Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PARKSVILLE QUALICUM BEACH REALTY AND AGENT FOR 577139 ALBERTA LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, MNR, MNSD, FF

Introduction

A hearing was convened on October 24, 2017 in response to cross applications.

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 the rental unit, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on May 19, 2017 the Landlord's Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to the male Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from documents filed with the Application for Dispute Resolution that the Tenants are also seeking a monetary Order for money owed or compensation for damage or loss, and that matter will be considered at these proceedings.

The Tenant stated that on September 18, 2017 the Tenants' Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenants submitted with the Application were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 18, 2017 the Tenants submitted 27 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on October 18, 2017. The Agent for the Landlord stated that this evidence was received on October 20, 2017 and that she has not had sufficient time to review the evidence.

As the evidence the Landlord received on October 20, 2017 was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and the Agent for the Landlord stated she has not had sufficient time to consider the evidence, the parties were advised that it would not be discussed during the hearing on October 24, 2017. As this hearing was adjourned, I find that the Landlord will have ample time to consider this evidence and it was accepted as evidence for the reconvened hearing.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

There was insufficient time to conclude the hearing on October 24, 2016 so the hearing was adjourned. The hearing was reconvened on January 16, 2018 and was concluded on that date.

Preliminary Matter #1

The Landlord submitted several photographs in the evidence package. The photographs that were served to the Tenant were colour photographs however the photographs in my possession were black and white. The Agent for the Landlord stated that she will provide the Residential Tenancy Branch with colour photographs.

The Landlord submitted colour photographs after the hearing and I was able to consider those photographs during this adjudication.

Preliminary Matter #2

The Landlord has spelled the name of the Tenant on the Landlord's Application for Dispute Resolution differently than the spelling provided by the Tenant during the hearing. With the consent of both parties, the Landlord's Application for Dispute Resolution was amended to reflect the spelling of the Tenant's name as it was provided at the hearing.

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?
Are the Tenants entitled to compensation for problems with the rental unit and to the return of the security deposit?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- the tenancy began on July 01, 2015;

- the tenancy was for a fixed term, the fixed term of which ended on June 30, 2016;
- the parties subsequently agreed to enter into another fixed term, which ended on June 30, 2017;
- the Tenant agreed to pay monthly rent of $1,400.00 by the first day of each month;
- the Tenant paid a security deposit of $700.00;
- a condition inspection report was completed at the beginning of the tenancy;
- the Tenant asked if he could end the fixed term tenancy prior to June 30, 2017; and
- on January 24, 2017 the parties signed a mutual agreement to end the tenancy, effective January 31, 2017.

The Tenant stated that after signing the mutual agreement to end the tenancy they mutually agreed that the Tenant could remain in the rental unit until February 15, 2017, providing they paid rent until February 15, 2017.

The Agent for the Landlord stated that after signing the mutual agreement to end the tenancy they mutually agreed that the Tenant could remain in the rental unit until February 13, 2017, providing they paid rent until February 15, 2017.

The Landlord submitted a letter, dated January 23, 2017, in which the Landlord informs the Tenant they will not have to pay the "broken lease fee" if they "pay the rent for the vacant period of" February 01, 2017 to February 15, 2017. In this letter the Landlord scheduled a final inspection for February 13, 2017.

The Landlord submitted a letter, dated February 01, 2017, in which the Landlord declared that vacant possession of the rental unit will be given on February 13, 2017 and that rent of $750.00 is being accepted for "use and occupancy only".

The Tenant is seeking a rent refund of $93.33 because he did not have full use of the rental unit on February 14, 2017 and February 15, 2017.

The Tenant is also seeking a rent refund of $50.00 as he allegedly overpaid the rent for the period between February 01, 2017 and February 15, 2017. The Agent for Landlord agreed that the Tenant paid $750.00 in rent for that period and that he should have only paid $700.00.

The Agent for the Landlord stated that she went to the rental unit on February 14, 2017 for the purposes of completing a condition inspection report. She stated that the Tenant would not agree with her assessment of the rental unit so she completed the report in his presence, but he refused to sign the report. The Landlord submitted a copy of the condition inspection report.

The Tenant stated that the Agent for the Landlord was at the rental unit on February 14, 2017 but she did not complete a condition inspection report at that time. When he was asked why the Agent for the Landlord was at the rental unit on February 14, 2017, he stated that she was not there to complete a condition inspection report and was only there to "illegally evict" him. When he was asked if she was completing a report when she was at the unit on February 14, 2017 he

stated that she was not making any notes on the condition of the rental unit and that she did not have papers of any kind with her.

When the parties were subsequently discussing a damaged window the Agent for the Landlord referred to page 8 of the condition inspection report the Landlord submitted in evidence. The Landlord and the Tenant agree that the Tenant signed this page of the report on February 14, 2017 to acknowledge areas in the unit that had been damaged. The Tenant was unable to explain how he could have signed this report if the Agent for the Landlord did not have it with her on February 14, 2017.

The Tenant stated that he sent his forwarding address to the Landlord, via email, on April 21, 2017. The Tenant stated that he subsequently telephoned the Agent for the Landlord who told him she had not received his email, so he re-sent the email on May 18, 2017.

The Agent for the Landlord stated that she contacted the Tenant's wife because she had not received a forwarding address for the Tenant; that the Tenant subsequently telephoned her and told her he had sent her an email in which he provided a forwarding address; and that on May 18, 2017 the Tenant re-sent the email of April 21, 2017.

The Tenant is seeking compensation, in the amount of $3,500.00, for being unable to use the bathroom on the main floor of the rental unit. He stated that he was able to use the bathroom on the second floor of the rental unit and a powder room on the main floor.

The Landlord and the Tenant agree that when this tenancy began the taps for the sink in the main floor bathroom were not working, which the Landlord promised to repair.

In support of the claim for $3,500.00 the Tenant stated that:

- he was told the entire vanity needed to be replaced in order to fix the taps;
- the water to the entire bathroom was shut off during the tenancy;
- they were unable to use this bathroom because the water was shut off;
- the vanity/taps were never repaired during the tenancy; and
- he did not tell the Landlord he did not want the taps repaired.

In response to the claim for $3,500.00 the Agent for the Landlord stated that:

- when the repair to the taps was initiated it was determined that the entire vanity needed replacing;
- the water to the vanity was shut off during the tenancy;
- the water to the rest of the bathroom fixtures was not shut off; and
- the vanity/taps were never repaired because the Tenant asked them not to make the repair.

The Agent for the Landlord argued that the Tenant's claim of $3,500.00 in compensation is excessive. She stated that the bathroom is only 42 square feet; that the entire house is 2,146

square feet and that the amount of compensation should reflect the size of the bathroom in relation to total size of the unit.

The Landlord applied for compensation of $750.00 for a “broken lease fee”, which was reduced to $700.00 at the hearing. The Landlord bases this application of clause 15 of the addendum to the tenancy agreement, which was submitted in evidence. The applicable portion of this clause reads: “The Tenant further agrees that the security deposit may be forfeited to the Landlord, to cover the cost of placing a new tenant, if the Tenant vacates prior to the end of their lease, or if they fail to give proper notice”.

The Agent for the Landlord and the Tenant agree that they signed a document, dated January 23, 2017, in which the Landlord declared the “broken lease fee” will be waived providing rent is paid for the “vacant period of Feb 1 to 15, 2017” and that the property is vacated and left in good repair for the new tenancy “which begins on February 15, 2017”.

The Landlord applied for compensation for repairing two broken windows. At the hearing the Agent for the Landlord stated that the Landlord is only seeking compensation for the window that was broken in the shed. The Tenant acknowledged that the window in the shed was broken during the tenancy.

The Agent for the Landlord stated that the cost of the shed window was $63.93 and the Landlord was charged $90.00 for installing the two windows. The Landlord submitted an invoice for replacing the two windows, in the amount of $172.25.

The Landlord is claiming compensation of $52.50 for replacing a piece of fence that had been removed during the tenancy. The Tenant does not dispute this claim. The Landlord submitted an invoice that indicates this expense was incurred.

The Landlord is claiming compensation of $308.49 for cleaning the carpet that had not been cleaned at the end of the tenancy. The Tenant does not dispute this claim. The Landlord submitted an invoice that indicates this expense was incurred.

The Landlord is claiming compensation of $210.00 for cleaning the rental unit. The Agent for the Landlord stated that at the end of the tenancy the interior windows and ledges required cleaning, the cupboards needed wiping, the floors needed washing, and there were some areas in the bathroom that needed cleaning.

The Landlord submitted documents that show that people spent 10.5 hours cleaning the carpet. In one of these documents the person completing part of the cleaning declared that she cleaned the windows and window tracks, and that the window tracks were dirty and moldy.

The Tenant stated that he had made arrangements to have the rental unit cleaned by professional cleaners on February 14, 2017 but the Landlord had taken possession of the unit before the cleaners could clean the unit.

The Landlord submitted two series of photographs, one of which were taken at the start of the tenancy and one of which were taken at the end of the tenancy. The Tenant agrees that these photographs represent those areas depicted in the photographs.

The Landlord is claiming compensation of $19.00 for disposing of items left in the yard of the rental unit. The Agent for the Landlord stated that the Tenant left some items in the yard when the rental unit was vacated, which the Landlord disposed of at the same time other items belonging to the Landlord were discarded.

The Tenant stated that he did not leave property in the yard after he fully vacated the unit.

The Landlord submitted photographs of the rental unit which show the amount of property that was in the yard while the Tenant was in the process of moving. The Agent for the Landlord stated that the Tenant had moved most of those items by the time the rental unit was full vacated. The Landlord did not submit any photographs of the items that were left in the yard after the rental was fully vacated.

The Landlord is claiming compensation of $265.00 for repairing the walls in the rental unit, which the Agent for the Landlord stated were damaged in 5 places. The Agent for the Landlord stated that the Landlord submitted 4 photographs of the damage to the walls (which I have initialed and labelled 1, 2, 3, and 4). The Landlord submitted an invoice that establishes the Landlord was charged $265.00 to repair the walls.

The Tenant stated that the walls were not damaged during the tenancy, with the exception of the damage depicted by photograph #2. He stated that the damage depicted in photograph #1 and 4 were not present at the end of the tenancy and that he cannot see any damage in photograph #3.

At the hearing the Landlord withdrew the claim for repairing the garden beds.

The Landlord is claiming compensation of $15.00 for replacing light bulbs. The Agent for the Landlord stated that 4 light bulbs were burned out at the end of the tenancy. The Tenant stated that only two light bulbs were not working at the end of the tenancy and that they were not working at the start of the tenancy. The Landlord did not submit a receipt to support this claim.

The Landlord is claiming compensation of $30.00 for excessive water usage. The Agent for the Landlord stated that an exterior tap was “spewing water” at the end of the tenancy, which the Landlord estimates resulted in $30.00 of water consumption. The Landlord alleges the Tenant is responsible for these costs because the problem was not reported to the Landlord. The

Agent for the Landlord acknowledged that the leaking tap was not recorded on the final inspection report.

The Tenant stated that an exterior tap was not leaking at the end of the tenancy.

Analysis

On the basis of the letter dated February 01, 2017, I find that the Landlord accepted rent for "use and occupancy only" for the period between February 01, 2017 and February 15, 2017. The term "use and occupancy" is commonly understood to mean that a tenant is paying rent in exchange for the right to occupy a rental unit for the period of the payment, even if the tenant no longer has the right to occupy the unit under the terms of a tenancy agreement. On the basis of this letter, I find that the Tenant paid rent for the period between February 01, 2017 and February 15, 2017 and that he therefore had the right to occupy the rental unit until February 15, 2017.

On the basis of the letter dated January 23, 2017, I find that the Landlord scheduled a final inspection for February 13, 2017. While I accept that this letter shows that the Landlord believed the rental unit would be vacated by February 13, 2017, I find that it does not establish that the Tenant agreed the unit would be vacated by February 13, 2017.

On the basis of the letter dated February 01, 2017, in which the Landlord declared that vacant possession of the rental unit will be given on February 13, 2017, I find that the Landlord understood the unit would be vacated by February 13, 2017. I find, however, that there is insufficient evidence to establish that the Tenant agreed the unit would be vacated by February 13, 2017.

On the basis of the undisputed evidence that the Agent for the Landlord moved the Tenant's property out of the rental unit on February 14, 2017, I find that the Tenant was not obligated to pay rent for February 14, 2017 and February 15, 2017.

As the Tenant had the right to occupy the rental unit for the period between February 01, 2017 and February 13, 2017, I find that he was required to pay rent of $650.00 for those days, at a per diem rate of $50.00. As the Tenant paid $750.00 in rent for this period, I find that he is entitled to a rent refund of $100.00.

I favour the Agent for the Landlord's testimony, who stated that she completed a condition inspection report in the presence of the Tenant on February 14, 2017, over the testimony of the Tenant, who stated that the Agent for the Landlord was not making notes regarding the condition of the rental unit on February 14, 2017.

I favoured the testimony of the Agent for the Landlord in this regard, in large part, because the Tenant acknowledged signing the condition inspection report on February 14, 2017 to

acknowledge damage to the rental unit. I find this fact strongly corroborates the Agent for the Landlord's version of events and refutes the Tenant's version of events.

I find the testimony regarding the condition inspection report lacks credibility, in part, because he stated that the Agent for the Landlord was not there to complete the condition inspection report. This is entirely inconsistent with the email the Tenant submitted in evidence, dated February 13, 2017, in which the Agent for the Landlord informs the Tenant they need to meet on February 14, 2017 to "do the move out at noon together".

On the basis of the undisputed evidence and the emails that were submitted in evidence, I am satisfied that the Tenant sent his forwarding address to the Landlord, via email, on April 21, 2017. I find, however, that there is no evidence to show that the Landlord received this email. In reaching this conclusion I was heavily influenced by the Agent for the Landlord's testimony that the email was not received and by the fact that neither party submitted a copy of an email in which the Agent for the Landlord responded to this particular email.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served*.* Service by email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. In circumstances where one party acknowledges receiving an email or there is documentary evidence that shows an email was received, I may be inclined to conclude that a document has been sufficiently served. As that is not the case in these circumstances, I cannot conclude that the Landlord received the email that was sent by the Tenant on April 21, 2017.

On the basis of the undisputed evidence that the forwarding address was provided to the Landlord, via email, on May 18, 2017, I find that the forwarding address was received on that date.

When making a claim for damage or loss 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 undisputed evidence I find that when this tenancy began the Landlord promised to repair the taps for the sink in the main bathroom and that this repair was never completed.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a non-essential service or facility if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

As the Landlord did not complete the promised repairs to the taps, I find that the Landlord was obligated to reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the failure to complete that repair, pursuant to section 27(2) of the *Act*.

In concluding that the Tenant is entitled to a rent reduction I have placed no weight on the Agent for the Landlord's testimony that the Tenant asked the Landlord not to make the repair. I placed no weight on this submission because the Landlord submitted no evidence to corroborate the Agent for the Landlord's testimony in this regard or that refutes the Tenant's testimony that he did not tell the Landlord that the repairs were not needed.

In determining the amount of compensation due to the Tenant I have placed no weight on the Tenant's testimony that he was completely unable to use the washroom as the water to all the fixtures had been turned off. I placed no weight on this submission because the Tenant submitted no evidence to corroborate his testimony that all of the water was shut off or that refutes the Landlord's testimony that only the water to the sink was shut off. Given that it is not typically necessary to shut off all of the water in a bathroom to repair sink taps, I find it highly unlikely that all of the water was shut off.

I am basing my assessment on the amount of compensation due to the Tenant on the basis that the bathroom was usable, with the exception of the sink. In my view this reduction in service reduced the value of this tenancy by $20.00 per month. Given that the Tenant was able to use the majority of the bathroom and there were two other bathrooms in the rental unit, I find this to be reasonable compensation. I therefore grant the Tenant compensation of $390.00 for being without the use of this sink for 19.5 months.

I find that compensation in these circumstances should not be based on square footage of the rental unit, as that relationship does not accurately reflect the importance of a sink.

Section 20 of the *Act* stipulates that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement. I find that clause 15 of the addendum to the tenancy agreement breaches section 20 of the *Act*, as it stipulates the security deposit may be forfeited if the Tenant vacates prior to the end of their lease or do not give proper notice to end the tenancy. As the reference to retaining the security deposit breaches section 20 of the *Act*, I find that portion of the clause is unenforceable. I therefore dismiss the Landlord's application for a "broken lease fee".

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 the window in the shed that was broken during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of replacing the window. I therefore find that the Landlord is entitled to $45.00 for labour (50% of the cost of installing 2 windows), $63.93 for the cost of the window, and $5.44 in tax.

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 a piece of fence that he removed during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of replacing the fence pieces, in the amount of $52.50.

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 leave the carpet in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the carpet, in the amount of $308.49.

On the basis of the photographs submitted in evidence I accept that the rental unit was not in reasonably clean condition on February 14, 2017. As the Landlord took possession of the rental unit on February 14, 2017, rather than February 15, 2017, I find that the Landlord prevented the Tenant from complying with his obligation to leave the rental unit in reasonably clean condition. I therefore find that the Landlord is not entitled to compensation for cleaning the unit and I dismiss that claim.

In adjudicating the claim for cleaning I was influenced, in part, by the undisputed evidence that the Tenant had hired professional cleaners to clean the unit on February 14, 2017.

I find that the Landlord submitted insufficient evidence to show that the Tenant left items in the yard after the rental unit was fully vacated. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, which corroborate the Agent for the Landlord's testimony that property was left in the yard or that refutes the Tenant's testimony that no property was left in the yard after the rental unit was fully vacated. As the Landlord has failed to establish that property was left in the yard, I dismiss the Landlord's claim for disposing of property left in the yard.

On the basis of the photographs submitted in evidence I find that the walls were damaged in at least four places. I find that the photographs did not clearly depict that damage occurred at a fifth location.

As the Tenant acknowledged that the wall was damaged in one area, I find that the Tenant is obligated to repair that damage.

I favour the testimony of the Agent for the Landlord, who declared that the walls were damaged in the four places depicted in the photographs, over the testimony of the Tenant, who declared that the damage in three of those places had not occurred prior to the end of the tenancy. In reaching this conclusion I was heavily influenced by the nature of the damage, which is typical of damage that would occur during a tenancy. I find it highly unlikely that this damage could have occurred between the time the tenancy ended and the time the Agent for the Landlord took these photographs.

I therefore find that the Landlord is entitled to compensation for repairing the walls, in the amount of $265.00.

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 at the start of the tenancy, which was signed by the Tenant at the start of the tenancy, does not indicate that there were lights not working in the garage, I find that I must rely on this report to conclude that the lights in the garage were working at the start of the tenancy. I find that the Tenant's testimony that those lights were not working does not constitute a preponderance of evidence to the contrary. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he did not replace those lightbulbs.

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. I find that the Landlord failed to establish the true cost of replacing light bulbs in the rental unit. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that corroborates the Landlord's claim that it cost $15.00 to replace lightbulbs. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. As the Landlord has failed to establish the cost of replacing lightbulbs, I dismiss the claim for replacing lightbulbs.

I find that the Landlord submitted insufficient evidence to establish that the Tenant was aware that an exterior tap was leaking at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of any evidence that refutes the Tenant's testimony that an exterior tap was not leaking at the end of the tenancy. In the absence of evidence that establishes that the Tenant was aware of a leak and failed to report it, I cannot conclude that he is responsible for any costs associated to the leak. I therefore dismiss the Landlord's claim for excessive water consumption.

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

Conclusion

The Landlord has established a monetary claim, in the amount of $740.36, which includes $114.37 for replacing a broken window, $52.50 for replacing a portion of the fence, $308.49 for cleaning the carpet, $265.00 to repair damaged walls. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain the Tenant's security deposit of $700.00 in partial satisfaction of this monetary claim, leaving a balance owing of $40.36

The Tenants have established a monetary claim, in the amount of $490.00, which includes a rent refund of $100.00 and $390.00 for being unable to use the sink in one of the bathrooms.

After offsetting the two claims I find that the Tenant is entitled to a monetary Order for $449.64. 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: January 17, 2018

Residential Tenancy Branch