



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT ROYAL VILLAGE DEV. INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

A hearing was convened on March 13, 2018 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, to keep the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on September 07, 2017 the Landlord's Application for Dispute Resolution, the Notice of Hearing, and 38 pages of evidence the Landlord submitted to the Residential Tenancy Branch on September 06, 2017 were sent to the Tenants, via registered mail. The male 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 they applied for a monetary Order for money owed or compensation for damage or loss, to recover the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The male Tenant stated that on February 08, 2018 the Tenants' Application for Dispute Resolution, the Notice of Hearing, and all evidence the Tenants submitted to the Residential Tenancy Branch on November 10, 2017, February 08, 2018, and February 13, 2018 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.

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.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

The hearing on March 13, 2018 was adjourned for reasons outlined below. The hearing was reconvened on May 31, 2018 and was concluded on that date.

Preliminary Matter #1

On September 06, 2017 the Landlord submitted a copy of a condition inspection report to the Residential Tenancy Branch. Section Y of the condition inspection report of this report indicates that the Tenants agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy and it indicates that the Tenants do not agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy. The Agent for the Landlord stated that this evidence was served to the Tenant on September 07, 2017.

On February 08, 2017 the Tenants submitted a copy of a condition inspection report to the Residential Tenancy Branch. Section Y of the condition inspection report of this report indicates that the Tenants agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy and it indicates that the Tenants do not agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy. The male Tenant stated that this evidence was served to the Landlord on February 08, 2017.

The Agent for the Landlord stated that when she was reviewing evidence in preparation for this hearing she noticed that the in section Y of the condition inspection reports both parties submitted indicate that the Tenants agreed that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy and it indicates that the Tenants did not agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy.

The Agent for the Landlord stated that upon noticing this discrepancy she obtained a copy of the original condition inspection report from her head office and noted that in this copy section Y of the report indicates that the Tenants did agree that the report

fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy.

On March 07, 2018 the Landlord submitted a copy of the condition inspection report to the Residential Tenancy Branch, in which section Y indicates that the Tenants agreed that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy. The Agent for the Landlord stated that this evidence was served to the Tenant, via email, on March 07, 2018. The male Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that a Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find that the condition inspection report sent to the Tenants via email on March 07, 2018 was not served to them a full seven days prior to the hearing.

The male Tenant stated that after he received the condition inspection report on March 07, 2018 he searched through his files and found a copy of the condition inspection report that is different than any of the reports that have been submitted in evidence. He stated that due to the late service of the Landlord's evidence, he did not have the opportunity to submit the copy of the report he has just recently discovered.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence not served in accordance with the timelines established by the rules of procedure may be considered if the evidence is new and relevant. As the hearing progressed it became evidence that the discrepancy in the condition inspection report was highly relevant to the issues in dispute at these proceedings. As the change to the condition inspection report was newly discovered by the Landlord, I find that this evidence should be accepted regardless of the fact it was not served on time.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence not served in accordance with the timelines established by the rules of procedure may be considered only if the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The hearing on March 13, 2018 was adjourned, in part, to provide the Tenants with the opportunity to submit the copy of the condition inspection report he has recently located

that he believes is different than any of the reports that have been submitted in evidence. I find that this adjournment will ensure that the Tenants are not disadvantaged by my decision to accept the evidence that was not served by the Landlord until March 07, 2018.

I find that adjourning the hearing to provide the Tenants with the opportunity to submit additional evidence has no significant impact on these proceedings, as the hearing would have had to be adjourned in any case because we had insufficient time to consider all of the issues in the time allotted for the proceedings.

At the hearing on May 31, 2018 the male Tenant stated that he submitted a copy of the condition inspection report to the Residential Tenancy Branch and that he served the Landlord with a copy of this report on March 24, 2018. The Landlord acknowledged receipt of this report and it was accepted as evidence for these proceedings. I note that section Y of this report indicates that the Tenants agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy and it indicates that the Tenants do not agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy.

Preliminary Matter #2

As I was advising the parties that the hearing would be adjourned, the female Tenant informed me that the male Tenant was in medical distress and that she needed to call for an ambulance. She was advised to hang up and call an ambulance.

No further discussions occurred after the Tenants exited the teleconference, with the exception of obtaining an email address for the Landlord.

At the reconvened hearing on May 31, 2018 the male Tenant informed me that he was medically able to participate in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for cleaning the rental unit?

Are the Tenants entitled to compensation for deficiencies with the rental unit?

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

Background and Evidence discussed on March 14, 2018

The Agent for the Landlord stated that this tenancy began on February 01, 2014, at which time it was being managed by a different management company.

The male Tenant stated that the tenancy began on January 15, 2013.

The Landlord and the Tenants agree that:

- the rental unit was vacated on August 30, 2017;
- the Tenants paid a security deposit of \$850.00 on July 12, 2013;
- a condition inspection report was completed at the beginning of the tenancy;
- a condition inspection report was completed at the end of the tenancy; and
- the Tenants provided a forwarding address, in writing, when the condition inspection report was completed on August 30, 2017.

The Landlord is seeking compensation, in the amount of \$315.00, for cleaning the rental unit. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The Agent for the Landlord stated that the rental unit was not left in reasonably clean condition at the end of the tenancy. Both Tenants stated that the rental unit was left in very clean condition at the end of the tenancy.

The Landlord and the Tenant agree that when the condition inspection report was completed on August 30, 2017 they did not agree on the condition of the rental unit. The parties agree that the male Tenant indicated on the report that he did not agree that the report fairly represented the condition of the rental unit.

The Landlord submitted photographs, which the Agent for the Landlord stated were taken on August 30, 2018 after the parties did not agree on the contents of the condition inspection report. The Agent for the Landlord stated that the photographs are a true reflection of the condition of the rental unit at the end of the tenancy.

The male Tenant stated that none of the photographs submitted by the Landlord reflect the condition of the rental unit at the end of the tenancy. He argued that the photographs were either not taken at the end of the tenancy or they were taken of areas not within the rental unit.

The Agent for the Landlord stated that photographs #1 and #2 show grease on the microwave. The male Tenant stated that the microwave was not dirty at the end of the

tenancy and he speculates the microwave in the photographs is not the microwave that was in the rental unit.

The Agent for the Landlord stated that photograph #3 shows dirt on the bottom of the refrigerator door. The male Tenant agreed there was a mark on the bottom of the refrigerator door at the end of the tenancy and that the Agent for the Landlord had told them it needed to be polished.

The Agent for the Landlord stated that photograph #4 shows dirt on the stovetop. The male Tenant stated that the stove was clean at the end of the tenancy and he speculates the stove in the photographs is not the stove that was in the rental unit.

The Agent for the Landlord stated that photographs #5, #6, and #7 show that the dishwasher was dirty. The male Tenant stated that the dishwasher was clean at the end of the tenancy and he speculates the dishwasher in the photographs is not the dishwasher that was in the rental unit.

The Agent for the Landlord stated that photograph #8 shows that the back of a drawer needed cleaning. The parties agree that they discussed the back of a drawer at the end of the tenancy and the Tenants did not agree it was dirty. The male Tenant stated that this photograph is not a photograph of the drawer they discussed.

The Agent for the Landlord stated that photographs #9 and #10 show that the washing machine was dirty. The parties agree that they discussed the washing machine at the end of the tenancy and the Tenants did not agree it was dirty. The male Tenant stated that the washing machine was clean at the end of the tenancy and he speculates the machine in the photographs is not the washing machine that was in the rental unit.

The Agent for the Landlord stated that photograph #11 shows that a kitchen window required cleaning. She stated that this window was discussed with the Tenants at the time the final condition inspection report was completed, which the Tenants deny. The male Tenant stated that this photograph does not represent the condition of any of the kitchen windows at the end of the tenancy.

The Agent for the Landlord stated that photograph #12 shows a kitchen drawer handle required cleaning and that many of the handles required cleaning. She stated that this window was discussed with the Tenants at the time the final condition inspection report was completed, which the Tenants deny. The male Tenant stated that this photograph does not represent the condition of any of the handles at the end of the tenancy.

The Agent for the Landlord stated that photographs #13 and #14 shows the patio door needed cleaning at the end of the tenancy. The male Tenant stated that the patio door was clean at the end of the tenancy.

The Agent for the Landlord stated that photograph #15 shows the oven needed cleaning at the end of the tenancy. The male Tenant stated that the oven was clean at the end of the tenancy.

The Agent for the Landlord stated that photograph #16 shows a kitchen drawer required cleaning. She stated that this drawer was discussed with the Tenants at the time the final condition inspection report was completed, which the Tenants deny. The male Tenant stated that this photograph does not represent the condition of any of the drawers at the end of the tenancy.

The Agent for the Landlord stated that photograph #17 shows that the area behind the kitchen drawers required cleaning. The male Tenant stated that they did not clean behind the drawers at the end of the tenancy.

The Agent for the Landlord stated that photograph #18 shows that the top of the dryer required cleaning at the end of the tenancy. The male Tenant stated that the dryer was clean at the end of the tenancy.

The Agent for the Landlord stated that photograph #19 shows a light switch in the entry required cleaning at the end of the tenancy. The male Tenant stated that all light switches were clean at the end of the tenancy.

The Tenants did not submit photographs of the rental unit at the end of the tenancy.

The male Tenant stated that some of the photographs submitted in evidence are inconsistent with some of the information recorded on the condition inspection report that was completed at the end of the tenancy.

The male Tenant noted that the condition inspection report indicates that the microwave is in good condition, although the photographs indicate it is dirty.

The Agent for the Landlord stated that the microwave is also the stove fan and that the condition inspection report indicates that the "exhaust hood and fan" are dirty.

The male Tenant noted that the condition inspection report indicates that the stove is in good condition, although the photographs indicate it is dirty. The Agent for the Landlord stated that the male Tenants was being very confrontational during the final inspection, that she was very upset, and that she did not closely inspect the oven when she indicated on the report that it was in good condition.

The male Tenant noted that the condition inspection report indicates that the dryer is in good condition, although the photographs indicate it is dirty. The Agent for the Landlord stated that the photographs show the top of the dryer was very dirty and that she did not have a ladder to inspect this area when she completed the condition inspection report at the end of the tenancy.

The male Tenant noted that the condition inspection report indicates that all of the light switches were in good condition, although the photographs indicate that at least one switch was dirty. The Agent for the Landlord stated that the photographs show a dirty switch in the entry, which is consistent with information she provided on the condition inspection report completed at the end of the tenancy.

The male Tenant noted that entry on section J of the condition inspection report is unclear, as it indicates that the "Lighting Fixtures/Ceiling Fan/Bulbs" and in both "good" condition and dirty. The Agent for the Landlord stated that this is because the light switch was dirty and other areas were in good condition.

The male Tenant noted that entry on section K of the condition inspection report is unclear, as it indicates that the "Walls and Trim" and in both "good" condition and dirty. The Agent for the Landlord stated that this is because some areas were dirty and some were clean.

The Landlord is seeking compensation, in the amount of \$235.20, for cleaning the blinds in the rental unit. The Landlord submitted an invoice to show that the Landlord paid \$294.00 to clean the blinds at the end of the tenancy.

The Landlord and the Tenants agree that section 38 of the addendum to the tenancy agreement reads, in part: "Drapes and blinds shall be professionally cleaned, as recommended by the Landlord, by the Tenant at the Tenant's expense and immediately prior to the Tenant vacating the Premises".

The Landlord and the Tenants agree that the blinds were not professionally cleaned at the end of the tenancy.

The male Tenant stated that the blinds were not cleaned at the start of the tenancy. The Agent for the Landlord stated that her company was not managing the rental unit at the start of the tenancy so she does not know if the blinds were cleaned at that time.

The Landlord and the Tenants agree that the blinds were cleaned on April 22, 2016, at the expense of the Landlord.

The Tenants are seeking compensation, in part, because the rental unit was not properly cleaned at the start of the tenancy. The female Tenant stated that she spent approximately 12 hours cleaning the rental unit at the start of the tenancy.

The female Tenant stated that she informed an agent who was representing the Landlord when this tenancy began that the rental unit was not reasonably clean. She stated that this agent disagreed with her assessment of the rental unit.

The Landlord and the Tenants agree that the condition inspection report that was completed at the start of the tenancy indicates the rental unit was in good condition with the exception of soap scum in the shower.

As has been previously discussed there are two versions of the condition inspection report. One version indicates, in section Y, that the Tenants agreed that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy and it indicates that the Tenants did not agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy. The second version indicates, in section Y, that the Tenants agreed that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy.

The Agent for the Landlord stated that she was not representing the Landlord when the condition inspection report was completed at the start of the tenancy. She speculated that the discrepancy in section Y of the condition inspection reports may have occurred when the male Tenant inadvertently checked this section when he was intending to indicate that he did not agree the report fairly represented the condition of the rental unit when the unit was inspected at the end of the tenancy.

The male Tenant stated that he did not change section Y of the report at any time and that he never indicated on the report that was completed at the start of the tenancy that he agreed with the content of that report.

The Tenants are seeking compensation, in part, because the blinds in rental unit were not professionally cleaned at the start of the tenancy. The Tenants submitted a copy of an email from the Agent for the Landlord, dated August 09, 2016, in which she acknowledged that the blinds were not cleaned at the start of the tenancy.

The Tenants are seeking compensation, in part, because the rental unit was not clean at the start of the tenancy. The male Tenant stated that the Tenants did not submit any evidence that corroborates their testimony that the rental unit was not clean at the start of the tenancy.

Background and Evidence discussed on May 31, 2018

At the outset of this hearing the parties were again asked to explain the discrepancy in section Y of the condition inspection report.

The Agent for the Landlord reiterated that she was not representing the Landlord when the condition inspection report was completed at the start of the tenancy and that she does not, therefore, know why there is a discrepancy.

The female Tenant stated that the Tenants first saw the condition inspection report on January 12, 2013, at which time they did not look at section Y. She stated that when the report was provided to them on January 18, 2013 they noticed that section Y of the report declared that the Tenants agreed that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy. She stated that she objected to that entry and that the entry was then changed to indicate that the Tenants did not agree that the report fairly represented the condition of the rental unit when the unit.

The female Tenant stated that they asked the previous agent for the Landlord to clean the blinds on several occasions; that the requests were never made in writing; and that the blinds were not cleaned until they asked the new agent for the Landlord to have the blinds cleaned.

The female Tenant stated that she spent many hours cleaning the rental unit at the start of the tenancy. She acknowledged that there is nothing on the condition inspection report, with the exception of a reference to some soap scum, which corroborates the Tenant's claim that cleaning was required.

The Tenants are seeking compensation, in part, because their quiet enjoyment of the rental unit was breached by repairs to the ceiling.

The female Tenant stated that they noticed a crack in the ceiling in September of 2013, which was not repaired until November of 2013. She stated that they noticed the crack in the ceiling again in August of 2014, which was not repaired until September or October of 2014. She stated that they noticed the crack in the ceiling again in May of 2015, which was not repaired until April of 2016.

The Agent for the Landlord stated that she is not personally aware of the history of the repairs to the cracks in the ceiling she believes, on the basis of emails she has viewed, that there were a series of cracks/repairs during this tenancy.

The female Tenant stated that the crack in the ceiling was approximately 2 meters long and 1 foot wide.

The Agent for the Landlord stated that the residential complex was built in 2011 and that the crack the Tenants refer to were related to the building settling. The Agent for the Landlord described the crack as being quite long and 1 mm wide.

The Tenants contend that the three ceiling repairs were a significant inconvenience. The female Tenant stated that the repairs were made over several days on each occasion and that tradespeople were in the rental unit on several occasions prior to each repair to estimate the cost of the repair. She stated that the tradespeople did not clean during the repairs and that they did not clean up after each repair was completed.

The Agent for the Landlord stated that all of the repairs to the ceiling involved drywall repairs and were, therefore, completed over several days. She stated that she does not know if the rental unit was cleaned after the initial two repairs to the ceiling. She stated that the tradespeople cleaned between visits when the ceiling was repaired in 2018. She stated that she spent approximately 15 hours cleaning the rental unit after the repairs in 2018 and that she had the Tenants' bedding professionally cleaned.

The female Tenant acknowledged that the Agent for the Landlord cleaned the unit after the repairs in 2018 but she stated the cleaning was inadequate. She acknowledged that their bedding was professionally cleaned after the final repair.

The female Tenant stated that they had to discard food after the repairs, including food from the refrigerator as they were concerned that it had been contaminated by the drywall dust. She stated that during the final repair they stayed with friends because repairs were started prior to the week-end and were not completed until the end of the week-end.

The Tenants did not submit any photographs of the condition of the rental unit during, or after the repairs.

The female Tenant stated that she spent approximately 52 hours cleaning the rental unit during/after the three repairs.

The female Tenant stated that she is allergic to dust. She stated that the Landlord's failure to clean the rental unit/blinds at the start of the tenancy and the dust created by the ceiling repairs exacerbated her allergies.

The Landlord is claiming compensation of \$62.25 for hydro. The Agent for the Landlord and the Tenants agree that the Tenants were required to pay for hydro costs during their tenancy.

The Agent for the Landlord stated that no documentary evidence was submitted to support the Landlord's claim for \$62.25. The male Tenant stated that there are no outstanding hydro charges for the rental unit.

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) of the *Act* requires tenants to leave a rental unit in reasonably clean condition at the end of the tenancy. When parties do not agree on the condition of the rental unit a Residential Tenancy Branch arbitrator must determine whether a rental unit was left in reasonably clean condition, which is not necessarily the standards of the arbitrator, the landlord or the tenant.

A condition inspection report that is completed at the end of the tenancy is intended to record the condition of the unit at the end of the tenancy. In circumstances such as these, where the parties do not agree that the report accurately reflects the condition of the unit at the end of the tenancy, the report is of little evidentiary value as it merely records the opinions of the landlord.

When parties cannot agree on the information provided on a condition inspection report, photographs are typically relied upon to record the condition of the rental unit at the end of the tenancy.

As the Tenants did not submit any photographs taken of the rental unit at the end of the tenancy I find that the photographs submitted by the Landlord are the best evidence of the condition of the rental unit at the end of the tenancy.

I favour the testimony of the Agent for the Landlord, who stated that the photographs were taken on August 30, 2017, over the Tenants' submission that the photographs do not accurately reflect the condition of the rental unit at the end of the tenancy.

In reaching this conclusion I was guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

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

In the circumstances before me I find the testimony of the Landlord to be the most probable. I find it unlikely that the Agent for the Landlord would have taken photographs of different appliances or at a different time merely to support this claim. Rather, I find it likely that the Agent for the Landlord took the photographs to support this claim after it was clear the parties could not agree on the cleanliness of the rental unit at the end of the tenancy.

In concluding that the Agent for the Landlord took the photographs on August 30, 2017 I was influenced, in part, by the undisputed evidence that the parties discussed certain areas in the unit at the end of the tenancy, such as the washing machine and the back of a drawer, and could not agree on whether or not they were sufficiently cleaned. I

find it logical that the Agent for the Landlord would take photographs of areas in dispute. Conversely, I find that the Tenants are now not acknowledging that the photographs represent the condition of the rental unit at the end of the tenancy because they did not recognize those areas to be in need of cleaning at the time of the final inspection.

I find that the Tenants' submission that the photographs do not represent the condition of the rental unit at the end of the tenancy to be self-serving. Conversely, I find that the testimony of the Agent for the Landlord was forthright and consistent, and I can find no reason to discount her testimony that the photographs were taken on August 30, 2017.

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 at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$315.00.

In adjudicating the claim for cleaning I have placed little weight on the inconsistencies the Tenants noted between the photographs and the information on the condition inspection report completed at the end of the tenancy, as the Agent for the Landlord provided reasonable explanations for those inconsistencies.

I find the Agent for the Landlord's explanation that she was upset when she was completing the condition inspection report at the end of the tenancy, which resulted in her misrepresenting the condition of the oven, because the male Tenant was being very confrontational to be very credible. I find this explanation is credible because it is consistent with the male Tenant's behavior at various times during the hearing on March 14, 2018.

In adjudicating the claim for cleaning I have placed no weight on the letter from the Tenants' friend, in which the friend declares they concluded the rental unit was clean when they viewed it on August 30, 2017. I find that the opinion of this third party is much less compelling than the photographs submitted in evidence by the Landlord.

On the basis of the undisputed evidence I find that section 38 of the addendum to the tenancy agreement requires the Tenants to have the blinds professionally cleaned at the end of the tenancy. Regardless of whether or not the blinds were professionally cleaned at the start of the tenancy I find that the blinds were cleaned by the Landlord on April 22, 2016. As the blinds were cleaned by the Landlord during the tenancy, I find that the Tenants remained obligated to comply with section 38 of the addendum to the tenancy agreement.

Although the evidence shows that the Landlord paid \$294.00 to clean the blinds at the end of the tenancy, the Landlord has only claimed compensation of \$235.20 for the cleaning. I therefore find that the Landlord is entitled to the full amount of the claim of \$235.20.

I note that in one version of the condition inspection report section Y indicates that the Tenants agreed that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy and it indicates that the Tenants did not agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy. I find that the explanation for this discrepancy which was provided by the female Tenant on May 31, 2018, is the most plausible explanation provided for this discrepancy. I therefore find, on the basis of her testimony, that the Tenants did not agree that the report fairly represented the condition of the rental unit when the unit was inspected at the start of the tenancy and that they asked the person who completed the report to change that section of the report.

On the basis of the testimony of the Tenants, I find that they believed the rental unit required cleaning at the start of the tenancy. I find, however, that they submitted insufficient evidence to establish that the rental unit was not provided to them in reasonably clean condition at the start of the tenancy.

In determining that the Tenants submitted insufficient evidence to show that the rental unit was not provided to the Tenants in reasonably clean condition at the start of the tenancy I was influenced, in part, by the condition inspection report that was submitted in evidence.

On the basis of the female Tenant's testimony and the condition inspection reports that were submitted in evidence, I find that when the condition inspection report was completed at the start of the tenancy the person acting on behalf of the Landlord concluded that the rental unit was in clean condition, with the exception of some soap scum. I further find that the Tenants did not agree with that assessment and that the agent was asked to amend the report to indicate that the Tenants did not agree that the report reflected the condition of the rental unit at the start of the tenancy.

When two parties disagree on the condition of a rental unit at the start of a tenancy the person claiming compensation for an alleged deficiency bear the burden of proving the rental unit was deficient. I find that the Tenants have submitted insufficient evidence to allow me to conclude whether their assessment of the cleanliness of the rental unit was

accurate or whether the person acting on behalf of the Landlord's assessment was accurate.

In determining that the Tenants have submitted insufficient evidence to allow me to conclude whether the Tenants' assessment of the cleanliness of the rental unit at the start of the tenancy was accurate I was influenced, in part, by the absence of photographs of the condition of the rental unit at the start of the tenancy. Such photographs would have enabled me to make an independent assessment of the unit.

In determining that the Tenants have submitted insufficient evidence to allow me to conclude whether the Tenants' assessment of the cleanliness of the rental unit at the start of the tenancy was accurate I was influenced, in part, by the absence of any written communication that indicates the Tenants expressed concern to the Landlord about the cleanliness of the unit at the start of the tenancy. Had the rental unit required significant cleaning I find it quite likely that the Tenants would have lodged a formal complaint about the unit.

In determining that the Tenants have submitted insufficient evidence to allow me to conclude whether the Tenants' assessment of the cleanliness of the rental unit at the start of the tenancy was accurate I was influenced, in part, by section X of the condition inspection reports. Section X is where parties list repairs that need to be completed at the start of the tenancy. Had the rental unit required significant cleaning at the start of the tenancy I would expect an entry to have made in this area of the report.

As the Tenants have submitted insufficient evidence to allow me to conclude that the Tenants' assessment of the cleanliness of the rental unit at the start of the tenancy was accurate, I find they are not entitled to any compensation for time spent cleaning the unit at the start of the tenancy.

On the basis of the undisputed evidence I find that Tenants did not have the blinds professionally cleaned at the end of the tenancy and I therefore find that the Landlord is entitled to compensation for cleaning the blinds, in the amount of \$294.00.

On the basis of the undisputed testimony I find that the blinds were not professionally cleaned at the start of the tenancy and that they were not cleaned by the Landlord until April 22, 2016. As section 38 of the addendum to the tenancy agreement requires the Tenants to have the blinds professionally cleaned at the end of the tenancy, I find that it would be reasonable for the Tenants to expect the blinds to be professionally cleaned at the start of the tenancy. I therefore find that the Landlord breached a term of the

tenancy when they did not ensure that the blinds were professionally cleaned at the start of the tenancy.

I find that Tenants are entitled to compensation, in the amount of \$294.00, because the blinds were not cleaned at the start of the tenancy. The amount of this award is based on the cost of cleaning the blinds.

Section 7(2) of the *Act* stipulates, in part, that a tenant, who claims compensation for damage or loss that results from a landlord's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that it would have been reasonable for the Tenants to simply clean the blinds as soon as they realized the blinds had not been cleaned and then seek compensation from the Landlord.

As the Tenants did not mitigate the impact of having dirty blinds by simply cleaning the blinds, I find that they are not entitled to any compensation that is greater than the cost of cleaning the blinds.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*, and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline #6, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

On the basis of the undisputed tenancy I find that the ceiling in the rental unit cracked on three occasions during this tenancy. I find that the Tenants submitted insufficient evidence to establish that the crack was particularly unsightly and I can therefore not conclude that the presence of the crack breached the Tenants' quiet enjoyment of the rental unit.

In determining that the crack was not particularly unsightly I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Tenants' submission that the crack was 1 foot wide or that refutes the Landlord's submission that the crack was only 1 mm wide. As the Tenants are claiming compensation for the crack, they bear the burden of proving that it was unsightly if their claim for compensation is based on the physical appearance of the crack.

As the Tenants have submitted insufficient evidence to establish that the crack in the ceiling was unsightly, I find that they are not entitled to any compensation as a result of the physical appearance of the crack(s).

On the basis of the testimony of the Agent for the Landlord and in the absence of any evidence to the contrary, I find that the cracks in the ceiling were the result of settling. Landlords have both a right and an obligation to maintain residential property in a reasonable state of repair and I therefore find that the Landlord had the right to repair the cracks in the ceiling.

In adjudicating this matter I must balance the Tenant's right to quiet enjoyment with the Landlord's right and responsibility to maintain the premises. While I accept that the ceiling repairs were an inconvenience for the Tenants, I do not find that the inconvenience of the repairs constitute a basis for a breach of the entitlement to quiet enjoyment. Given that the aesthetic value of their rental unit was somewhat improved by the repairs, I find that the Tenants must accept the disruption that the repairs created for them.

Although I find that the Tenants must accept the disruption caused by the repairs, I do not find that they are required to participate in the repairs. In particular, I find that they are not responsible for cleaning during or after the repairs.

As the Agent for the Landlord stated that she spent approximately 15 hours cleaning the rental unit at the end of the final repair, I find the female Tenant's estimate that she spent approximately 52 hours cleaning the rental unit during and after the repairs to be reasonable. I find that the need for this amount of cleaning was a breach of the

Tenants' right to quiet enjoyment. I therefore find that the Tenants are entitled to compensation of \$780.00 for the time spent cleaning the unit, at an hourly rate of \$15.00 per hour.

In determining that the Tenants are not entitled to compensation that exceeds the cost of cleaning the rental unit after the ceiling repairs, I find that the Tenants have either overreacted to the repairs or have exaggerated the impact of the repairs. I find it extremely unlikely that food in the Tenants' refrigerator had been contaminated and need to be discarded.

In determining that the Tenants are not entitled to compensation that exceeds the cost of cleaning the rental unit, I was influenced by the absence of photographs that depict the extent of the repairs and need for cleaning. In the absence of such photographs I find that I am unable to conclude that the disruption and inconvenience of these repairs were atypical of drywall repairs.

I find that the Landlord has submitted insufficient evidence to establish that there are outstanding hydro charges related to this tenancy. In reaching this conclusion I was heavily influenced by the absence of documentary evidence that refutes the male Tenant's testimony that all hydro charges have been paid. I therefore dismiss the Landlord's claim for of \$62.25 for hydro.

I find that the both Applications for Dispute Resolution have merit and that the parties are, therefore, responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$550.20, which includes \$315.00 for cleaning the unit and \$235.20 for cleaning the blinds,

The Tenants have established a monetary claim, in the amount of \$1,074.00, which includes \$780.00 for cleaning the unit during/after drywall repairs and \$294.00 because the blinds were not professionally cleaned at the start of the tenancy.

After offsetting the two claims, I find that the Landlord owes the Tenants \$523.80 in compensation.

As the Landlord has failed to establish the right to retain any portion of the Tenants' security deposit, I find that the Landlord must return the Tenants' security deposit of \$850.00.

I grant the Tenants a monetary Order for \$1,373.80. 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: June 02, 2018

Residential Tenancy Branch