



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to cross applications. There was insufficient time to conclude the hearing on August 19, 2015. The hearing was reconvened on November 25, 2015 and was concluded on that date.

On March 16, 2015 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss; for the return of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on March 16, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents submitted to the Residential Tenancy Branch on March 16, 2015 were sent to the Landlords, via registered mail. The Landlords acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On July 29, 2015 the Landlords filed an Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On July 30, 2015 the Landlords submitted two documents to the Residential Tenancy Branch. Legal Counsel for the Landlords stated that these documents were not served to the Tenants and they will therefore not be considered as evidence for these proceedings.

Legal Counsel for the Landlords stated that on August 05, 2015 the Application for Dispute Resolution, the Notice of Hearing, a binder of evidence submitted to the Residential Tenancy Branch on July 29, 2015; and 14 pages of evidence submitted to the Residential Tenancy Branch on August 04, 2015 were served to the Tenants via a process server. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 07, 2015 the Tenants submitted ten pages of evidence plus numerous photographs to the Residential Tenancy Branch. The male Tenant stated that this evidence was personally served to the Landlords' legal counsel on August 05, 2015. The Landlords acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On August 18, 2015 the Tenants submitted 14 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was personally served to the Landlords' legal counsel on August 17, 2015. Legal Counsel for the Landlords stated that she just received this evidence this morning and has not had adequate time to review the documents.

At the hearing on August 19, 2015 the parties were advised that the documents submitted on August 18, 2015 would not be considered at the hearing on August 19, 2015, as the evidence was not submitted in accordance with the Residential Tenancy Branch Rules of Procedure. As the hearing on August 19, 2015 was adjourned, I subsequently concluded it was reasonable to accept these documents as evidence.

This decision to include the "late" evidence was based on the fact that the adjournment provided the Landlords with additional time to consider the evidence; accepting the late evidence does not unduly prejudice the Landlords, as they have been given an opportunity to respond to the evidence; and the evidence may be relevant to the issues in dispute.

On September 09, 2015 the Landlord submitted 28 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlords stated that these documents were served to the Tenants, via registered mail, on September 09, 2015. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

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

Preliminary Matter

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

The Landlords attached Schedule A to their Application for Dispute Resolution, in which they declared they are seeking \$850.00 for miscellaneous repairs. I find that this claim does not comply with section 59(2)(b) of the *Act* as it does not provide sufficient details of this particular claim. The claim does not specify the nature of the miscellaneous repairs nor does it declare the amount of compensation the Landlords are seeking for each repair.

I find that the absence of detail makes it difficult, if not impossible, for the Tenants to prepare a response to the Landlords claim and I therefore find it would be unfair to the Tenants to consider this particular claim at these proceedings. I therefore decline to consider this portion of the Landlords' Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and damage to the rental unit?
Is the Landlord entitled to retain all or part of the security deposit or should it be returned to the Tenant?

Background and Evidence

The Landlords and the Tenants agree that this tenancy began on January 01, 2013 and that the Tenants agreed to pay rent of \$2,200.00 by the first day of each month. A copy of the written tenancy agreement was submitted in evidence, which declares that the tenancy has a fixed term that runs from January 01, 2013 to January 01, 2015.

The Landlords and the Tenants agree that the parties verbally agreed to continue with the tenancy past the end of the fixed term. The Landlords contend that the parties entered into a second fixed term tenancy, the fixed term of which ended on March 31, 2015. The Tenants contend that the parties did not agree to another fixed term and that the Landlords agreed that the Tenants could move out when they found alternate accommodations.

The Landlords contend that the parties agreed to a second fixed term in an email dated December 01, 2014, which is located at tab five of the Landlords' evidence binder. The Tenants contend that the email clearly specifies that the second fixed term was contingent on the Tenants' paying \$6,600.00 by December 03, 2014, which both parties acknowledge was not paid. The Tenants contend that since the payment was not made, the parties did not enter a second fixed term tenancy.

The Landlords and the Tenants agree that the Tenants informed the Landlords of their intent to vacate in writing. A copy of this notice is located at tab six of the Landlords' evidence binder. This letter declares that the Tenants will be vacating the rental unit by February 02, 2015 and that it will be ready for inspection by February 03, 2015.

The female Tenant stated that the notice to end tenancy was sent to the Landlords on January 05, 2015 via email and Canada Post. The Landlords acknowledge receiving this notice by email on January 06, 2015 and by post on January 07, 2015.

The Landlords contend the rental unit was vacated sometime between February 03, 2015 and February 07, 2015. At the hearing on August 19, 2015 the male Tenant stated that the rental unit was vacated on February 01, 2015 and that the unit was

jointly inspected on February 07, 2015. At the hearing on November 25, 2015 the male Tenant stated that the rental unit was cleaned on February 01, 2015 but they had "vacated" on January 31, 2015.

The Landlords are seeking compensation for unpaid rent/lost revenue from February and March of 2015, in the amount of \$4,400.00. The Landlords base the claim of \$4,400.00 on the basis that the Tenants ended the tenancy before the end of the second fixed term of the tenancy. The Landlords submit that in the event a second fixed term has not been established they are entitled to lost revenue for the month of February, in the amount of \$2,200.00, due to improper notice to end the tenancy.

The Landlords and the Tenants agree no rent was paid for February and March of 2015.

The Landlords contend a pet damage deposit of \$1,100.00 was paid and a security deposit of \$1,100.00 was paid. The Tenants contend a security deposit of \$2,200.00 was paid. The tenancy agreement that was submitted in evidence declares that a security deposit of \$2,200.00 was paid on November 05, 2012.

The Landlords and the Tenants agree that:

- the rental unit was jointly inspected on February 07, 2015
- on February 07, 2015 the female Tenant provided the Agent for the Landlord with a forwarding address, in writing;
- the Tenants did not give the Landlords authority to retain any portion of the \$2,200.00 deposit; and
- no portion of the \$2,200.00 deposit was returned to the Tenants.

The Agent for the Landlord stated that the security deposit was not returned within fifteen days of receiving the Tenant's forwarding address because the parties verbally agreed that they would wait to resolve the dispute regarding damages to the rental unit and the return of the security deposit until the male Landlord returned to Canada. The male Tenant stated that the Tenants did not agree to wait until the male Landlord returned to Canada.

The Agent for the Landlord stated that on March 23, 2015 the male Landlord contacted the Tenants, via email, in an attempt to discuss the damages to the rental unit and the security deposit refund. The parties agree that the Tenants sent an email to the Landlords on March 24, 2015, in which they informed the Landlords that they wished to resolve the issues in dispute at this hearing.

The Landlords are seeking compensation, in the amount of \$800.00, for cleaning the rental unit. The Landlords contend the rental unit required extensive cleaning at the end of the tenancy and the Tenants contend the rental unit was left in reasonably clean condition at the end of the tenancy.

The Agent for the Landlord stated that she took all of the photographs at tab 17 and tab 19 of the Landlords' evidence binder during the middle to latter part of March of 2015. She stated that these photographs fairly represent the condition of the rental unit at the end of the tenancy and that nobody occupied the rental unit between February 07, 2015 and the time these photographs were taken.

The female Tenant stated that the photographs show more mould and dust than was present at the end of the tenancy. The Tenants contend that the claim for cleaning is excessive.

The Agent for the Landlord stated that the rental unit was cleaned by an individual who has been cleaning for her parents for many years. She initially stated that the cleaner spent ten to twelve hours cleaning the rental unit. When it was suggested that a claim of \$800.00 was excessive for twelve hours of cleaning, the Agent for the Landlord stated that she is not certain of how much time was spent cleaning the rental unit and that the Landlords simply paid the amount requested by the cleaner. The Landlords submitted a handwritten receipt for cleaning, in the amount of \$800.00.

The Landlords are seeking compensation, in the amount of \$288.75, for disposing of property left in the rental unit at the end of the tenancy. The Landlords contend that most of the personal property/garbage in the photographs at tab 20 of the Landlords' evidence binder was left in the rental unit by the Tenants. The Tenants contend that all of the property shown in those photographs was in the rental unit at the start of the tenancy.

The Landlords and the Tenants agree that the Tenants provided the Landlords with a list of deficiencies shortly after this tenancy began, which is located at tab 2 of the Landlord's evidence binder. The Landlords contend that the Tenants were paid \$200.00 to remove any property left in the rental unit at the start of the tenancy and the Tenants contend this \$200.00 was for cleaning the rental unit.

The Landlords are seeking compensation, in the amount of \$84.00, for carpet cleaning. The Landlords contend that the carpet on the stairs of the rental unit required cleaning at the end of the tenancy. The Landlords submitted three photographs of the dirty carpet, which are located at tab 19 of the Landlord's evidence package.

The male Tenant stated that he does not specifically recall the stains shown in the Landlords' photographs. The Tenants contend that the stains may have been present at the start of the tenancy, as the rental unit was not clean at the start of the tenancy.

The Landlords contend that the email located at tab 9 of the Landlords' evidence binder establishes that the Tenants accept responsibility for the dirty carpets. The female Tenant stated that when she wrote this email she was simply confirming that the Landlords believed the carpets needed cleaning.

The Landlords are seeking compensation, in the amount of \$1,463.88, for repairing drywall and painting the rental unit.

The Landlords contend that:

- the Landlord added a third floor to the rental unit in late 2008 or early 2009;
- a building permit was issued for this renovation on May 12, 2008;
- the interior of the renovations to the rental unit was slowly renovated between 2009 and 2012;
- the rental unit was newly painted in early 2012 as part of those renovations;
- an occupancy permit was issued on April 13, 2012; and
- the Tenants were the first persons to occupy the unit after it was painted in 2012.

The male Tenant stated that:

- he does not believe the rental unit was painted shortly before the start of the tenancy;
- he does not believe the rental unit was renovated shortly before the start of the tenancy;
- a person who lives near the rental unit told him there was no construction activity noted after 2009; and
- the walls in the rental unit were not in good condition at the start of the tenancy.

The Landlords submitted several photographs of the rental unit in tab 13 of the Landlords' evidence binder, which the Landlord contends reflect the condition of the walls at the start of the tenancy.

The Landlords and the Tenants agree that the Tenants informed the Landlords of a variety of deficiencies with the rental unit in an email dated January 21, 2013, which is located at tab 2 of the Landlords' evidence binder. Included in this list of deficiencies are concerns about the walls being unclean and "missing paint in some places".

The Tenants submitted numerous photographs of the rental unit in their evidence package of August 07, 2015, which the Tenants contend were taken in January of 2013 and reflect the conditions of the rental unit at the start of the tenancy. The male Tenant stated that not all of these photographs were provided to the Landlords prior to the commencement of these proceedings. The Landlords and the Tenants agree that the nine photographs in tab 2 of the Landlords' evidence binder were provided to the Landlord by the Tenant in January of 2013.

Legal Counsel for the Landlords stated that the Landlords acknowledge that the damage depicted in the photographs in tab 2 of the Landlords' evidence binder was present at the start of the tenancy and that the Landlords are not seeking compensation for repairing the damage noted.

The Tenants submitted an undated electronic communication, which the male Tenant stated was received from a former neighbour. In the communication the author

declares that he is unaware of any “significant construction or renovation” done to the rental unit after the “upper story was added”, which includes the six months prior to the start of the tenancy.

The Landlords submitted an affidavit from a female who declared that:

- she is a real estate agent;
- she listed the rental unit for sale in May of 2012;
- at the time of listing she was told the rental unit had been recently renovated, which she believed was true;
- the photographs in her real estate listing are an accurate representation of the home when it was listed for sale;
- at the time of listing she was told the rental unit was vacant, which she believed was true;
- she was told the rental unit was rented between January 01, 2013 and February of 2015 due to the Landlords’ inability to sell the property;
- she inspected the rental unit in March of 2015 for the purposes of re-listing the property; and
- in March of 2015 she observed mould in every window, damage to the drywall, and damage to the hardwood floors which was not present prior to the start of the tenancy.

The Landlords submitted several photographs of the walls in the rental unit in tab 16 of the Landlords’ evidence binder, which the Landlords contend reflect the condition of the walls at the end of the tenancy. Legal Counsel for the Landlords stated that these photographs were taken during the latter part of March of 2015, after the male Landlord returned to the community.

There are several photographs at tab 16 of the Landlords’ evidence binder that show several areas marked with green tape, which Legal Counsel for the Landlords stated show the location of numerous small holes. The Landlord contends that:

- there were numerous small nail holes in the living room walls around with windows at the end of the tenancy;
- the small holes were not present at the start of the tenancy; and
- the Landlords do not know why the small holes were made but they may have been the result of the windows being covered with plastic.

The male Tenant stated that:

- he never noticed the small holes in the wall that are depicted in the Landlords’ photographs;
- the marks the Landlords contend are small holes could actually be small pencil marks;
- if the marks are actually small holes in the wall it is possible that somebody is being “mischievous”;
- the Tenants did not make the small holes in the wall; and

- the Tenants did cover some windows with plastic on the interior side of the rental unit, but the plastic was attached to the walls with tape.

The Landlords contend that the damage to the walls, as shown in photographs 5, 6, 8, 10, 13, 16, and 19 at tab 16 of the Landlords' evidence binder, occurred during the tenancy. The male Tenant stated that he does not recognize the damage in any of those photographs.

The Landlords contend that the damage to the wall, as shown in photograph 7 at tab 16 of the Landlords' evidence binder, occurred during the tenancy. Legal Counsel for the Landlords stated that this damage is above the fireplace where the Tenants had hung a picture. The male Tenant stated that they did hang art above the fireplace; that they may have made the holes shown in the photograph; but he does not recognize the "black item" in the photograph.

The Landlords contend that the damage to the wall, as shown in photographs 11 and 12 at tab 16 of the Landlords' evidence binder, occurred during the tenancy. Although the Landlords are not certain of the location of this particular damage, they believe it may be in, or near, the laundry room. The male Tenant stated that he believes the damage to the wall was the result of a shelf being hung in the laundry room; that the shelf had been removed prior to their tenancy; and that the damage in the photographs was present at the start of their tenancy.

The Landlords contend that the damage to the wall, as shown in photograph 17 at tab 16 of the Landlords' evidence binder, occurred during the tenancy. Legal Counsel for the Landlord stated that this damage was in the hallway near the dining room. The male Tenant stated that the damage in that photograph was present at the start of their tenancy.

The Landlords are seeking compensation, in the amount of \$1,739.85, for removing mould from the window sills and for repainting the window sills.

The Landlords submitted several photographs of the windows/window sills in tab 17 of the Landlords' evidence binder. The Landlords contend that:

- these photographs accurately reflect the condition of the windows/window sills at the end of the tenancy, even though the photographs were not taken until the latter part of March of 2015;
- mould was not present on the windows/window sills prior to the start of the tenancy;
- the problem with the mould was greatly exacerbated by the fact the Tenants did not report the problem with mould to the Landlords;
- had the problem been promptly reported to the Landlords they could have addressed the problem before the sills needed to be replaced;
- the "root cause" of the mould has never been identified;
- that the windows in the rental unit have never leaked; and

- the mould did not return between the time the sills were cleaned/painted and the property was sold in September of 2015.

The male Tenant stated that:

- mould was present on the windows/window sills at the start of the tenancy;
- additional mould accumulated on the windows/window sills during the tenancy;
- the problem with mould was not reported to the Landlords until the summer of 2013;
- most of the mould was cleaned from the window sills at the end of the tenancy, although it could not be completely removed;
- 99% of the mould shown in the photographs in tab 17 of the Landlords' evidence binder was not present at the end of the tenancy;
- he believes the mould accumulated as a result of the windows leaking;
- and he did cover a vent in the bedroom with plastic because it was drawing warm air out of the bedroom.

The Landlords submitted a written document from the individual who repaired and painted the walls, who is the Agent for the Landlord's husband. He estimates he spent 6 days repairing the walls and repainting the window sills and walls, for which the Landlord is seeking \$900.00 for repairing/painting the walls and \$600.00 for repainting the window sills.

The Tenants contend the claim for labour is excessive as the individual who repaired/painted the walls is an unusually slow worker.

The Landlords submitted receipts which total \$563.88. The Landlords contend that these receipts were for materials used to repair/paint the walls.

The Landlords submitted a written receipt in the amount of \$800.00 which the Landlords contend was paid to an individual who cleaned the mould from the windows/sills. The Landlords submitted a purchase order for renting a dehumidifier, in the amount of \$339.85, which the Landlords contend was used to eliminate mould in the rental unit.

The Landlords are seeking compensation, in the amount of \$300.00, for repairing the hardwood floors. The Landlords contend that:

- with the exception of one scratch the Tenants reported at the start of the tenancy, the hardwood floors were in good condition at the start of the tenancy; and
- all of the scratches on the floor in the photographs at tab 18 of the Landlords' evidence binder occurred during the tenancy.

The male Tenant stated that:

- during the tenancy the floor in the living room was scratched in two places;
- the scratches in the living room were very small;

- they had area rugs on most of the floor so they could not have scratched the floors; and
- they do not recognize most of the scratches in the photographs at tab 18 of the Landlords' evidence binder.

The Landlords submitted a handwritten receipt from the individual who repaired some of the scratches on the floor, who acknowledged receiving \$300.00 for repairing the floor.

Analysis

On the basis of the undisputed evidence I find that the parties entered into a fixed term tenancy agreement that ran from January 01, 2013 to January 01, 2015, which required the Tenants to pay monthly rent of \$2,200.00 by the first day of each month.

I find that the Landlord submitted insufficient evidence to establish that the parties entered into a second fixed term tenancy agreement. In reaching this agreement I was heavily influenced by the testimony of the male Tenant, who stated they did not agree to a second fixed term, and by the absence of any documentary evidence that clearly established an agreement regarding a second fixed term.

In determining there is insufficient evidence to establish that the parties entered into a second fixed term I considered the email dated December 01, 2014. This email clearly indicates that a second fixed term tenancy was contingent on the Tenants paying \$6,600.00 and sending email confirmation by December 02, 2014. In the absence of evidence to show that the Tenants paid \$6,600.00 or that they sent a confirmation email, I cannot conclude that they agreed to a second fixed term.

Section 44(3) of the *Residential Tenancy Act (Act)* stipulates that if on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date and the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms. As the written tenancy agreement does not clearly specify that the Tenants must vacate the rental unit on January 01, 2015 and the Tenants did not enter into a new tenancy agreement, I find that the tenancy continued after January 01, 2015 on a month to month basis, pursuant to section 44(3) of the *Act*.

I find that the Tenants failed to comply with section 45 of the *Act* when the Tenants failed to provide the Landlord with notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on January 31, 2015 in accordance with section 45 of the *Act*, the Tenants would have had to provide written notice to the Landlords on, or before, December 31, 2014. As the Tenants did not give written notice to the Landlord until after January 01, 2015, I find, pursuant to section 53

of the *Act*, that the earliest effective date of the notice they provided in early January was February 28, 2015.

On the basis of the undisputed evidence, I find that the Tenants still had possession of the rental unit on February 01, 2015. As the Tenants had possession of the rental unit by the time rent was due on February 01, 2015 and they did not give proper notice to end the tenancy prior to February 01, 2015, I find that they were obligated to pay the rent that was due on February 01, 2015, even though they opted to vacate the rental unit prior to the end of February. I therefore grant the Landlords' claim of \$2,200.00 for rent for February of 2015.

In determining that rent was due on February 01, 2015 I have placed no weight on the male Tenant's testimony that the parties had a verbal agreement the Tenants could move out when they found alternate accommodations. Even if the parties had such an agreement, I find that section 5(1) of the *Act* prohibited the parties from ending the tenancy in a manner that does not comply with the *Act*.

As the Landlords have failed to establish the Tenants entered into a second fixed term tenancy agreement that ended on March 31, 2015, I find that the Landlords are not entitled to compensation for lost revenue from March of 2015.

On the basis of the undisputed evidence, I find that the rental unit was vacated on, or before, February 07, 2015. I therefore find it reasonable to conclude that the tenancy ended in accordance with section 44(1)(d) of the *Act* on, or before, February 07, 2015.

I favour the submission of the Tenants, who contend a security deposit of \$2,200.00 was paid, over the submission of the Landlords, who submit a pet damage deposit of \$1,100.00 was paid and a security deposit of \$1,100.00 was paid. I favoured the Tenants' submission as it is corroborated by the tenancy agreement that was submitted in evidence.

Section 38(1) of the *Act* stipulates that within 15 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 Landlords failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit and they did not file an Application for Dispute Resolution until July 29, 2015, which is more than 15 days after the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, 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 Landlords did not comply with section 38(1) of the *Act*, I find that the Landlords must pay the Tenants double the security deposit.

In adjudicating this matter I have placed no weight on the Landlords' submission that on March 23, 2015 the male Landlord attempted to discuss damages to the rental unit and the security deposit refund with the Tenants. Given that this attempt was made more than fifteen days after the tenancy ended and the forwarding address was received, I find this submission is not relevant to my decision that double the deposit is due.

In adjudicating this matter I have placed no weight on the Landlords' submission that the parties verbally agreed to wait until the male Landlord returned to Canada before refunding any portion of the security deposit. Section 5(2) of the *Act* does not allow parties to avoid or contract out of the *Act* and the *Act* does not authorize parties to extend the timeline established by section 38 of the *Act*.

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 damage or loss occurred; establishing 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 photographs located at tabs 17 and 19 of the Landlords' evidence binder, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when the rental unit was not left in reasonably clean condition. Even if I allowed for some dust/mould accumulation for the approximately six weeks between the end of the tenancy and the time the photographs were taken, I find that the photographs clearly establish additional cleaning was required.

Specifically, I find the photographs at tabs 17 and 19 of the Landlords' evidence binder, demonstrate that:

- the floor and baseboards required cleaning at the end of the tenancy;
- the fridge, microwave, washing machine, and clothes dryer required cleaning at the end of the tenancy;
- the toilet required cleaning at the end of the tenancy;
- the windowsills required cleaning at the end of the tenancy; and
- some drawers/cupboards required cleaning at the end of the tenancy.

I find that the items requiring cleaning, in particular the appliances, toilets, and cupboards, are areas that are typically cleaned on a regular basis and cannot be attributed to cleaning that was required prior to the start of the tenancy.

I find that the photographs at tabs 17 and 19 of the Landlords' evidence binder do not support the claim of \$800.00 for cleaning. In my view, the claim appears to be excessive based on the need to clean as demonstrated by those photographs. I find the Agent for the Landlords' estimate that it took 10-12 hours to clean the rental unit to be a reasonable estimate and I find that the Landlord is entitled to compensation for that time. I find \$25.00 per hour reasonable compensation for cleaning and I therefore grant

the Landlords compensation of \$275.00 for cleaning, based on an average of the estimate of the time it took to clean, which is 11 hours.

I find that the Landlords have submitted insufficient evidence to establish that the property left in the rental unit at the end of the tenancy belonged to the Tenants. In reaching this conclusion I was heavily influenced by the email from the Tenants to the Landlords, dated January 21, 2013, in which the Tenants inform the Landlords that garbage has been left in the rental unit. This email serves to corroborate the Tenants' submission that there was property/garbage in the unit at the start of the tenancy.

In determining that the Landlords have submitted insufficient evidence to establish that the property left in the rental unit at the end of the tenancy belonged to the Tenants, I was further influenced by the absence of any documentary evidence that establishes all of the garbage left in the unit at the start of the tenancy was removed after the tenancy commenced. Even if I accepted the Landlords submission that the Tenants were paid to remove the garbage, I cannot conclude that the Tenants removed all of the garbage. I find it entirely possible that the Tenants simply opted not to discard the items shown in the photographs at tab 20 of the Landlords' evidence binder.

As the Landlords have failed to establish that the property left in the rental unit at the end of the tenancy belonged to the Tenants, I dismiss the Landlords' claim of \$288.75 for disposing of that property.

Although the photographs submitted by the Landlords show that there were some small stains on the carpet at the end of the tenancy, I find that the Landlords have submitted insufficient evidence to establish that the stains were not present at the start of the tenancy. As the Landlords have failed to establish that the carpet was clean at the start of the tenancy, I cannot conclude that the Tenants were responsible for staining the carpet and I therefore dismiss the claim of \$84.00 for cleaning the carpets.

In determining there was insufficient evidence to establish that the carpet was clean at the start of the tenancy I was influenced, in part, by the absence of a condition inspection report that was completed at the start of the tenancy. The *Act* requires a landlord to complete a condition inspection report at the start of the tenancy for the primary purpose of establishing the condition of the unit at the start of the tenancy, which benefits all parties.

In determining there was insufficient evidence to establish that the carpet was clean at the start of the tenancy I was influenced, in part, by the email from the Tenants to the Landlords dated January 21, 2013. Although the Tenants do not specifically mention the carpets in the email, they do declare that "overall the interior is not clean and will require considerable cleaning". This email lends credibility to the Tenants' submission that the stains on the carpet may have been present at the start of the tenancy.

I favour the evidence of the Landlords who contend that the walls were in good condition at the start of the tenancy, with the exception of some minor damage reported

by the Tenants at the start of the tenancy. I find this evidence more credible than the evidence of the Tenants who contend that the walls were not in good condition at the start of the tenancy.

On the basis of the undisputed evidence, I find that there were a few minor scuffs/smudges on the walls and one significant hole in the wall at the start of the tenancy. Photographs of this damage are located in tab 2 of the Landlords evidence package. With the exception of the damage acknowledged by the Landlords, I find the Tenants have submitted no evidence to support their submission that the walls were not in good condition.

In determining that the walls were in good condition at the start of the tenancy, with the exception of the damage reported by the Tenants at the start of the tenancy, I was influenced, by the photographs of the rental unit the Tenants submitted in their evidence package of August 07, 2015, which the Tenants contend were taken in January of 2013. Although these photographs depict a hole in the wall consistent with a door handle being forced against the wall and some minor smudges, I find the photographs establish that the walls are in generally good condition.

In determining that the walls were in good condition at the start of the tenancy, with the exception of the damage reported by the Tenants at the start of the tenancy, I was influenced by the affidavit of the real estate agent who listed the rental unit for sale in May of 2012. On the basis of this affidavit I find that the rental unit had been recently renovated; that the photographs in her real estate listing are an accurate representation of the home when it was listed for sale in May of 2012; and that the rental unit was vacant between the time the photographs were taken and the start of this tenancy. The relatively minor damage to the walls reported by the Tenants shortly after the start of the tenancy is, in my view, consistent with the type of damage that would be reasonably expected to occur when the rental unit is being viewed by potential purchasers and/or when personal property is being moved into the rental unit.

In determining that the walls were in good condition at the start of the tenancy, with the exception of the damage reported by the Tenants at the start of the tenancy I was influenced by the building permit for the renovation, issued on May 12, 2008, which was submitted in evidence. The evidence shows an occupancy permit was issued on April 13, 2012, which lends credibility to the Landlords' submission that the renovations were completed in 2012.

In determining that the walls were in good condition at the start of the tenancy, with the exception of the damage reported by the Tenants at the start of the tenancy, I placed little weight on the electronic communication from a person who lives near the rental unit. Although the author declares that he is unaware of any "significant construction or renovation" done to the rental unit after the "upper story was added", I find that the interior renovations and painting could easily have proceeded without his knowledge.

I find, on the balance of probabilities, that the numerous small holes in the wall shown in the photographs at tab 16 in the Landlord's evidence binder were made during the tenancy. In making this determination I was guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenants' submission that the small holes may be small pencil marks or that they may have been made with nefarious intent to be highly unlikely. I find Legal Counsel for the Lawyers' speculation that the holes were related to the windows being covered with plastic is considerably more likely. Given that the holes surround the windows and the Tenants acknowledged covering the interior side of the windows with plastic, I find it highly likely that the holes are related to the plastic covering.

I find, on the balance of probabilities, that the damage to the walls, as shown in photographs 5, 6, 10, 13, 16, and 19 at tab 19 of the Landlords' evidence binder occurred during the tenancy. As the Tenants contend that they do not recognize the damage and the Landlords contend the damage was not present at the start of the tenancy, I find it reasonable to conclude that the damage was not present at the start of the tenancy.

Given that the damage in those six photographs was not present at the start of the tenancy, I must conclude that the damage either occurred during the tenancy or it occurred after the rental unit was vacated. In my view the damage in those photographs is consistent with damage that occurs during a tenancy and/or when moving in/out of a rental unit and I find it most likely that the damage occurred during the tenancy. In my experience the damage depicted in those photographs is not typical of damage that occurs in a vacant unit.

On the basis of the undisputed evidence, I find that the Tenants hung art above the fireplace. I find it reasonable to conclude, therefore, that the damage to the wall shown in photograph 7 at tab 16 of the Landlords' evidence binder was caused by the Tenants hanging art on the wall. I note that the "black item" in the photograph that the male Tenant did not recognize is simply a picture hook that was not removed from the wall.

I favour the evidence of the Landlords, who contend that the damage shown in photographs 11, 12, and 17 at tab 16 of the Landlords' evidence binder, was not

present at the start of the tenancy over the evidence of the Tenants who contend that it was present at the start of the tenancy.

In reaching this conclusion I was heavily influenced by the fact that this damage depicted by those photographs, which is relatively significant, was not recorded by the Tenants in the photographs they took at the start of the tenancy. Given the significant nature of the damage, I find it reasonable to conclude that the damage would have been recorded if it was present at the start of the tenancy.

In determining that the Tenants would have recorded the damage shown in photographs 11, 12 and 17 if it was present at the start of the tenancy I was influenced by the fact that the Tenants photographed damage that was far less significant, including a small scuff on the wall below a light switch; some small scuffs on a door; and some small scuffs on the wall in a corner of a room. Given the diligence the Tenants displayed in recording the damage they observed at the start of the tenancy, I find it highly likely they would have recorded the damage shown in photographs 11, 12, and 17 if it was present at the start of the tenancy.

I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when the damage to the walls in the rental unit, which exceed normal wear and tear were not repaired at the end of the tenancy. I therefore find that the Landlords are entitled to compensation for repairing and repainting the walls in the rental unit.

On the basis of the written document from the individual who repaired and painted the walls, I find that he spent 6 days repairing the walls and repainting the window sills and walls. When used for the purposes of discussing employment, the term "days" typically means 8 hours and I therefore find it reasonable to conclude that the author of the document is declaring that he spent 48 hours repairing the walls and repainting the window sills and walls.

As the Landlord is seeking \$900.00 for repairing/painting the walls and \$600.00 for repainting the window sills, I find it reasonable to conclude that the author of the document spent 9/15 of his time repairing/painting the walls and 6/15 of his time repainting the window sills. I therefore find that the Landlord is entitled to compensation for the approximate 30 hours the Agent for the Landlord's spouse spent repairing/painting the walls. I find the claim of \$900.00 for painting/repairing the walls to be reasonable, as it equates to an hourly wage of \$30.00.

I also find that the Landlords are entitled to compensation for the cost of materials used to repair/paint the walls. Although the Landlords have submitted receipts totaling \$563.88 which they contend were used for supplies for repairing/painting the walls, upon reviewing the receipts I can only conclude that \$511.80 of those receipts can be attributed to these repairs.

In awarding compensation for repairing/painting the walls I have placed no weight on the Tenants submission that the individual who repaired/painted the walls is an

unusually slow worker. I find 30 hours to be a reasonable amount of time to repair the damage demonstrated by the Landlords' photographs.

I favour the evidence of the Landlords, who contend that mould was not present on the windows/sills at the start of the tenancy over the evidence of the Tenants, who contend that it was present in those areas. In reaching this conclusion I was influenced by:

- the affidavit of the listing real estate agent who declared that mould was not present at the start of the tenancy;
- the photographs of the rental unit the Tenants submitted in evidence that they took shortly after the start of the tenancy, which show the windows/sills are in very good condition;
- the photographs of the rental unit the Landlords submitted in evidence that were used in the real estate listing, which show the windows/sills are in very good condition; and
- the fact the Tenants do not raise the issue of mould in the email they sent to the Landlords on January 21, 2013, although they mention less significant issues such as a missing cover for an electrical socket.

I find that the Landlords have submitted insufficient evidence to establish that the Tenants are responsible for the mould in the rental unit. In reaching this conclusion was heavily influenced by the absence of expert evidence that establishes the mould was related to environmental factors controlled by the Tenants or that the mould was not related to a problem with the building envelope.

I find that the Landlords have submitted insufficient evidence to establish that the Tenants did not promptly report the problem with mould. In reaching this conclusion was heavily influenced by the absence of evidence that corroborates the Landlords' claim it was not reported or that refutes the Tenants' claim that it was reported in the summer of 2013.

As the Landlords have failed to establish that the mould was the result of the Tenants actions or neglect and that the Tenants did not promptly report the problem with the mould, I dismiss the Landlords' claim for compensation arising from the presence of mould, which includes the cost of cleaning the windows/sills, painting the window sills, and renting a dehumidifier.

I find, on the balance of probabilities, that the damage to the floor, as shown in photographs at tab 18 of the Landlords' evidence binder occurred during the tenancy. As the Tenants contend that they do not recognize the damage and the Landlords contend the damage was not present at the start of the tenancy, I find it reasonable to conclude that the damage was not present at the start of the tenancy.

Given that the damage in those photographs was not present at the start of the tenancy, I must conclude that the damage either occurred during the tenancy or it occurred after the rental unit was vacated. In my view the damage in those photographs is consistent

with damage that occurs during a tenancy and/or when moving in/out of a rental unit and I find it most likely that the damage occurred during the tenancy.

I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they did not repair the floor that was damaged during the tenancy. I therefore find that the Landlords are entitled to compensation for the \$300.00 they paid to have the floors repaired.

I find that the Landlords' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenants have established a monetary claim, in the amount of \$4,450.00, which is comprised of double the security deposit plus \$50.00 in compensation for fee paid to file an Application for Dispute Resolution.

The Landlords have established a monetary claim, in the amount of \$4,286.80, which is comprised of \$2,200.00 in unpaid rent; \$1,986.80 in damages; and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting the two claims I find that the Landlords owe the Tenants \$163.20 and I grant the Tenants a monetary Order for that amount. In the event the Landlords do not comply with this Order, it may be served on the Landlords, 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: November 26, 2015

Residential Tenancy Branch

