Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCL-S, MNDL-S, FFL

Introduction

On December 22, 2017 the Landlord was granted a substitute service Order by a different Residential Tenancy Branch Arbitrator. The substitute service Order was granted because the Landlord alleged the Tenants did not provide a forwarding address at the end of the tenancy. The substitute service Order granted the Landlord authority to serve hearing documents to the Tenant with the initials "JD" via email.

A hearing was convened on June 22, 2018 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 damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The hearing on June 22, 2018 was presided over by a different Residential Tenancy Branch Arbitrator. That Arbitrator adjourned the hearing on June 22, 2018 because the Arbitrator was not satisfied that hearing documents had been served to the Tenant with the initials "JD" via email.

The Arbitrator who presided over the hearing on June 22, 2018 is no longer with the Residential Tenancy Branch and this matter was, therefore, assigned to me. A hearing was convened on July 23, 2018 to consider the merits of the Landlord's Application for Dispute Resolution.

At the hearing on July 23, 2018 the Agent for the Landlord stated that on January 05, 2018 she sent the Application for Dispute Resolution, 14 pages of evidence, and 11 photographs to the male Tenant's email address. On July 03, 2018 the Landlord submitted a copy of the email she sent to the male Tenant's email address. The Agent for the Landlord stated that the male Tenant did not respond to this email.

On the basis of the testimony of the Agent for the Landlord and the documentary evidence submitted on July 03, 2018, I find that the Landlord served the Application for Dispute Resolution to the male Tenant pursuant to section 89(1)(e) of the *Residential Tenancy Act (Act).*

At the hearing on July 23, 2018 the male Tenant stated that he did not receive the email the Landlord sent on January 05, 2018. He stated that the email address used by the Landlord is his work email and that he is not the only person who accesses that email.

At the hearing on July 23, 2018 the male Tenant stated that the Tenants have never received the Landlord's Application for Dispute Resolution or evidence in support of that Application. He stated that he attended the hearing today because he received an email from the Residential Tenancy Branch on July 20, 2018, which reminded him of these proceedings. He stated that he was not aware of these proceedings prior to July 20, 2018.

On the basis of the testimony of the male Tenant and in the absence of any evidence to the contrary, I find that the male Tenant did not receive the Application for Dispute Resolution and evidence the Landlord emailed on January 05, 2018.

As both Tenants attended the hearing on July 23, 2018, I am satisfied that they are both now aware that these proceedings have commenced.

The hearing on July 23, 2018 was adjourned to ensure that the Tenants have a reasonable and fair opportunity to respond to the claims being made by the Landlord and to provide the Landlord with the opportunity to re-serve the Application for Dispute Resolution and evidence to the Tenants. The hearing was reconvened on October 15, 2018 and was concluded on that date.

At the hearing on July 23, 2018 the Tenants were asked to provide the Landlord with a mailing address for the purposes of serving documents, the female Tenant stated that they do not have a mailing address or a forwarding address. When the Tenants were

asked to provide the Landlord with an email address for the purposes of service of documents, the female Tenant stated that they do not have a reliable email address.

At the hearing the male Tenant stated that he is willing and able to pick up the Application for Dispute Resolution and evidence from the Landlord's business address. The Agent for the Landlord provided the Landlord's business address the male Tenant stated that he will pick up documents from that address.

My interim decision of July 24, 2018 indicated that the Application for Dispute Resolution and evidence should be ready to be picked up by September 04, 2018. At the hearing on October 15, 2018 the male Tenant stated that he had agreed, at the hearing on July 23, 2018, to pick up those documents on September 24, 2018 and that he could not pick them up on September 04, 2018 as he was out of town for an extended period of time.

At the hearing on October 15, 2018 the Agent for the Landlord stated that the Landlord's Application for Dispute Resolution and evidence were ready to be picked up from the Landlord's business office prior to September 04, 2018 and that they remained available for pick up at that location until October 15, 2018.

At the hearing on October 15, 2018 the male Tenant stated that he did not make any attempt to pick up the Landlord's Application for Dispute Resolution and evidence from the Landlord's business address on, or after, September 24, 2018 because he assumed he was too late to pick up those documents.

At the hearing on October 15, 2018 the male Tenant stated that when he received my interim decision of July 24, 2018 he concluded that the September 04, 2018 pick-up date was incorrect. He stated that on July 25, 2018 he sent an email to the Residential Tenancy Branch informing the Branch that the September 04, 2018 date was incorrect. He stated that he did not receive a response from the Residential Tenancy Branch and did not, therefore, make any effort to pick up the Landlord's Application for Dispute Resolution and evidence.

In my interim decision of July 24, 2018 the Tenants were advised that "if they have any difficulty picking up the documents from the Landlord on September 04, 2018 they must immediately advise the Agent for the Landlord of the issue, via email, and must make every reasonable attempt to ensure the documents are picked up from the Landlord". The Agent for the Landlord provided her email address on three occasions during the hearing on July 24, 2018 but the male Tenant stated that he was not recording that

address. Both the email address and the Landlord's business address were recorded on the second page of my interim decision of July 24, 2018.

At the hearing on October 15, 2018 the Tenant stated that he made no effort to contact the Agent for the Landlord to make alternate arrangements to pick up the Landlord's Application for Dispute Resolution and evidence because the Tenants were no longer speaking with her.

I find that the Tenants did not make a reasonable effort to obtain the Landlord's Application for Dispute Resolution and evidence. Even if the Tenants were unable to pick up those documents from the Landlord's business office because they were not in town on September 04, 2018, I find that it would have been reasonable for them to pick those documents up on September 24, 2018.

I find that the Tenant's testimony that he did not pick them up because he did not receive a response to the email he sent to the Residential Tenancy Branch advising them he could not pick them up on September 04, 2018 is not a sufficient reason for failing to pick up those documents. As the Tenants were informed, in my interim decision of July 24, 2018, they were required to advise the Agent for the Landlord, via email, if they have a problem picking up those documents, I find that there was no reason to contact the Residential Tenancy Branch nor was it necessary for the Residential Tenancy Branch to provide the Tenants with additional direction. The remedy for being unable to prick up those documents was clearly laid out for the Tenants in the interim decision

I find that the Tenants were avoiding being served with these documents, in part, by refusing to provide a forwarding address or email address. In reaching this conclusion I note that the Tenants provided the Residential Tenancy Branch with an email address that they confirmed could be used to serve my interim decision of July 24, 2018; they provided the same email address that they confirmed could be used to serve this final decision; and they communicated with the Residential Tenancy Branch, via email, on July 25, 2018.

I find that the Tenants did not take reasonable steps to obtain the Landlord's Application for Dispute Resolution and evidence after they were provided with an opportunity to pick those documents up from the Landlord's business address. Even if the Tenant was aware there was a misunderstanding about the date these documents were to be picked up, the Tenants should have at least attempted to pick up the documents on

September 24, 2018 and, in any case, should have contacted the Agent for the Landlord, via email, to make arrangements to pick up the documents.

A tenant cannot indefinitely delay a legal proceeding by simply refusing to accept documents which, in my view, is what these Tenants are attempting to do. The parties were advised that the hearing on October 15, 2018 would proceed and that the Landlord's evidence was being accepted as evidence for these proceedings.

To ensure that the Tenants have every reasonable opportunity to respond to the claims being made by the Landlord, the claims the Landlord made was explained to the male Tenant at the hearing on October 15, 2018 and each piece of evidence discussed during the hearing was explained to him.

At the hearing on October 15, 2018 all participants 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.

Preliminary Matter #1

The Tenants dialed into the teleconference on July 23, 2018 several minutes after the scheduled start time of the hearing. The information provided to the Landlord at the start of the hearing was provided to the Tenants when they joined the teleconference.

Service issues discussed prior to the Tenants' attendance were also discussed with the Tenants once they joined the teleconference.

Preliminary Matter #2

On several occasions during the hearing on October 15, 2018 the male Tenant stated that during the hearing on July 23, 2018 he agreed to pick up the Landlord's Application for Dispute Resolution and evidence package on September 24, 2018, not September 04, 2018. I have since reviewed my notes from the hearing on July 23, 2018, which indicate that the agreement was to pick up the documents on September 24, 2018. I therefore accept that there was an inadvertent error on my interim decision of July 24, 2018.

As previously stated, however, I am satisfied that this error did not prevent the Tenants from picking the documents up on September 24, 2018 nor did it prevent them from

contacting the Agent for the Landlord, via email, to advise them the documents would not be picked up until September 24, 2018.

Preliminary Matter #3

On several occasions during the hearing on October 15, 2018 the male Tenant stated that he had recorded the hearing on July 23, 2018 and, therefore, had proof that the agreement was that the Landlord's Application for Dispute Resolution and evidence package would be picked up on September 24, 2018, not September 04, 2018.

The Tenant was advised that even if he does have a recording from the hearing on July 23, 2018 I did not wish to hear that recording. I did not wish to hear the recording, in part, because of my previously stated conclusion that the error did not prevent the Tenants from picking the documents up on September 24, 2018 nor did it prevent him from contacting the Agent for the Landlord, via email.

More importantly, I did not wish to hear that recording as rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibit participants from recording proceedings, except as allowed by rule 6.12. Given that recordings are prohibited, I find it would be unfair to the Landlord to allow such evidence to be introduced, particularly when the evidence is not highly relevant.

The male Tenant was advised, on October 15, 2018, that he was not permitted to record that hearing.

Preliminary Matter #4

Both Tenants frequently interrupted the hearing on July 23, 2018 in spite of my repeated direction to refrain from speaking until directed to do so. They interrupted the hearing by speaking to each other when I or the Agent for the Landlord was speaking and by attempting to testify while the Agent for the Landlord was testifying or while I was giving directions.

The Tenants were advised that they would be placed in "mute mode" if they continued to disrupt the hearing and that they would be removed from "mute mode" when it was there turn to speak. "Mute mode" is designed to allow the parties being "muted" to hear what is being said during the teleconference and to prevent the other teleconference participants from hearing what the muted party is saying.

The Tenants continued to interrupt the hearing and at 9:37 a.m. they were placed in "mute mode". During this time the parties were advised that the hearing was being adjourned and details of the adjournment were provided. This took approximately ten minutes due to the fact the Landlord was provided with specific details of the documents that must be re-served to the Tenants.

When the Tenants were "unmuted" a few minutes prior to the end of the hearing they did not respond to my queries, although the teleconference console indicated they were still present. I do not know if they were simply refusing to respond to my queries or if they had exited the teleconference and the teleconference console was not functioning properly.

I further note that after the Tenants were removed from "mute mode" the Agent for the Landlord informed me that she could hear the Tenants speaking while they were on "mute mode" and that she heard them speaking until approximately 2 minutes before I removed them from "mute mode". This indicates the teleconference console was malfunctioning, however it also indicates that the Tenants were present during most of the time they were in "mute mode".

Preliminary Matter #5

The male Tenant frequently interrupted the hearing on October 15, 2018 in spite of my repeated direction to refrain from speaking until directed to do so. He interrupted the hearing by speaking and attempting to testify while I was explaining the proceedings and discussing service of documents.

The male Tenant was advised that he would be placed in "mute mode" if he continued to disrupt the hearing and that he would be removed from "mute mode" when it was his turn to speak.

The male Tenant was placed in "mute mode" on two occasions during the introductory part of the hearing on October 15, 2018. After he was removed from "mute mode" on both occasions he indicated that he did not have any questions about what had occurred while he was in "mute mode".

Once the parties began testifying about the claims being made by the Landlord, the male Tenant behaved appropriately for the remainder of the hearing.

Issue(s) to be Decided

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

Background and Evidence provided on October 15, 2018

The Landlord and the Tenants agree that:

- the tenancy began on November 26, 2016;
- the Tenants vacated the rental unit on November 30, 2017;
- the Tenants agreed to pay monthly rent of $2,700.00 by the first day of each month; and
- the Tenants paid a security deposit of $1,350.00.

The Agent for the Landlord stated that the Tenants did not provide a forwarding address. The male Tenant stated that he does not recall if a forwarding address was provided.

The Landlord is seeking compensation, in the amount of $332.46, for cleaning the rental unit. The Landlord submitted photographs, which the Agent for the Landlord stated were taken at the end of the tenancy, which show the rental unit required cleaning. The nature of the photographs was explained to the male Tenant. The Landlord submitted an invoice to show that the Landlord incurred this expense. The content of the invoice was explained to the male Tenant.

The male Tenant stated that they had insufficient time to clean the rental unit due to a family emergency. He stated that some cleaning was completed and he estimated that it would have taken another 4 hours to clean the unit.

The Landlord is seeking compensation, in the amount of $93.75, for removing personal property left in the rental unit and on the residential property. The Landlord submitted photographs, which the Agent for the Landlord stated were taken at the end of the tenancy, which show the nature of the property left in the unit and on the property. Those photographs were explained to the male Tenant. The Landlord submitted an invoice to show that the Landlord incurred this expense, dated December 11, 2017. The content of the invoice was explained to the male Tenant.

The male Tenant stated that they had insufficient time to remove all of their personal property due to a family emergency. He stated that he returned to the rental unit to recover that property sometime around December 15, 2017, by which time it had been

discarded. He stated that he did not inform the Landlord that he would be returning for this property.

The Landlord is seeking compensation, in the amount of $854.95, for an unpaid utility bill. The Landlord submitted a copy of a utility bill for $839.95. The bill, which included garbage, water, and sewer charges, was explained to the male Tenant.

The Landlord submitted a copy of the tenancy agreement, which indicates that the water and garbage disposal were not included with the tenancy. This term of the tenancy agreement was explained to the male Tenant. The male Tenant stated that he does not recall that term of the tenancy but he accepts the Tenants were required to pay for water and garbage disposal on the basis of the information provided to him.

The Agent for the Landlord stated that although the tenancy agreement does not specify that the Tenants were responsible for paying for sewer, she specifically told the Tenants they would also be responsible for this portion of the utility bill. The male Tenant stated that he does not recall being told they would be responsible for sewage costs.

The Agent for the Landlord stated that the utility bills were mailed directly to the rental unit and the Landlord expected them to be paid by the Tenants. The male Tenant stated that they did not receive any utility bills and they did not, therefore, pay any of the bills.

In their written documents the Landlord declares that it is also seeking $139.42 in utility charges that the Landlord estimates were incurred in October and November of 2017. This document was not discussed with the male Tenant during the hearing, as it was not raised by the Agent for the Landlord.

The Landlord is seeking compensation, in the amount of $402.62, for replacing a glass door. The Agent for the Landlord stated that she noticed the door between the bedroom and the bathroom was broken when she inspected the unit on November 30, 2017. The Landlord submitted a photograph of the door which had a horizontal crack in the glass near the middle of the door. The Agent for the Landlord stated that this photograph was taken at the end of the tenancy. This photograph was explained to the male Tenant. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The male Tenant stated that this door was not damaged when the rental unit was vacated by the Tenants. He argued that the amount of the claim was excessive and that he could replace the entire door for less than the amount claimed by the Landlord.

The Landlord is seeking compensation, in the amount of $280.40, for replacing the front panel of the dishwasher. The Agent for the Landlord stated that the door had dent in it at the end of the tenancy that was not present at the start of the tenancy. The Landlord submitted a photograph of the door, the contents of which was explained to the male Tenant. The Landlord submitted an estimate for repairing the door, which was explained to the male Tenant.

The male Tenant stated that he recalls there being a small dent in the door of the dishwasher, although he does not know how that door was damaged.

The Landlord is seeking compensation, in the amount of $981.40, for replacing the front doors of the refrigerator. The Agent for the Landlord stated that the doors were scratched and dented in two places at the end of the tenancy that were not present at the start of the tenancy. The Landlord submitted photographs of the refrigerator, the contents of which were explained to the male Tenant.

The male Tenant stated that he recalls there being some small scratches on the refrigerator but he does not recall any dents. He contends that any damage to the refrigerator was normal wear and tear.

The Landlord is seeking compensation, in the amount of $320.00, for replacing cabinet drawers that were scratched. The Landlord submitted photographs of the damaged drawers, the contents of which were explained to the male Tenant.

The male Tenant stated that the cabinet door beside those drawers was installed incorrectly and that the drawers were damaged when the screws holding the handle onto that cabinet door came into contact with the drawers. He stated that the cabinet door swings out to the left and passes in front of the drawers.

The Agent for the Landlord stated that she does not know how the drawers were damaged.

Analysis

On the basis of the testimony of the Agent for the Landlord and the absence of any evidence to the contrary, I find that the Tenants did not provide a forwarding address when this tenancy ended.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants 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 $332.46.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to remove all of their personal property from the rental unit at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of removing that property, which was $193.75. In determining that the Landlord is entitled to compensation for removing the property, I was heavily influenced by the fact it was not removed until December 11, 2017 and the Tenants did not inform the Landlord they would be returning for the property.

On the basis of the written tenancy agreement I find that costs garbage disposal and water were not included with the tenancy agreement. I therefore find that the Tenants were obligated to pay the costs of those charges during their tenancy.

On the basis of the testimony of the Agent for the Landlord, who stated that she specifically told the Tenants they would also be responsible for sewer charges on the municipal utility bill, I find that the Tenants agreed to pay this charge. I find that her

testimony is more reliable than the male Tenant's testimony in regard to sewage costs, as the male Tenant could only state that he does not recall being told they would be responsible for sewage costs.

On the basis of the undisputed evidence I find that the Tenants did not pay for any sewage, garbage disposal, or water charges during their tenancy. I therefore find that they must compensate the Landlord for all of those costs.

On the basis of the utility bill submitted in evidence I find that charges of $839.95 were incurred at the rental unit for the period between October 01, 2016 and September 30, 2017. $186.62 of these charges was incurred in the period between October 01, 2016 and December 31, 2016 and the remaining $653.33 which were incurred in the period between January 01, 0217 and September 30, 2017.

As the Tenants did not move into the rental unit until November 26, 2017, I find that they are not obligated to pay for any of the utility charges that were incurred prior to November 26, 2017. As the Tenants only occupied the rental unit for 36 of the 92 days between October 01, 2016 and December 31, 2016, I find that the Tenants are only required to pay 36/92 of the $186.62 in charges that were incurred in that period, which is $73.14. I find they are obligated to pay this $73.14 plus the charges of $653.33 that were incurred in the period between January 01, 0217 and September 30, 2017, which equals $726.47.

I find that the Landlord has submitted insufficient evidence to establish the amount of utility charges that were incurred during October and November of 2017. Although the Landlord has estimated the costs of those charges on the basis of the 2016 bill, I find that it insufficient to accurately establish those utility charges and I therefore decline to award compensation for those months. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for those charges once the Landlord obtains a bill for those months.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, 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.*

I favour the testimony of the Agent for the Landlord, who stated that the glass door was damaged when she inspected the rental unit on November 30, 2017 over the testimony of the male Tenant, who stated that the door was not broken when the rental unit was vacated. I find it much more likely that the door was damaged during the one-year tenancy rather than during the brief period between the Tenants vacating the rental unit on November 30, 2017 and the Agent for the Landlord inspecting it on that date.

I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to repair the glass door that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation of $402.62, which the evidence shows was the cost of repairing the door.

On the basis of the undisputed evidence I find that the dishwasher door was damaged during the tenancy. On the basis of the photograph submitted in evidence I find that the damage to the door exceeded normal wear and tear and I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when the failed to repair the dishwasher door that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation of $280.40, which the evidence shows was the cost of repairing the door.

On the basis of the undisputed evidence I find that the refrigerator door was scratched during the tenancy. On the basis of the photographs submitted in evidence and the testimony of the Agent for the Landlord, I also find that the refrigerator was dented in two places during the tenancy. On the basis of those photographs I find that the damage to the refrigerator was minor and that it should, therefore, be considered normal wear and tear. As tenants are not obligated to repair damage that is normal wear and tear, I dismiss the Landlord's claim for repairing the refrigerator.

On the basis of the undisputed evidence I find that two cabinet drawers were scratched during the tenancy. On the basis of the photograph submitted in evidence and the testimony of the Tenant, I find that the drawers were scratched when the screws holding the handle onto an adjacent door came into contact with the drawers. I find that this was either a design flaw or an installation error and that the Tenants are not, therefore, obligated to repair that damage. I therefore dismiss the Landlord's application to recover the cost of repairing the drawers.

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 Landlord has established a monetary claim, in the amount of $2,035.70, which includes $332.46 for cleaning the rental unit; $193.75 for removing personal property; $726.47 for utility charges, $402.62 for repairing the glass door; $280.40 for repairing the dishwasher door; and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain the Tenants' security deposit of $1,350.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance $685.70. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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

Dated: October 16, 2018

Residential Tenancy Branch