



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied 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 November 20, 2019 the Dispute Resolution Package and some evidence the Landlord submitted to the Residential Tenancy Branch in November of 2019 were sent to each Tenant, via registered mail. The Tenant with the initials JC, hereinafter referred to as JC, acknowledged receiving these documents in the mail. The Tenant with the initials JB, hereinafter referred to as JB, stated that he did not receive these documents in the mail, but he received scanned copies from JC. As both Tenants have received these documents, the evidence was accepted as evidence for these proceedings.

The Landlord submitted additional evidence to the Residential Tenancy Branch later in November of 2019. The Agent for the Landlord stated that this evidence was served to each Tenant, via registered mail, on November 27, 2019. JC acknowledged receiving these documents in the mail. JB stated that he received scanned copies of the documents from JC. As both Tenants have received these documents, the evidence was accepted as evidence for these proceedings.

In March of 2020 the Tenants submitted evidence to the Residential Tenancy Branch. JB stated that on March 24, 2020 this evidence was posted at the service address provided by the Landlord. The Agent for the Landlord stated that this evidence was received sometime last week and that she does not require additional time to consider

the evidence. As the Agent for the Landlord acknowledged receiving this evidence, it was accepted as evidence for these proceedings. As the Agent for the Landlord did not require more time to consider the evidence, the hearing proceeded as scheduled.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

### Preliminary Matter

With the consent of all parties present at the hearing, the Application for Dispute Resolution was amended to reflect the correct spelling of JC's surname and JB's first name, as those spellings were provided at the hearing.

### Issue(s) to be Decided

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

### Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on August 01, 2018;
- the tenancy ended on October 29, 2019;
- the Tenants paid a security deposit of \$1,347.50;
- a condition inspection report was completed at the beginning of the tenancy;
- a condition inspection report was completed at the end of the tenancy;
- the Tenants did not agree with the information recorded on the condition inspection report that was completed at the end of the tenancy;
- the Tenants provided a forwarding address to the Landlord, in writing, on October 29, 2019;
- the Tenants did not give the Landlord written authority to retain any portion of the security deposit; and
- the Landlord did not return any portion of the security deposit.

The Landlord is seeking compensation, in the amount of \$315.00, for cleaning the rental unit. The Landlord submitted photographs, which both parties agree fairly represent the cleanliness of rental unit at the end of the tenancy. The Tenants acknowledge that the Landlord provided them with an invoice to show that the Landlord incurred this expense.

JB stated the area behind the stove and refrigerator was not cleaned because those appliances were not on rollers. The Agent for the Landlord stated both appliances were on rollers.

The parties agree that in September of 2019 the Landlord sent the Tenants an email, which contained a pdf document with information typically provided to all tenants of the residential complex regarding cleaning of a rental unit at the end of a tenancy. CB read that pdf document during the hearing and declared that it directed the Tenants to pull the fridge forward a short distance before tipping it back onto its rollers. CB stated that the pdf document directed the Tenants to carefully slide the stove forward, with no mention of rollers. The Agent for the Landlord did not have the pdf document with her at the hearing, but she agrees that CB is accurately reported the relevant information.

The Agent for the Landlord contends that the rental unit was not left in reasonably clean condition. The Tenants contend that the rental unit was left in a reasonably clean condition.

The Witness for the Tenants stated that she is JB's girlfriend; that during the tenancy the rental unit was clean; that she was present when the Tenant's were moving from the unit; and that the unit was clean and in good repair at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$598.50, for repairing the stove top. The Landlord submitted photographs, which both parties agree fairly represent the condition of the stove top at the end of the tenancy. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The Landlord contends that the stove top was cracked. She contends that the invoice for the repairs corroborates the Landlord's submission that it was cracked.

JB stated that the marks shown in the Landlord's photographs are grease stains. He stated that the stove top was discussed when the condition inspection report was completed at the end of the tenancy; the agent for the Landlord completing the report initially agreed that the stove top was not damaged; and that the agent completing the report did not record the damage to the stove top until the Tenants would not agree to allow the Landlord to retain their entire security deposit for damage.

The Landlord is seeking compensation, in the amount of \$210.00, for "buffing" the countertop. The Agent for the Landlord stated that the countertop was stained during the tenancy. The Landlord submitted photographs, which both parties agree fairly

represent the condition of the countertop at the end of the tenancy. The Landlord submitted an invoice to show that the Landlord incurred this expense.

JB stated that the countertop was regularly cleaned during the tenancy and that it was not stained at the end of the tenancy. He stated that he does not see any stains on the Landlord's photographs of the countertop.

The Landlord is seeking compensation, in the amount of \$16.00, for replacing a light bulb. The Agent for the Landlord stated that one light bulb was burned out at the end of the tenancy and one was missing from a light socket.

JB stated that no light bulbs were burned out at the end of the tenancy. He stated that they left the "missing" light bulb in a drawer and they informed the agent for the Landlord completing the final inspection report of the location of that light bulb. The Agent for the Landlord stated that she has no knowledge of this conversation, as she was not present during the final inspection.

The Landlord is seeking compensation, in the amount of \$430.50, for painting the walls.

The Agent for the Landlord and the Tenants agree that the Tenants applied adhesive hooks to the wall, which were not removed at the end of the tenancy. She stated that the walls were damaged when the hooks were removed and that the walls needed to be repainted as a result of that damage.

JB stated that the adhesive hooks can be easily removed by simply heating the adhesive with a hair dryer before peeling them from the wall. He stated that the Tenants told the agent for the Landlord completing the final inspection report how to remove the hooks during the final inspection. The Agent for the Landlord stated that she has no knowledge of this conversation, as she was not present during the final inspection.

The Agent for the Landlord stated that there were also larger holes in the wall, which are depicted in photograph #6. JB stated that the images are not holes. JB stated that they are actually hooks that are attached to the wall with a small finishing nail. The Agent for the Landlord agreed that those images may be hooks that are attached to the wall with a small finishing nail.

## Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (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)(a) of the *Act* requires tenants to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, when a rental unit is vacated.

Residential Tenancy Branch Policy Guideline #1, with which I concur, reads, in part:

An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

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If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

On the basis of the photographs submitted in evidence by the Landlord, I find that:

- the oven was not left in reasonably clean condition;
- the back splash behind the stove was not left in reasonably clean condition;
- the counter area below the backsplash behind the stove was not left in reasonably clean condition;
- the dryer filter was not left in reasonably clean condition;
- the kitchen sink was not left in reasonably clean condition; and
- the bathtub was not left in reasonably clean condition.

On the basis of JB's testimony that the marks on the stove top which can be seen in the Landlord's photographs are grease stains, I find that the stove top was not left in reasonably clean condition.

On the basis of the photographs submitted in evidence by the Landlord, I find that the balcony was left in reasonably clean condition. Although there was a cup left on the balcony, I find that is easily remedied and does not establish that the balcony was left in unreasonably clean condition, given that it is an exterior space.

I find that the Landlord has submitted insufficient evidence to establish that the refrigerator was on rollers. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that clearly corroborates the Agent for the Landlord's testimony that it was on rollers or that refutes the Tenants' submission that it was not on rollers. As there is insufficient evidence to establish that the refrigerator was on rollers, I find that the Tenants were not obligated to clean behind the refrigerator. In concluding the Tenants were not obligated to clean this area, I was influenced by the undisputed testimony that the only instructions provided to the Tenants for cleaning behind the refrigerator related to an appliance equipped with rollers, which may not have been the case in these circumstances.

I find that the Landlord has submitted insufficient evidence to corroborate the Agent for the Landlord's testimony that the stove was on rollers or to refute the Tenants' submission that it was not on rollers. On the basis of the undisputed testimony, however, I find that in September of 2019 the Tenants received a pdf document that directed them to clean behind the stove by carefully sliding the stove forward, with no mention of rollers. On the basis of this document, I find that the Tenants were obligated to clean behind the stove, by carefully sliding it forward.

On the basis of the photograph submitted in evidence, I find that the Tenants did not leave the area behind the stove in reasonably clean condition.

After considering all of the evidence regarding the cleanliness of the rental unit, 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 Witness' testimony that the rental unit was kept clean during the tenancy and that it was clean at the end of the tenancy. I find that her subjective observations have far less evidentiary value than the photographs presented in evidence.

I find that the Landlord submitted insufficient evidence to establish that the stove top was cracked at the end of the tenancy. I have viewed the photographs of the stove top and am not satisfied that they establish that it was cracked.

I have also viewed the invoice for replacing the stove top. As this invoice does not declare that the stove top was cracked, I cannot conclude that it corroborates the Landlord's claim it was cracked. I find it entirely possible that the stove top was replaced because of the marks on the surface of the stove top, which may simply be cosmetic scratches.

As I have concluded that the Landlord submitted insufficient evidence to corroborate the claim that the stove top was cracked or to refute the Tenants' submission that it was not cracked, I dismiss the Landlord's claim for replacing the stove top.

I find that the Landlord submitted insufficient evidence to establish that the countertops were damaged, beyond normal wear and tear, during the tenancy. I have viewed the photographs of the countertop and am not satisfied that there were any significant stains on the countertop at the end of the tenancy. While I accept that there may be some very minor discoloration on the light colored countertop, I find that this discoloration would be expected during normal use of a light colored countertop. I therefore find that this discoloration constitutes normal wear and tear, which the Tenants are not obligated to repair.

As the Tenants were not obligated to repair the normal wear and tear to the countertop, I dismiss the Landlord's claim for buffing the countertop.

I find that the Landlord submitted insufficient evidence to establish that a light bulb was burned out during the tenancy. In reaching this conclusion, I was influenced by the absence of evidence to corroborate the Agent for the Landlord's testimony that a light bulb was burned out or to refute JB's testimony that no light bulbs were burned out at the end of the tenancy.

On the basis of JB's undisputed testimony, I find that the light bulb that was missing from one of the light sockets was left in a drawer inside the rental unit.

As the Landlord has submitted insufficient evidence to establish that a light bulb was burned out during the tenancy or that one was missing from the rental unit at the end of the tenancy, I dismiss the Landlord's claim for replacing light bulbs.

On the basis of the undisputed evidence, I find that the Tenants applied adhesive hooks to the wall which were not removed at the end of the tenancy; that the adhesive hooks could be removed from the wall by heating the adhesive with a hair dryer before peeling them from the wall; and that the Tenants told an agent for the Landlord how to remove the hooks without damaging the wall.

On the basis of the undisputed evidence, I find that the walls were damaged when the adhesive hooks were removed from the wall. I find that the damage to the wall could have been mitigated by following the Tenant's directions about how to remove the hooks from the wall.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. As I have concluded that the Landlord did not take reasonable steps to minimize the damage that occurred when the adhesive hooks were removed from the wall, I find that the Landlord is not entitled to compensation for the cost of painting the rental unit as a result of that wall damage.

Had the Landlord applied for compensation for the cost of removing the adhesive hooks, I would likely have granted that claim, as the Tenants should have removed those adhesive hooks at the end of the tenancy. I am unable to award the Landlord compensation for the cost of removing those hooks, however, as they have not claimed compensation for that expense.

I find that the Landlord submitted insufficient evidence to show that the Tenants made unreasonably large nail or screw holes in the wall. In reaching this conclusion I was influenced by JB's testimony that the marks in the wall shown in photograph #6 are actually hooks that are simply attached to the wall with a small finishing nail. The Agent for the Landlord agreed that the photograph may depict hooks that are attached to the wall with a small finishing nail.

As the Landlord submitted insufficient evidence to show that the Tenants made unreasonably large nail or screw holes in the wall, I find that the Landlord is not entitled to compensation for the cost of painting the rental unit as a result of this type of damage.



In adjudicating the claims for damages, I have placed no weight on the condition inspection report that was completed at the end of the tenancy. I find this report has little evidentiary value, as the Tenants did not agree to the content of the report.

I find that the Landlord's Application for Dispute Resolution has some 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 \$415.00, which includes \$315.00 for cleaning 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 \$415.00 from the Tenants' security deposit in full satisfaction of this monetary claim.

As the Landlord has not establish a right to retain the remaining \$932.50 of the security deposit, I find that amount must be returned to the Tenants.

Based on these determinations I grant the Tenants a monetary Order for \$932.50. 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: April 04, 2020

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Residential Tenancy Branch