# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On January 14, 2016 the Landlord filed an 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 an Application for Dispute Resolution.

The Agent for the Landlord stated that on January 18, 2016 the Application for Dispute Resolution, the Notice of Hearing, 24 pages of evidence the Landlord submitted to the Residential Tenancy Branch on January 14, 2016, and 11 pages of evidence the Landlord submitted to the Residential Tenancy Branch on January 21, 2016 were personally served to the male Tenant on January 18, 2016. The male Tenant stated that these documents were received on January 21, 2016. As the Tenant acknowledged receiving the documents, they were accepted as evidence for these proceedings.

On January 28, 2016 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 their security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The male Tenant stated that on February 01, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 18 pages of evidence the Tenants submitted to the Residential Tenancy Branch on January 28, 2016 were personally delivered to the Landlord's business office. The Agent for the Landlord acknowledged receiving the documents and they were accepted as evidence for these proceedings.

The parties 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?
Should the security deposit be returned to the Tenants or retained by the Landlord?

Background and Evidence

The Landlord and the Tenants agree that:

- the Tenants first moved into the rental unit on October 15, 2012;
- the parties signed a new tenancy agreement for December 01, 2014;
- the tenancy ended on December 31, 2015;
- the Tenants paid a security deposit of $650.00 and a pet damage deposit of $650.00 on September 12, 2012;
- a condition inspection report was completed at the start of the tenancy (on October 15, 2012) and the Tenants were given a copy of that report a few days thereafter;
- a condition inspection report was completed at the end of the tenancy (on December 31, 2015);
- a copy of the condition inspection report that was completed on December 31, 2015 was provided to the Tenants when they were served with the Application for Dispute Resolution; and
- the Landlord returned the $650.00 pet damage deposit on January 14, 2016.

The female Tenant stated that on December 31, 2015 she handed the Landlord her forwarding address, which she had recorded on a piece of paper, which the Agent for the Landlord recorded on the condition inspection report. The Agent for the Landlord stated that on December 31, 2015 the female Tenant told him what her forwarding address was, which then recorded on the condition inspection report.

The Agent for the Landlord stated that one of the Tenants gave the Landlord written consent, on the back of the condition inspection report, to keep $100.00 from the security deposit. The female Tenant stated that she did agree, in writing, that the Landlord could keep $100.00 for cleaning but that agreement was contingent on being provided with receipts. The Agent for the Landlord stated that the agreement was not contingent on being provided with receipts.

The Landlord has claimed compensation, in the amount of $335.00, for repairing the walls in one room and for painting that room. At the hearing the Agent for the Landlord reduced the amount of the claim to $50.00, which is compensation for sanding the walls.

The Landlord submitted photographs of the walls in the room, which the Agent for the Landlord stated were taken on December 31, 2015. These photographs show that many small repairs have been made on the wall, some of which are not properly sanded.

The Landlord submitted an estimate that indicates:

- it will cost $50.00 for “sanding and repatching”; and
- because of the number of patches on the wall one coat of primer and two coats of paint should be applied, which will cost $335.00.

The male Tenant stated that the photographs of the repairs fairly represent the condition of the walls in one bedroom. He stated that many of the holes he repaired existed prior to the start of the tenancy and he repaired them simply to maintain a good relationship with the Landlord. The Agent for the Landlord agreed that some of the holes in the walls repaired by the Tenant were present at the start of the tenancy.

The Landlord and the Tenant agree that the condition inspection report that was completed at the start of the tenancy declared that this bedroom had “numerous scuff marks & penetrations needs paint”.

The Agent for the Landlord stated that the Landlord is seeking compensation for sanding because the repairs completed by the Tenant were of poor quality and additional sanding was required in that room. He stated that holes in the walls in other rooms were properly repaired.

The male Tenant stated that his repairs saved the Landlord money because the Landlord did not have to patch the walls prior to painting.

The female Tenant stated that the repairs in this bedroom were of the same quality as the repairs in other areas of the house, which the Agent for the Landlord agreed were acceptable.

The Tenants are seeking double the security deposit on the basis that the Landlord did not provide them with a copy of the condition inspection report within fifteen days of the end of the tenancy.

Analysis

Section 38(4) of the *Residential Tenancy Act (Act)* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants gave the Landlord written authorization to retain $100.00 from the Tenants’ security deposit for cleaning. In reaching this conclusion I was influenced by the absence of evidence, such as the back of the condition inspection report that the Tenant allegedly signed, that corroborates the Agent for the Landlord’s testimony that the Landlord had unconditional authorization to keep $100.00 of the security deposit or that refutes the

female Tenant's testimony that the authorization to retain that amount was contingent on being provided with receipts.

I find that the Landlord has failed to establish that it has the right to retain $100.00 from the security deposit pursuant to section 38(4) 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.

Section 37(2) 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.

On the basis of the undisputed evidence I find that there were many holes in the walls in the bedroom that is the subject of this dispute when this tenancy began. I am therefore unable to determine how many of the holes in the walls were made by the Tenants during the tenancy.

On the basis of the photographs submitted in evidence I find that all of the repairs made by the Tenants were repairs to minor holes in the wall and that it does not appear that the Tenants significantly damaged the walls in this room during the tenancy. I therefore find that the Tenants were not obligated to repair any of the holes in the wall. Even if the Tenants did make some holes in the wall during the tenancy, there is insufficient evidence to show that the holes exceeded reasonable wear and tear, which the Tenants were not obligated to repair.

On the basis of the undisputed evidence I find that the Tenants did repair the holes in the walls of the room that is the subject of this dispute. Although the Tenants were not obligated to repair the holes I find that they did have an obligation to repair the walls in a manner that did not place the Landlord in a worse position than if the repairs had not been attempted.

On the basis of the photographs submitted in evidence I find that the repairs made by the Tenants were incomplete and that additional sanding was required. On the basis of the repair estimate submitted in evidence I find that it cost $50.00 for sanding and "repatching". The wording of this estimate causes me to conclude that the Tenants' repair job must be sanded before it can be patched in preparation for painting. I therefore find that the Landlord had to pay to sand the Tenants' repairs, which is an expense the Landlord would not have incurred if the Tenants had not attempted the repairs.

Although it is not clear, I find it reasonable to conclude that $25.00 of the estimate was for sanding and $25.00 was for “repatching”. As the Landlord would not have incurred the expense of sanding if the Tenants had not attempted the repairs in this room, I find that the Landlord is entitled to compensation of $25.00 for sanding.

I find that the Landlord would have had to pay to patch the walls even if the Tenants had not attempted the repairs and I therefore dismiss the Landlord’s claim for the remaining $25.00 of the cost of “sanding and repatching”.

Section 35(4) of the *Act* stipulates that a landlord must give the tenant a copy of the condition inspection report that was completed at the end of the tenancy in accordance with the regulations. Section 18(1)(b) of the *Residential Tenancy Regulation* stipulates that a landlord must give the tenant a copy of the condition inspection report that is completed at the end of the tenancy within 15 days of the later of the the date the condition inspection is completed and the date the landlord receives the tenant's forwarding address in writing.

On the basis of the undisputed evidence I find that on December 31, 2015 the Agent for the Landlord recorded a forwarding address for the Tenants on the condition inspection report. Regardless of whether the forwarding address was given to him verbally or in writing, I find that the Landlord received the forwarding address in writing once the Agent for the Landlord recorded it on the condition inspection report, in the presence of the Tenant.

As the final condition inspection report was completed on December 31, 2015 and the Landlord recorded a forwarding address provided by the Tenants on the condition inspection report on December 31, 2015, I find that the copy of the Landlord was obligated to provide the Tenants with a copy of the condition inspection report by January 15, 2016.

Even if I accepted the Agent for the Landlord’s testimony that the condition inspection report was personally served to the male Tenant on January 18, 2016, I would conclude that the report was not served in accordance with section 18(1)(b) of the *Residential Tenancy Regulation* and section 35(4) of the *Act.*

Section 36(2)(c) of the *Act* stipulates that a landlord’s right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not give the tenant a copy of the final condition inspection report in accordance with the *Residential Tenancy Regulation.* As I have concluded that the Landlord failed to comply with section 36(2)(c) of the *Act*, I find that the Landlord’s right to claim against the security deposit for damage is extinguished.

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. In

circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 36(2)(c) of the *Act,* the Landlord does not have the right to file an Application for Dispute Resolution claiming against the security deposit and the only option remaining open to the Landlord is to return the security deposit 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. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the security deposit.

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. As I have found that the Landlord did not comply with section 38(6) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenants.

I find that the Application for Dispute Resolution filed by the Landlord and the Application for Dispute Resolution filed by the Tenants both have some merit. I therefore find that each party is responsible for paying the cost of filing their own Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $25.00, for sanding the walls in one of the rooms of the rental unit. The Tenants have established a monetary claim, in the amount of $1,300.00, which represents double the security deposit. After offsetting the two claims I find that the Landlord must pay the Tenants $1,275.00.

Based on these determinations I grant the Tenants a monetary Order for $1,275.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 08, 2016

Residential Tenancy Branch