



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords 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 male Landlord stated that on December 27, 2019 the Dispute Resolution Package and the evidence the Landlords submitted to the Residential Tenancy Branch in December of 2019 were sent to the Tenants, via registered mail. The Tenants acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

In May of 2020 the Landlord submitted additional evidence to the Residential Tenancy Branch. The male Landlord stated that some of this evidence was served to the Tenants, via registered mail, on March 06, 2020 and some was served, via email, on May 13, 2020. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In May of 2020 the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the LL, via email, on May 13, 2020. The Landlords acknowledged receiving this evidence and it 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. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

### Preliminary Matter

With the consent of both parties, the Application for Dispute Resolution was amended at the hearing to reflect the correct surname of the female Tenant, as she provided it at the hearing.

### Issue(s) to be Decided

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

### Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on September 15, 2017;
- the tenancy ended on December 15, 2019;
- the Tenants paid a security deposit of \$725.00;
- the Tenants did not authorize the Landlords to retain any portion of the security deposit;
- the Landlords received a forwarding address from the Tenants, by text message, on December 18, 2019;
- a condition inspection report was completed at the beginning of the tenancy;
- the male Landlord and the male Tenant met on December 18, 2019 for the purposes of inspecting the rental unit;
- on December 18, 2019 or December 19, 2019, the Landlords sent a security deposit refund of \$150.00 to the Tenants, by e-transfer; and
- the Tenants declined to accept the \$150.00 e-transfer.

The male Landlord stated that he completed a condition inspection report on December 15, 2019; he presented the report to the male Tenant when they met on December 18, 2019; the male Tenant was upset about the Landlord's assessment of the condition of the rental unit; and he did not ask the Tenant to sign the final condition inspection report, as the male Tenant was upset.

The male Tenant stated that the male Landlord did not show him a final condition inspection report when they met on December 18, 2019; the male Landlord did not complete one in his presence; and the male Landlord did not present him with the report for the purposes of him signing the report.

The Landlords are seeking compensation, in the amount of \$394.73, for cleaning the rental unit. The Landlords submitted photographs, which the male Landlord stated were taken at the end of the tenancy. The male Tenant stated that although the photographs are not very clear, they appear to accurately reflect the cleanliness of the rental unit at the end of the tenancy.

The Landlords submitted an invoice to show that the Landlords were charged \$330.75 for cleaning the rental unit. The Landlords submitted a receipt for a carpet cleaner rental, in the amount of \$63.98, which the male Landlord stated was used to clean the carpet.

The female Tenant stated that they cleaned the rental unit at the end of the tenancy, although the oven, the stove top, and the shower may have needed additional cleaning. She stated that the oven was self cleaning and that she had to clean the oven at the start of the tenancy.

The female Landlord agreed that the oven may have not been clean at the start of the tenancy.

The male Landlord stated that many areas needed additional cleaning, including the oven, the stove top, and the shower, the top of the fridge, the bathroom sink, the walls, the blinds, the deck, and the carpet in the second bedroom.

The Tenants submit that the carpets in the second bedroom were stained at the start of the tenancy. The Landlords submit that the carpets in the second bedroom were not stained at the start of the tenancy.

The Landlords are seeking compensation of \$43.53 for replacing light bulbs. The male Landlord stated that five light bulbs were burned out at the end of the tenancy. The male Tenant stated that he does not know if any light bulbs were burned out at the end of the tenancy. The Landlords submitted photographs that clearly show three light bulbs were burned out at the end of the tenancy.

The Landlords submitted a receipt to show that they paid \$43.53 to purchase seven light bulbs.

The female Tenant stated that there were “more than 4” burned out light bulbs in the rental unit at the start of the tenancy. The male Landlord stated that he was not aware any light bulbs were burned out during the tenancy.

The Landlords are seeking compensation of replacing the battery in a smoke alarm which the male Landlord estimates cost \$12.00. The male Landlord stated that the battery in the smoke alarm was not working at the end of the tenancy. The male Tenant stated that he does not know if any the battery was working at the end of the tenancy.

The male Landlord stated that a receipt for replacing the battery was not submitted.

### Analysis

On the basis of the undisputed evidence, I find that this tenancy ended on December 15, 2019 and that the Landlords received a forwarding address for the Tenants, in writing, by text message on December 18, 2019.

In determining that the Landlords received the Tenants’ forwarding address, in writing, via text message, I was guided, in part, by the definition provided by the Black’s Law Dictionary Sixth Edition, which defines “writing” as “handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof”. I find that a text message meets the definition of written as defined by Black’s Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.

Section 88 of the *Residential Tenancy Act (Act)* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be

served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlords acknowledged receiving the text message in which the Tenants provided their forwarding address, I find that the Landlords were sufficiently served with the Tenants' forwarding address.

Section 35(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. I find that the male Landlord and the male Tenant complied with section 35(1) of the *Act* when they inspected the condition of the rental unit on December 18, 2019.

Section 35(3) of the *Act* stipulates that the landlord must complete a condition inspection report in accordance with the regulations. As there is no dispute that the Landlord created a final condition inspection report prior to meeting with the Tenant on December 18, 2019, I find that the Landlords complied with section 35(3) of the *Act*.

Section 35(3) of the *Act* stipulates that the landlord and the tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. On the basis of the undisputed evidence, I find that the male Landlord signed the final condition inspection report. I find that no negative inference can be applied to the fact the Tenants did not sign the final inspection report, as they were not given the opportunity to do so.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As the Tenants were not given the opportunity to sign the final inspection report, I find that the condition inspection report that was completed at the end of the tenancy has no evidentiary value.

In the Landlords written submission, the Landlords declared that a copy of the final condition inspection report was given to the Tenants 24 hours after it was completed. In the absence of evidence to the contrary, I find that a copy of the final condition

inspection report was provided to the Tenants in accordance with section 35(3) of the *Act*.

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 reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear. Residential Tenancy Branch Policy Guideline #1 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.

.....

The tenant is responsible for replacing light bulbs in his or her premises during the Tenancy.

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 \$330.75.

In adjudicating the claim for cleaning the rental unit, I have placed no weight on the Tenants' submission that the self-cleaning oven had not been cleaned at the start of the tenancy. This Application for Dispute Resolution is about, in part, the Landlords' application for compensation for cleaning the unit and not about a claim for compensation made by the Tenants. The Tenants retain the right to file their own Application for Dispute Resolution if they believe the Landlords did not provide them with a rental unit in reasonably clean condition at the start of the tenancy.

As both parties signed the condition inspection report that was completed at the start of the tenancy, I find that this report is evidence of the state of repair of the unit when that report was completed.

On the basis of the condition inspection report that was completed at the start of the tenancy, I find the carpet in the second bedroom was not stained at the start of the tenancy. On the basis of the photographs submitted in evidence, I find that this carpet required cleaning at the end of the tenancy. I therefore find that the Landlords are entitled to compensation of \$63.98 for renting a carpet cleaner.

On the basis of the evidence presented by the Landlords, I find that there were 5 light bulbs that needed replacing at the end of the tenancy. I find that the Tenants failed to comply with section 37(2) of the Act when they did not replace those 5 light bulbs and that the Landlords are entitled to compensation for replacing those bulbs.

The Landlords submitted evidence to show that they paid \$43.53 for seven light bulbs, which is an average cost of \$6.22 per bulb. I therefore find that the Landlords are entitled to compensation of \$31.10 for replacing 5 light bulbs (5 X 6.22).

In adjudicating the claim for replacing light bulbs, I have placed no weight on the Tenants' submission that some light bulbs were burned out at the start of the tenancy. This Application for Dispute Resolution is about, in part, the Landlords' application for replacing light bulbs and not about a claim for compensation made by the Tenants. The Tenants retain the right to file their own Application for Dispute Resolution if they believe the Landlords did not provide them with a rental unit with fully functioning light bulbs.

On the basis of the testimony of the male Landlord and the absence of evidence to the contrary I find that the Tenants failed to comply with section 37(2) of the Act when they did not replace the battery in the smoke alarm.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. I find that the Landlords failed to establish the true cost of replacing the battery in the smoke alarm. In reaching this conclusion, I was heavily influenced by the absence of any documentary evidence that corroborates the Landlord's testimony that it cost \$12.00 to replace the battery. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. I therefore dismiss the Landlords' claim for replacing the battery

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlords have established a monetary claim, in the amount of \$525.83, which includes \$394.73 for cleaning, \$31.10 for replacing light bulbs, 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 Landlords to retain this amount from the Tenants' security deposit of \$725.00 in full satisfaction of this monetary claim.

As the Landlords have failed to establish the right to retain the entire security deposit, I find that they must return the remaining \$199.17 to the Tenants. Based on these determinations I grant the Tenants a monetary Order for \$199.17. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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

Dated: May 25, 2020

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Residential Tenancy Branch