaust hood and the Landlord still has a fully functional exhaust hood, I find that the Landlord is entitled to compensation for the reduced value of the exhaust hood due to the cosmetic damage. An award such as this is always subjective. After considering the age of the exhaust hood; the very minor nature of the damage; and the fact that the damage is purely cosmetic, I find that the Landlord is entitled to compensation of $50.00 for the damage to the exhaust hood.

I find that the Application for Dispute Resolution filed by each party has merit. I therefore find that each of them is responsible for the costs of filing their own Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of $4,200.00, which is double the security deposit. The Landlord has established a monetary claim, in the amount of $330.00, for damage to the rental unit. After offsetting the two claims, I find the Landlord owes the Tenant $3,870.00.

Based on these determinations I grant the Tenant a monetary Order for the amount of $3,870.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As the Tenant has not received the cheque for $425.62 that was mailed on October 12, 2014, this refund is not being contemplated in this award. The Landlord may wish to ensure there is a “stop payment” placed on that cheque before complying with this monetary Order.

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: April 28, 2015

Residential Tenancy Branch