



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

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

The male Landlord stated that on August 17, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to each Tenant, via registered mail. The Tenant in attendance at the hearing stated that these documents were received by both Tenants but his co-tenant is unable to attend the hearing due to a funeral.

On the basis of the undisputed evidence I find that the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were served in accordance with section 89 of the *Residential Tenancy Act* (Act); however one of the Tenant's did not appear at the hearing. The hearing proceeded in the absence of this Tenant.

On December 17, 2015 the Tenant submitted four pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord it was not accepted as evidence for these proceedings.

The parties present at the hearing were given 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, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlords and the Tenant agree that:

- the Tenants first moved into the rental unit in 2010;
- they periodically entered into new tenancy agreements;
- their most recent tenancy agreement began on August 01, 2014;
- the most recent tenancy agreement required the Tenants to pay rent of \$1,350.00 by the first day of each month;
- the Tenants paid a security deposit of \$675.00;
- the tenancy ended on July 31, 2015;
- the Tenants provided the Landlords with a forwarding address, via text message, on August 01, 2015;
- a condition inspection report was completed on July 31, 2010;
- a condition inspection report was completed on July 31, 2015; and
- the Tenant refused to sign the report completed on July 31, 2015 as he did not agree with the content of the report.

The Landlords are seeking compensation, in the amount of \$1,500.00, for repairing and painting the walls in rental unit.

In support of the claim for repairing/painting the walls the male Landlord stated that:

- the walls had been damaged in various areas;
- the Tenants had repaired the walls with a white substance which he was unable to name;
- that the repairs were substandard;
- that the damage to the walls was repaired prior to the walls being painted;
- some areas of the walls/baseboards had to be sanded prior to painting because they were dirty or were mouldy; and
- after the end of the tenancy he lightly touched the towel rack in the bathroom and it fell off of the wall.

In response to the claim for repairing/painting the walls the Tenant stated that:

- various areas of the wall that were damaged during the tenancy were repaired with filler;
- the repairs were adequate;
- towel rack was attached to the wall at the end of the tenancy, which is why he did not repair the damage;
- the Landlord's photograph #22 show that the towel rack was still attached at the end of the tenancy; and
- the walls simply needed to be repainted.

The Landlords submitted several photographs, most of which the parties agree are a fair representation of the condition of the walls at the end of the tenancy and/or the start of the tenancy.

The Landlords submitted an invoice to show that the Landlord paid \$1,500.00 to repair and paint the walls and baseboards in the rental unit. The male Landlord stated that the rental unit was last painted sometime in 2010.

The Landlords are seeking compensation, in the amount of \$93.45, for shampooing the carpet on the stairs. The Landlords contends the carpet was dirty at the end of the tenancy. The Tenant agrees the carpet was dirty at the end of the tenancy and he does not dispute the claim for \$93.45. The Landlords submitted an invoice that shows they were charged \$93.45 for cleaning the carpet.

The Landlords are seeking compensation, in the amount of \$210.00, for lawn maintenance. The male Landlord stated that after the tenancy ended the lawn needed mowing and weeding.

The Tenant agreed that the lawn needed mowing at the end of the tenancy and that there were a significant amount of weeds in the lawn.

The Landlord and the Tenant agree that the addendum to the tenancy agreement declared that the "yard work is the responsibility of the tenant(s)". The Tenant stated that he interpreted this to mean that he was required to mow and water the grass, subject to watering restrictions. The male Landlord stated that he understood this to mean that the Tenant was required to mow, water, and weed the grass.

The Landlords submitted an invoice that shows they were charged \$210.00 for "3 trees pruned", "lawn mowing", and "need cleanup". The male Landlord estimates that it took approximately ½ hour to prune the trees; that the remainder of the invoice was for weeding and mowing the lawn; and that the reference to "cleanup" refers to pulling weeds from the lawn.

The Landlords submitted photographs of the lawn which the Tenant acknowledged fairly represented the condition of the lawn at the end of the tenancy.

The Landlords are seeking compensation, in the amount of \$400.00, for power washing the exterior of the house, including the gutters, the sides of the house, the sidewalks, and the balcony. The male Landlord stated that these areas were dirty and some moss was growing in those areas.

The Landlords are seeking compensation, in the amount of \$26.63, for repairing the handle on the washing machine, which the Landlords contend was broken during the tenancy.

The Tenant stated that the handle simply broke off one day when the washing machine was being used.

The Landlords are seeking compensation, in the amount of \$14.54, for replacing the toilet seat, which the Landlords contend was broken during the tenancy.

The Tenant stated that the toilet seat broke one day when he was using the toilet.

The Landlords are seeking compensation, in the amount of \$178.12, for unplugging a toilet in the rental unit. The male Landlord stated that the toilet did not flush properly at the end of the tenancy so he used a drain de-clogging agent in an attempt to clear the drain. He stated that when that didn't work he hired a plumber to clear the toilet.

The Landlords submitted a receipt to show that they paid \$8.33 for a drain cleaner and an invoice to show they paid \$157.50 for clearing a clogged toilet. The plumbing invoice indicated that the plumber found a cloth obstructing the toilet.

The Tenant stated that the toilet was not flushing properly during the latter part of the tenancy. Upon viewing the invoice that declared a cloth was obstructing the toilet he agreed that the Tenants should pay for the cost of this repair.

The Landlords are seeking compensation, in the amount of \$55.87, for replacing several lightbulbs in the rental unit. The male Landlord stated that he changed a total of 11 lightbulbs, including one in the bathroom.

The Tenant stated that the light in the bathroom was burned out but none of the other lightbulbs were burned out at the end of the tenancy.

The Landlord submitted receipts to show that he paid \$8.98 plus tax for a new bathroom light and \$40.86 plus tax to replace other lights.

The Landlords are seeking compensation, in the amount of \$10.92, for replacing two doorstops. The male Landlord stated that two doorstops were damaged during the tenancy. The Tenant stated that no door stops were damaged during the tenancy.

The Landlords are seeking compensation, in the amount of \$229.76, for replacing two refrigerator shelves. The male Landlord stated that the shelves were not damaged at the end of the tenancy.

The Tenant stated that one of the shelves was cracked at the start of the tenancy. He stated that the Landlord did not note it on the condition inspection report that was completed at the start of the tenancy because the Landlord told him "not to worry about it".

The Landlords submitted documents that indicate they paid \$229.76 to replace the two shelves.

The Landlords are seeking compensation, in the amount of \$1,080.00 for "cleaning, "researching parts", "stress", and "time and gas for travelling". At the hearing the male

Landlord stated that \$800.00 of the claim is for cleaning and the remaining \$280.00 is for the time and fuel he spent locating parts.

In support of the claim for cleaning the Landlord stated that he spent 13 hours cleaning the rental unit and three hours locating and purchasing parts. He stated that photographs 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 37, 38, 39, and 40 all demonstrate the need for cleaning. He stated that he spent approximately 16 hours cleaning the rental unit and that he spent \$26.21 for cleaning supplies. The Landlords submitted receipts that indicate they spent \$23.44 plus tax for cleaning supplies.

The Tenant agreed that the rental unit required some additional cleaning at the end of the tenancy but he estimates it would have only taken six hours to clean the rental unit.

The Landlords are seeking compensation, in the amount of \$11.74, for repairing a fence. The male Landlord stated that the fence needed to be repaired where it attaches to the residential complex. He was unable to state how he knows the fence was damaged by these Tenants rather than the occupants of the other suite in the residential complex.

The Tenant stated that he does not know how the fence was damaged.

The Landlords are seeking compensation, in the amount of \$25.75, for repairing the mail box. The male Landlord stated that the locking mechanism to the mail box was damaged. He was unable to state how he knows the mail box was damaged by these Tenants rather than the occupants of the other suite who share the mail box.

The Tenant stated that he did not know the mailbox was damaged.

The Landlords are seeking compensation, in the amount of \$7.26, for repairing two light switches. The male Landlord stated that the switches simply did not work at the end of the tenancy, although there was no evidence of damage to the switches.

Analysis

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.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

I find that the Landlords submitted insufficient evidence to establish that the Tenant did not adequately repair the walls that were damaged during the tenancy. In reaching this conclusion I was influenced, to some degree, by the Tenant's testimony that the walls were adequately repaired and simply needed painting.

In determining there was insufficient evidence to determine that the walls were not adequately repaired I was also influenced by the photographs submitted in evidence by the Landlords. I find photographs 4, 5, 6, 7, 8, 9, 10, 13, and 42 all show areas where the walls have been repaired. In my view these photographs are not of sufficient quality to corroborate the Landlords submission that the repairs were inadequate.

In determining there was insufficient evidence to determine that the walls were not adequately repaired I was also influenced by the captions for photographs 4, 5, 6, 7, 8, 9, 10, 13, and 42. The Landlord has noted that all of these photographs depict areas that are "patched up and not painted". The Landlord does not note that the repairs are inadequate, which would be expected if the repairs were not adequate.

As the Landlords have failed to establish that the repairs made by the Tenants were inadequate, I dismiss the Landlords' claim for repairing the areas shown in those photographs.

On the basis of the photographs submitted in evidence I accept that the areas depicted in photographs 12, 19, 20, 21, and 22 needed to be repaired, sanded and/or cleaned prior to painting. I find I find that the damage depicted in those photographs is relatively minor and that this damage constitutes wear and tear that can be reasonably expected after a rental unit has been occupied for approximately five years.

As the Landlords have failed to establish that the damage shown in photographs 19, 20, 21, and 22 are anything other than reasonable wear and tear, which the Tenants are not required to repair, I dismiss the Landlords' claim for repairing those areas.

I find that the Landlords have submitted insufficient evidence to establish that the towel rack fell off the wall prior to the end of the tenancy. In reaching this conclusion I was influenced by:

- the Tenant's testimony that the rack was attached at the end of the tenancy;
- photograph 22 that shows the towel rack is attached to the wall; and
- the male Landlord's acknowledgement that the towel rack fell off the wall after he touched it, albeit he alleges he touched it lightly.

As the Landlords have failed to establish that the wall behind the towel rack was damaged during the tenancy, I dismiss the Landlords' claim for repairing the wall behind the towel rack.

On the basis of the undisputed evidence, I accept that the walls needed painting at the end of the tenancy. I find that the walls needed painting, at least in part, to cover the repairs made by the Tenant.

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

The Residential Tenancy Policy Guidelines, with which I concur, show that the life expectancy of interior paint is four years. The evidence shows that the rental unit was last painted in 2010 and was, therefore, over four years old when this tenancy ended on July 31, 2015. As the paint in the rental unit has exceeded its life expectancy, I dismiss the Landlords' claim for painting the rental unit.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the carpet on the stairs in reasonably clean condition at the end of the tenancy. I therefore find that the Landlords are entitled to compensation for the cost of cleaning the carpet, which was \$93.45.

On the basis of the undisputed evidence I find that the addendum to this tenancy agreement declared that the "yard work is the responsibility of the tenant(s)". I find that this addendum is not particularly clear as it does not clearly define "yard work".

The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd. 1986, 47 Sask R. 70 and Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift, (1982) 36 A.R. 193*, that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. I find the contra proferentem rule applies to the addendum relating to yard work, as the tenancy agreement was created by the Landlords. As the Tenants interpreted the addendum to mean that they were only required to mow and water the yard, I find that is how the addendum must be interpreted.

As the Landlords have failed to establish that the Tenants were required to weed the lawn, I dismiss the Landlords claim for the costs of weeding the lawn.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to mow the lawn at the end of the tenancy and I find that the Landlords entitled to compensation for the cost of mowing the lawn. 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 mowing the lawn. In reaching this conclusion I was influenced by the fact the invoice from the gardener does not establish

how much was paid for mowing the lawn, how much was paid for pruning the trees, and how much was paid for “cleanup”. I therefore am only able to award nominal damages of \$20.00 in compensation for mowing the lawn.

There is nothing in the *Act* that requires a tenant to maintain the exterior of a residential complex. I therefore find that the Tenants were not obligated to maintain the exterior of this residential complex and I dismiss the Landlords’ claim for power washing exterior areas of the complex.

In the absence of evidence that shows the washing machine or the toilet seat was being used in a manner for which they were not designed, I find that the broken handle and broken toilet seat constitutes normal wear and tear. This decision is based on my experience in these matters which has shown appliances and toilet seats periodically break during normal use. As tenants are not required to repair damage arising from normal wear and tear, I dismiss the Landlords’ claim for repairing the handle on the washing machine and for repairing the toilet seat.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when a cloth was introduced into the toilet, which interfered with the functioning of the toilet. I therefore find that the Landlords are entitled to compensation for the cost of repairing the toilet, which includes \$8.33 for a drain cleaner and \$157.50 for a plumber.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to replace the bathroom lightbulb that burned out during the tenancy. I therefore find that the Landlords are entitled to compensation for the cost of replacing the bathroom lightbulb, which includes \$8.98 plus tax of \$1.08.

I find that the Landlords have submitted insufficient evidence to show that other lightbulbs were burned out at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord’s testimony that other lightbulbs were burned out or that refutes the Tenant’s testimony that only the bathroom lightbulb was burned out.

As the Landlords have failed to establish that other lightbulbs were burned out at the end of the tenancy, I dismiss their claim for replacing the other lightbulbs.

I find that the Landlords have submitted insufficient evidence to show that two doorstops were damaged during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord’s testimony that two doorstops were damaged or that refutes the Tenant’s testimony that no doorstops were damaged.

As the Landlords have failed to establish that doorstops were damaged, I dismiss their claim for replacing the doorstops.

Section 21 of the *Residential Tenancy Regulation* 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 that was completed on July 31, 2010 does not indicate that the refrigerator shelves were damaged and the Tenant has not submitted evidence that corroborates his testimony the shelves were damaged at the start of the tenancy, I find that I must rely on this report. I therefore find that the shelves were not damaged at the start of the tenancy.

As the shelves were not damaged at the start of the tenancy and they were damaged at the end of the tenancy, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the shelves. I therefore find that the Landlords are entitled to compensation for the cost of replacing the shelves, which was \$229.76.

My decision to award compensation for the refrigerator shelves is based on my experience in these matters which has shown that while appliances periodically break during normal use, damage to refrigerator shelves is typically the result of excessive force being applied to the shelves.

On the basis of the photographs submitted in evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition. I note that the Tenants were only required to leave the rental unit in reasonably clean condition. While I accept that the male Landlord may have spent 13 hours cleaning the rental unit I find that the rental unit could have been rendered reasonably clean within 8 hours. I therefore find that the Landlords are entitled to compensation for 8 hours of cleaning at a rate of \$20.00 per hour, which equates to \$160.00. I also find that the Landlords are entitled to recover the cost of the cleaning supplies, which was \$23.44 plus \$2.81 in tax.

I find that the Landlords are also entitled to compensation for the 3 hours spent researching parts and purchasing cleaning supplies and other repair items, at a rate of \$20.00 per hour, which equates to \$60.00.

I dismiss the Landlords' claim for compensation for gas used to purchase supplies, as the Landlords did not submit any proof of the amount of gas used for this purpose.

I dismiss the Landlord's claim for stress related to these repairs, as the *Act* does not provide landlords with the same right to the quiet enjoyment of the rental unit that is guaranteed to tenants.

I find that the Landlords have submitted insufficient evidence to establish that the Tenants damaged the fence on the residential property or the mail box. I find it entirely possible that the fence and mail box were damaged by the occupants living in the other suite in the residential complex or by a third party wholly unrelated to the occupants of

the complex. I therefore dismiss the Landlords' claim for repairing the fence and the mailbox.

In the absence of evidence that shows the light switches were damaged by misuse or physical force, I cannot conclude that the Tenants are required to repair the light switches that were not working at the end of the tenancy. I therefore dismiss the Landlords' claim for replacing two light switches.

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

Conclusion

The Landlords have established a monetary claim, in the amount of \$815.35, which is comprised of \$93.45 for cleaning the carpet; \$20.00 in nominal damages; \$405.65 for damage to the rental unit; \$26.25 for cleaning supplies; \$220.00 for time spent cleaning the unit and purchasing supplies; 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 Landlords to retain the Tenants' security deposit of \$675.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance of \$140.35. In the event that the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, 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 10, 2016

Residential Tenancy Branch

