Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

A hearing was convened on March 29, 2017 in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for 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.

The Landlord stated that on March 19, 2017 the Application for Dispute Resolution and the Notice of Hearing were personally served to the male Advocate for the Tenant. The Tenant acknowledged receipt of these documents.

On March 21, 2017 the Tenant submitted 57 pages of evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that these documents were personally served to the Landlord on March 19, 2017. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord stated that on March 13, 2016 he submitted 38 pages of evidence to a Service BC office, which were served to the Tenant by a process server on March 13, 2016. The Tenant acknowledged the first 37 pages of this evidence and it was accepted as evidence for these proceedings.

The Tenant stated that she did not receive the 38th page of the Landlord's evidence package, which is merely an affidavit that the documents were served to the Tenant; a fact which is not disputed by the Tenant. As this document is not relevant to any issue in dispute, it will not be considered as evidence for these proceedings.

At the hearing on March 29, 2017 the parties were advised that I did not have the 38 pages of evidence that was submitted as evidence and that the hearing would be adjourned to provide the Landlord with the opportunity to re-submit that evidence. The Landlord re-submitted that evidence prior to the hearing on May 09, 2017 and it was available to me at the second hearing.

The hearing was reconvened on May 09, 2017 and was concluded on that date. The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

At the hearing on March 29, 2017 the Landlord stated that the application for a monetary Order for unpaid rent was made in error, as he did not believe the Tenant owed rent when he filed his Application for Dispute Resolution.

At the hearing on March 29, 2017 the Landlord stated that he made no mention of $900.00 in overdue rent in his evidence package, as he did not believe the Tenant owed rent when he submitted this evidence package.

At the hearing on March 29, 2017 the Landlord stated that approximately one week prior to the hearing he concluded that the Tenant still owed $900.00 in rent. At the hearing he applied to amend his Application for Dispute Resolution to include a claim for unpaid rent, in the amount of $900.00.

Rule 4.1 of the Residential Tenancy Branch Rules of Procedure stipulates that an applicant may amend a claim by completing and filing an Amendment to an Application for Dispute Resolution form.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure stipulates that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I do not find this to be the case in these circumstances, as the Tenant has not been advised that the Landlord is seeking compensation for unpaid rent in any amount.

The Landlord was advised that his application to amend the Application to include a claim for unpaid rent of $900.00 was declined. I find that the absence of advance notice of the claim for $900.00 made it difficult, if not impossible, for the Tenant to respond to this claim.

Preliminary Matter #2

At the conclusion of the hearing the Landlord stated that he was also seeking compensation for repairing the yard and for other repairs listed on the invoice from his company.

The Landlord was advised that only repairs listed on his Monetary Order Worksheet would be considered at these proceedings. The Landlord stated that the cost of

repairing the yard and other repairs to the rental unit were outlined on the invoice from his company that was submitted in evidence.

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. I find that the Landlord's Application for Dispute Resolution does not provide full details of the Landlord's claim to repair the yard or to make repairs other than repairs discussed in these proceedings.

I find that the Tenant knew, or should have known, that the Landlord was claiming compensation for the repairs discussed at these proceedings. I find that the Tenant knew, or should have known, that these claims would be considered at these proceedings because these claims were listed on the Monetary Order Worksheet.

I note that the Landlord did not outline any other claims on his Monetary Order Worksheet. I therefore find that it would be difficult for the Tenant to adequately prepare a response to any claims not outlined on the Monetary Order Worksheet.

Although the Landlord did provide invoices that list a variety of repairs, I find that the invoices are not sufficient notice that the Landlord was seeking compensation for those repairs. The onus is on the Landlord to clearly outline the details of his claim. The Tenant cannot be expected to sift through the evidence and speculate on the claims being made by the Landlord.

I therefore refuse to consider any claims for compensation that are not specifically outlined on the Monetary Order Worksheet.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on March 15, 2013;
- rent of $1,800.00 was due by the first day of each month;
- a security deposit of $900.00 was paid;
- a pet damage deposit of $900.00 was paid; and
- a condition inspection report was completed on March 16, 2013.

The Tenant stated that on September 06, 2016 the Tenant told the Landlord's wife that she would vacate the unit by the end of the September and that the wife told her she would prefer if the rental unit was vacated on September 15, 2016.

The Landlord stated that the Tenant told his wife that she wanted to end the tenancy, but no specific date was discussed at that time. He stated that his wife did not ask the Tenant to leave by September 15, 2016.

The Landlord and the Tenant agree that the Tenant did not give written notice of her intent to end the tenancy.

The Tenant stated that all of her property was removed from the rental unit on September 14, 2015 and from the residential property on September 15, 2016. The Landlord stated that he does not know when all of the Tenant's property was removed, but he knows it was vacant on September 16, 2016.

The Tenant stated that one key was given to the new tenant on September 14, 2016 and one key was given to an agent for the Landlord on September 15, 2016. The Landlord stated that his agent received a key for the rental unit "around" September 15, 2016.

The Landlord and the Tenant agree that the Tenant met with an agent for the Landlord on September 15, 2016 at the rental unit, to inspect the rental unit.

The Landlord stated that his agent had a blank condition inspection report when the parties met on September 15, 2016; that he asked the Tenant to complete the report; that she refused to complete the report; and that the agent completed the report on September 16, 2016, in the absence of the Tenant.

The Tenant stated that she was never asked to complete the condition inspection report on September 15, 2016; that she and her partner walked through the rental unit with an agent for the Landlord; that the agent was identifying deficiencies with the rental unit during this meeting; and that neither she nor her partner was asked to sign anything.

The Landlord stated that his agent posted a notice of a final inspection on the door after the Tenant left the rental unit on September 15, 2016 and the agent informed the Tenant, by telephone, that the notice had been posted. The Tenant stated that she did not locate a notice of final inspection after she left the rental unit on September 15, 2016 and she was not advised, by telephone, that one had been posted.

The Tenant submitted a written submission from her partner. In this submission that author stated that he was at the rental unit on September 15, 2016. He stated that during this meeting an agent for the Landlord had a "blank form to do the move out inspection which Sharon declined to do as there wasn't a copy of the move in inspection to reference to".

The Tenant stated that her forwarding address was provided to the Landlord, in writing, on September 27, 2016. The Landlord stated that it was received on September 28, 2016.

The Landlord is seeking compensation for painting the rental unit. The Landlord stated that the walls were damaged by crayons, marks, and holes throughout the rental unit and that the entire rental unit needed to be repainted. He stated that the rental unit was previously painted in February or March of 2013.

The Tenant stated that the walls in one lower bedroom were damaged; there was some damage to the walls in the second lower bedroom; and there was some damage in the entry and hallway of the lower portion of the unit. The Tenant stated that the walls in the upper portion of the rental unit were not damaged and did not require painting.

The Landlord submitted 4 photographs of the damaged walls. The parties agree that photographs #8 and #10 represent damage in the hallway/stairwell of the lower portion of the rental unit.

The Landlord stated that photograph 9 shows damage to a wall in a bedroom on the upper portion of the rental unit and that photograph 11 shows damage to a kitchen wall. The Tenant stated that photograph 9 shows damage to a wall in a bedroom on the lower portion of the rental unit and that photograph 11 shows damage to a hallway wall in the lower portion of the rental unit.

The Landlord and the Tenant agree that the lower portion and the upper portion of the rental unit are each approximately 900 square feet in size.

The Landlord submitted several receipts from a local home repair company, which total $898.30. The Landlord stated that $679.36 of these charges (plus tax) were for supplies used to repair and paint the walls in the rental unit. The Tenant does not dispute the Landlord's calculations.

The Landlord estimated that he spent 60 hours repairing and painting the walls in the entire unit and that a third party spent 84 hours repairing and painting the walls, for a total of 144 hours. The Tenant contends that the number of hours the Landlord is claiming are excessive.

The Landlord submitted a handwritten receipt, dated October 14, 2016, that indicates the third party spent a total of 108 hours completing a variety of tasks at the rental unit, including repairing/painting walls; removing carpets/garbage; and repairing the lawn. The hours spent completing each task is not provided.

The Landlord submitted an invoice from a company he owns, which indicates the company completed 84 hours of work at the rental unit, for which the company charged $65.00 per hour.

The Landlord is seeking compensation, in the amount of $15.29 (plus tax) for sandpaper. The Landlord stated that these supplies were used for repairing the walls. The Landlord submitted a receipt that shows a sanding disc was purchased for this amount.

The Tenant stated that she offered to repair the damaged walls prior to the end of the tenancy and that the parties agreed that the Landlord would pay for the labour for repairing/painting the walls and she would pay for the materials. The Landlord stated that he never agreed to pay for the labour for these repairs.

The Landlord is seeking compensation for replacing a faucet in downstairs bathroom, which he stated needed to be replaced because a handle was missing. The Tenant stated that the handle was not missing on the faucet in the downstairs bathroom, although the tap was dripping.

The Landlord is seeking compensation for replacing a towel bar in the upstairs bathroom, which he stated needed to be replaced because the bar was broken. The Tenant stated that the towel bar in the upstairs bathroom was not damaged.

The Landlord submitted a receipt which indicates that a replacement towel bar cost $28.98 (plus tax). The Landlord stated that it took approximately1 hour to replace the towel bar.

The Landlord is seeking compensation of $313.90 for cleaning this carpet in the rental unit. The Tenant agreed the carpet needed cleaning and she agreed the Landlord is entitled to compensation for cleaning the carpet.

The Landlord submitted an invoice for cleaning the carpet, which indicates there is an odour and that the carpets need a “biotreat”, which was completed.

The Landlord is seeking compensation of $729.88 for replacing the carpet in 2 bedrooms and on the stairs. The Landlord stated that the carpet in these three areas still smelled badly after they had been cleaned and he determined they needed to be replaced.

The Tenant stated that the carpet in one of the bedrooms smelled badly at the end of the tenancy and that she had located a carpet company that guaranteed they would be able to eliminate the odor. The Tenant stated that she made arrangements to have this carpet cleaner clean the carpets on September 26, 2016; that she could not meet the cleaners at the rental unit on September 26, 2016 so she asked the Landlord to meet the cleaners and pay them on her behalf; and the Landlord did not agree to pay the carpet cleaners on the Tenant’s behalf, so she cancelled the cleaners.

The Landlord stated that he waited for the cleaners for 2.5 hours on September 26, 2016 but they did not attend the rental unit, and that he was prepared to pay the cleaning bill with the understanding that the Tenant would reimburse him for those costs.

The Landlord submitted an invoice for new carpet, in the amount of $729.88. He stated that he and a helper spent approximately 16 hours removing the old carpet and installing the new carpet.

The Landlord stated that the carpet that was replaced was installed in January or February of 2012.

The Landlord is seeking compensation, in the amount of $46.20, for the cost of disposing of property left on the residential property at the end of the tenancy and for the cost of disposing of the used carpet. The Landlord submitted a photograph of the property that was left at the end of the tenancy. The Tenant agreed that she left a ping pong table and a lawn mower at the residential property at the end of the tenancy. The Landlord submitted a receipt that indicates this expense was incurred.

The Landlord is seeking compensation, in the amount of $36.92 (plus taxes and eco fees), for replacing 7 light bulbs. The Landlord submitted receipts that show that he paid well over $36.92 to purchase light bulbs (plus taxes) and $0.70 in eco fees. The Tenant does not dispute that approximately 7 light bulbs were burned out at the end of the tenancy.

The Landlord is seeking compensation, in the amount of $5.62, for replacing batteries in 2 smoke alarms. The Landlord stated that the batteries were not working at the end of the tenancy. The Tenant stated that she does not know if the batteries were not working at the end of the tenancy.

The Landlord is seeking compensation, in the amount of $8.99, for a “stain marker”. The Landlord stated that the “stain marker” was used to repair scratches on a bathroom vanity. The Tenant stated that the bathroom vanity was not scratched.

The Landlord is seeking compensation for cleaning the rental unit. The Landlord submitted receipts that show he paid two individuals for cleaning the rental unit. The Landlord estimates that these two individuals spent 32 hours cleaning the rental unit.

The Landlord and the Agent for the Landlord both stated that the rental unit required a significant amount of cleaning at the end of the tenancy.

The Tenant stated that she had several people help clean the rental unit at the end of the tenancy and that it was left in clean condition. The male Advocate for the Tenant stated that several capable cleaners helped clean the rental unit at the end of the tenancy; that TSP was used to clean the walls; and the unit was left in clean condition.

The Landlord stated that he did not provide photographs that demonstrate the rental unit was not left in clean condition as the photographs he took did not adequately demonstrate the need to clean.

Analysis

Section 35(1) of the *Residential Tenancy Act (Act)* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit. I find that the Landlord and the Tenant complied with section 35(1) of the *Act* when they met on September 15, 2016.

Section 35(3) of the *Act* stipulates that the landlord must complete a condition inspection report in accordance with the regulations.

I find that the evidence shows an agent for the Landlord had a condition inspection report with him when the parties met on September 15, 2016, but he did not complete it in the presence of the Tenant. I find that the agent for Landlord should have completed the report on September 15, 2016 even if the Tenant indicated she would not sign the report and even if he did not have a copy of the inspection report that was completed at the start of the tenancy.

Section 35(4) of the *Act* stipulates that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. As the Landlord did not complete a condition inspection report during the inspection on September 15, 2016, I find that there could be no reasonable expectation that the Tenant would have signed the report.

Section 35(5) of the *Act* stipulates that a landlord may make the inspection and complete and sign the report without the tenant if the landlord has offered the Tenant two opportunities to complete the report and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit. As the Tenant participated in the inspection on September 15, 2016 and she did not abandon the rental unit, I find that the Landlord did not have the right to complete this report in the absence of the Tenant.

Section 36(2)(c) of the *Act* stipulates that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if after having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the Landlord or his agent did not complete the inspection report at the time of the inspection on September 15, 2016 and the Landlord or his agent did not have the right to complete the report in the absence of the Tenant on September 16, 2016, I find that the Landlord's right to claim against the deposits for damage is extinguished, pursuant to section 36(2)(c) of the *Act.*

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 plus interest 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, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage and the only option remaining open to the Landlord is to return the security deposit and/or pet damage 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. As the Landlord has not yet returned the security deposit and pet damage deposit, I find that the Landlord did not comply with section 38(1) of the *Act.*

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 Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the pet damage deposit and security deposit to the Tenant.

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. In these circumstances the Landlord bears the burden of proving that the rental unit was damaged during the tenancy.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

It is important to note that the two parties and the testimony each puts forth, do not stand on equal ground, because one party carries the added burden of proof. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair and paint the walls in the lower portion of the rental unit that were damaged during the tenancy. On the basis of the photographs submitted in evidence I find that the damage to the walls in the lower portion exceeds normal wear and tear. I therefore find that the Landlord is entitled to compensation for repairing and painting the walls in the lower portion of the rental unit.

I find that the Landlord has submitted insufficient evidence to establish that the walls in the upper portion of the rental unit were damaged during the tenancy. In reaching this conclusion I was influenced by the fact the Tenant disputes the walls in the upper portion were damaged.

In concluding that the Landlord has submitted insufficient evidence to establish that the walls in the upper portion of the rental unit were damaged during the tenancy, I found that the photographs submitted by the Landlord were of little evidentiary value. I find they were of little evidentiary value as there was no evidence that corroborates the Landlord's submission that some of the photographs were show damage in the upper portion of the unit or that refutes the Tenant's submission that the photographs only show damage in the lower portion of the rental unit.

In adjudicating the claim for painting I considered the written submission of a neighbour, dated February 03, 2017, which was submitted in evidence by the Landlord. In this statement the author declared that he "repaired damaged walls throughout the place". In the absence of a more detailed description of the walls that needed repairing, I find that this declaration is of limited evidentiary value.

In adjudicating the claim for painting I considered the written submission of the Agent for the Landlord, dated February 21, 2017, which was submitted in evidence by the Landlord. In this statement the author declared that when he inspected the rental unit on September 14, 2017 he noticed numerous holes in the drywall in the lower level. I find that the absence of reference to damage to the walls in the upper level tends to corroborate the Tenant's submission that the walls in the upper level were not damaged.

On the basis of the undisputed evidence, I find that the Landlord paid $679.36 for supplies to paint/repair the walls in the rental unit plus 12% tax, which is $760.88 and $15.29 for sandpaper plus tax, which is $17.12.

I concur with the Tenant's submission that the amount of hours claimed for repairing the walls and painting the rental unit seems excessive, however I am unable to conclude that the hours are excessive, as the Tenant did not submit any evidence, such as a statement from a painter, that would establish the hours are excessive.

Conversely, the Landlord submitted a receipt that indicates he paid a third party $32.00 per hour for his labour and that he spent a total of 108 hours working at the rental unit completing a variety of tasks at the rental unit, including repairing/painting walls; removing carpets/garbage; and repairing the lawn and a receipt from the Landlord's company that indicates the Landlord spent 84 hours completing similar tasks. Although this evidence is not entirely unbiased, I find that are consistent with the Landlord's estimate that 144 hours were spent repairing and painting the walls.

On the basis of the undisputed testimony that the third party was paid $32.00 per hour, I find that the Landlord paid this individual $2,688.00 for painting the rental unit. Although the Landlord's company charges an hourly rate of $65.00, I find that the Landlord is not entitled to compensation in that amount for working on his own property. I find it reasonable that he be paid the same amount the third party was paid for painting the rental unit, which is $1,920.00 ($32.00 X 60).

Based on the aforementioned calculations, I find that the reasonable costs of repairing and painting the walls in the entire rental unit were $778.00 for supplies and $4,608.00, which is $5,386.00.

As I have concluded that the Tenant is only obligated to compensate the Landlord for repainting the lower portion of the rental unit and the evidence shows that the square footage of the lower portion is approximately 50% of the total area of the rental unit, my award will be based on 50% of the reasonable costs for repainting the entire unit, which is $2,693.00.

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 show that the life expectancy of interior paint is four years. The evidence shows that the rental unit was painted in February or March of 2013 and that the paint was, therefore, approximately 2.5 years old at the end of the tenancy. I therefore find that the paint in the living room had depreciated by 62.5% by the end of the tenancy and that the Landlord is entitled to 37.5% of repainting the lower portion of the rental unit, which I calculate was in these circumstances is $1,009.87.

Regardless of whether or not the Tenant agreed to pay for the materials used to repair and paint the walls and the Landlord agreed to pay for the labour for repairing/painting the walls and she would pay for the materials, the undisputed evidence is that the Tenant has not paid for the materials. I therefore find that they did not settle the issue in regards to the repairs to the wall and the Landlord was free to pursue that claim at these proceedings.

I find that the Landlord has submitted insufficient evidence to establish that the faucet in the lower bathroom was missing a handle. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the handle was missing or that refutes the Tenant's testimony that a handle was not missing.

In adjudicating the claim for repairing the faucet I considered the written submission of a neighbour, dated February 03, 2017, which was submitted in evidence by the Landlord. In this statement the author declared that he removed and installed "a broken vanity faucet. In the absence of a more detailed description of the nature of the damage to the faucet, I find that this declaration is of limited evidentiary value. I find it entirely possible that the faucet was replaced because it was dripping, as the Tenant acknowledged, which is typically damage that is considered normal wear and tear.

As the Landlord has submitted insufficient evidence to establish that the faucet was damaged during the tenant, and that the damage exceeded normal wear and tear, I dismiss the Landlord's claim for replacing the faucet.

I favour the testimony of the Landlord, stated that a towel bar was broken, over the testimony of the Tenant, who stated that a towel bard was not broken.

In adjudicating the claim for replacing the towel bar I placed considerable weight on the written submission of a neighbour, dated February 03, 2017, which was submitted in evidence by the Landlord. In this statement the author declared that he replaced "damaged towel racks". I find that this testimony corroborates the testimony of the Landlord in regards to the damaged towel bar.

In adjudicating the claim for replacing the towel bar I considered the written submissions submitted in evidence by the Tenant. As none of the authors of specifically refer to the towel bars, I find there evidence is of limited value in regards to the claim for replacing the towel bar.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair a damaged towel bar and that the Landlord is entitled to compensation for purchasing a towel bar, in the amount of replacing the towel $32.45. I find that the Landlord is also entitled to compensation for the hour he spent replacing the towel bar, in the amount of $32.00, which appears to be the hourly rate he would have paid a third party to install the item.

As the Tenant agreed the Landlord is entitled to compensation for cleaning the carpet, I grant the Landlord's claim of $313.90 for cleaning this carpet.

On the basis of the undisputed evidence I find that the carpet in the lower bedroom smelled at the end of this tenancy. I favour the testimony of the Landlord, who stated the carpet in a second bedroom and the carpet on the stairs also smelled, over the testimony of the Tenant, who stated that the carpets did not smell in these rooms.

I favoured the testimony of the Landlord in regards to the carpet smelling in the second bedroom and the stairs, in part, because of the written submission of the neighbour, dated February 03, 2017, in which the author declared that he removed carpets (plural) with very bad smell.

I favoured the testimony of the Landlord in regards to the carpet smelling in the second bedroom and the stairs, in part, because of the written submission of the Agent for the Landlord, dated February 21, 2017, in which the author declared that the carpets (plural) were "smelly".

In adjudicating the claim for replacing the carpets I considered the written submissions submitted in evidence by the Tenant. In some of these written submissions the authors declare that they did not notice any odours in the rental unit. As the Tenant

acknowledged that the carpets smelled in one of the bedrooms at the end of the tenancy, I find that any declaration that there was no smell is inaccurate.

On the testimony of the Landlord and in the absence of any evidence to the contrary, I find that the carpets continued to smell even after they were cleaned. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to ensure the carpets were clean and free of odours at the end of the tenancy and that the Landlord is also entitled to compensation for replacing the carpets that smelled.

In concluding that the carpets continued to smell even after they were cleaned by the Landlord I was heavily influenced by the text messages the parties exchanged in September of 2016, which the Tenant submitted in evidence. In particular I was influenced by the text messages sent by the Landlord in which he informs the Tenant the carpet still smells, which were sent after the Landlord has cleaned the carpets.

I specifically note that the Tenant had both a right and an obligation the carpets prior to vacating the rental unit and if she had done so she may have been able to find a professional cleaner that was able to eliminate the odour. I note that the Landlord did request a “biotreat” in an attempt to eliminate the odour.

On the basis of the undisputed evidence, I find that the Landlord paid $729.88 to purchase the replacement carpet. I find that the Landlord’s estimate that he and a third party spent approximately 16 hours removing the old carpet and installing the new carpet is a reasonable estimate. On the basis of the receipt that indicates the Landlord paid a third party $32.00 per hour for his labour, I find it reasonable to conclude that the Landlord is entitled to the same wages for the same labour, which is $512.00.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpets were installed in January or February of 2012 and that they were, therefore, approximately 3.75 years old at the end of the tenancy. I therefore find that the paint in the living room had depreciated by 37.5% by the end of the tenancy and that the Landlord is entitled to 62.5% of the cost of replacing the carpet, which I calculate to be $776.18.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to remove all of her personal property from the residential property, specifically a ping pong table and a lawn mower and I find that the Landlord is entitled to compensation for disposing of these items. As the Landlord also had to dispose of the soiled carpet in the rental unit I also find it reasonable that the Tenant compensate the Landlord for the cost of disposing of the soiled carpet. I therefore grant the Landlord’s application for disposing of these items, in the amount of $46.20.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace approximately 7 lightbulbs that burned out during the tenancy. As the evidence shows that the Landlord paid more

than $36.92 (plus taxes and eco fees) for replacing 7 light bulbs, I find that the Landlord is entitled to the full amount of this claim, in the amount of $43.70. ($36.92 + tax of $6.08 + $0.70 in eco fees)

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace the batteries in the smoke alarms. I therefore find that the Landlord is entitled to the $5.62 he paid to replace the batteries.

I find that the Landlord submitted insufficient evidence to establish that a bathroom vanity was scratched during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the item was scratched or that refutes the Tenant's testimony that it was not scratched. As the Landlord has failed to establish that the vanity was scratched during the tenancy, I dismiss his claim for a "stain marker".

I find that the Landlord has submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of objective evidence, such as photographs, that corroborate the Landlord's testimony that additional cleaning was required or that refutes the Tenant's testimony that the rental unit was left in clean condition.

In adjudicating the claim for cleaning I have placed little weight on the written submissions from a neighbour, dated February 03, 2017, or the written submission of the Agent for the Landlord, dated February 21, 2017, in which both parties declare the rental unit was not clean. I find that these submissions have limited value, as they were contradicted by written submissions submitted by the Tenant, in which the authors of those submissions declare the rental unit was clean.

As the Landlord submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition at the end of the tenancy, I dismiss his claim for cleaning costs.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of $3,600.00, which is double the security deposit and pet damage deposit.

The Landlord has established a monetary claim, in the amount of $2,359.92, which includes $1,009.87 for painting/repairing the walls; $64.45 for replacing a towel bar; $313.90 for cleaning the carpet; $776.18 for replacing the carpet; $46.20 for disposal

fees; $43.70 for replacing light bulbs; $5.62 for batteries; and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

After offsetting the two claims I find that the Landlord owes the Tenant $1,240.08 and I grant the Tenant a monetary Order in this amount. 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 *Act*.

Dated: May 10, 2017

Residential Tenancy Branch