



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

On January 14, 2019 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, 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.

This Application for Dispute Resolution was considered at a hearing on May 07, 2019. A different Residential Tenancy Branch Arbitrator dismissed the Application for Dispute Resolution, without leave to reapply.

The Landlord applied to the Supreme Court of British Columbia for judicial review of the decision of the original decision. On April 08, 2020, the Honourable Madam Justice W.A. Baker overturned the original decision and the matter was remitted back to the Residential Tenancy Branch for re-determination.

A hearing was convened on September 25, 2020 to consider the merits of the Landlord's Application for Dispute Resolution. There was insufficient time to conclude the matter in the time scheduled for the hearing on September 25, 2020, so that hearing was adjourned. The hearing was reconvened on December 11, 2020 and was concluded on that date.

The Landlord stated that on, or about, January 14, 2019 the Dispute Resolution Package was personally delivered to the Tenant's business office. The Tenant acknowledged receipt of these documents.

In February of 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, in February of 2019. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 23, 2019 the Landlord filed an Amendment to an Application for Dispute Resolution, in which the Landlord increased the amount of his monetary claim. The Landlord stated that this Amendment was personally delivered to the Tenant's business address on, or about, April 23, 2019. The Tenant acknowledged receiving these documents. Both parties agreed that this Amendment should be accepted, given the amount of time that has passed since the Amendment was served. The Amendment is, therefore, accepted.

On April 25, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally delivered to the Tenant's business address on, or about, April 25, 2019. The Tenant acknowledged receiving this evidence. Both parties agreed that this evidence should be accepted, given the amount of time that has passed since the evidence was served. The evidence is, therefore, accepted as evidence for these proceedings.

In July of 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on, or about, July 30, 2020. The Landlord acknowledged receiving this evidence. As this evidence was served more than two weeks before the hearing on September 25, 2020, it was accepted as evidence for these proceedings.

On August 04, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As this evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

On September 10, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant by email on September 10, 2020, The Tenant acknowledged receiving this evidence. As this evidence was served more than two weeks before the hearing on September 25, 2020, it was accepted as evidence for these proceedings.

On September 14, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the

evidence was not served to the Landlord, it was not 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 Landlord and the Tenant each affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter #1

The Landlord and the Tenant were advised that neither party is permitted to record these proceedings. Each party confirmed they would not record the proceedings.

Preliminary Matter #2

Shortly after the beginning of the hearing on September 25, 2020 Legal Counsel for the Landlord withdrew the application to retain the security deposit and I amend this Application for Dispute Resolution accordingly.

Preliminary Matter #3

Shortly after the beginning of the hearing on September 25, 2020, the Tenant asked for clarification regarding the claim for unpaid rent. The Tenant was advised that the Landlord is claiming compensation for lost revenue, not for unpaid rent.

Preliminary Matter #4

Shortly after the beginning of the hearing on September 25, 2020, the Tenant declared that his legal first name is Tony, not Anthony, as it appears on the Application for Dispute Resolution. With the consent and agreement of both parties, the Application for Dispute Resolution was amended to reflect the first name of the Tenant, as per his testimony.

Preliminary Matter #5

Section 59(2)(b) of the *Residential Tenancy Act (Act)* requires applicants to provide “full particulars” of a dispute. For this purpose, the Residential Tenancy Branch has created a Monetary Order Worksheet, on which applicants are expected to list receipts/estimate submitted and explain to which claim for compensation the receipt/estimate is related.

The parties were advised that neither Monetary Order Worksheet submitted in evidence by the Landlord, in my view, provides sufficient details of the nature of the monetary claims being made by the Landlord.

The Tenant was advised that I was prepared to adjourn the hearing to provide the Landlord with time to serve him with a more detailed Monetary Order Worksheet. The Tenant stated that he does not want an adjournment; that he understands the nature of the Landlord's monetary claims; and that he is prepared to respond to the Landlord's claims at this hearing.

On the basis of the information provided by the Tenant, the hearing was not adjourned to provide the Landlord with the opportunity to submit a more detailed Monetary Order Worksheet. The Tenant was advised that he should request an adjournment if, at any point during the hearing, the Landlord makes a claim he did not anticipate.

The proceedings were concluded without the Tenant requesting an adjournment.

Preliminary Matter #6

After the Tenant declined the opportunity for an adjournment, Legal Counsel requested an adjournment for the purpose of submitting a more detailed Monetary Order Worksheet. Legal Counsel submits that allowing this adjournment will enable the Landlord to present his evidence more clearly and more systematically.

The Tenant opposed the Landlord's application for an adjournment. He stated that he is ready to proceed, and he does not want to commit any more additional time to these matters.

The Landlord's application for an adjournment was denied. Given that this Application for Dispute Resolution was filed in January of 2019, I find that the Landlord has had ample time to prepare for these proceedings and that, with reasonable diligence, the Landlord should have been prepared to present his case at these proceedings.

I do not find that an adjournment is necessary to provide the Landlord with a reasonable opportunity to be heard and I do not find that the Landlord would be prejudiced by denying the adjournment. The Landlord was advised that he can declare the amount of compensation he is claiming for each alleged damaged item when those items are discussed at the hearing.

Conversely, I find that granting an adjournment would be unfair to the Tenant, as this matter has been on-going for an extended period of time and an adjournment would unnecessarily prolong the proceedings.

Preliminary Matter #7

The Landlord and the Tenant agree that this tenancy has been the subject of four previous dispute resolution proceedings. The file numbers for those proceedings appear on the first page of this decision.

The Landlord and the Tenant agreed that I should read the decisions made by the previous Residential Tenancy Branch Arbitrators. I have read those decisions and find they have little bearing on the issues before me, other than to confirm that the parties have had on-going disputes about the condition of the rental unit.

Preliminary Matter #8

At the hearing on September 25, 2020 Legal Counsel for the Landlord referred to video evidence that was described as “part one and two” of the video titled “EvictionandInspectionRefusal”. At the hearing on September 25, 2020 the parties were advised that I could not locate that video evidence, but that I would locate the evidence after the hearing and review it prior to rendering a decision.

After the hearing I reviewed all evidence submitted by the Landlord and was unable to locate parts one, two, three, or four of the videos titled “EvictionandInspectionRefusal”. I was able to locate parts five, six, seven, and eight of that video series.

In my interim decision dated September 28, 2020, I gave the Landlord authority to submit copies of parts one, two, three, or four of the videos titled “EvictionandInspectionRefusal” to the Residential Tenancy Branch, providing that evidence was previously submitted to the Residential Tenancy Branch. At the hearing on December 11, 2020, the Landlord stated that this evidence was initially submitted to the Residential Tenancy Branch in January of 2019.

In my interim decision dated September 28, 2020, the Landlord is directed to serve the Tenant with copies of parts one, two, three, or four of the videos titled “EvictionandInspectionRefusal”. At the hearing on December 11, 2020 the Landlord declared that this video evidence was served to the Tenant prior to the hearing in

September of 2020. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to compensation for lost revenue?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on August 01, 2012;
- the tenancy ended on December 31, 2018;
- at the end of the tenancy the monthly rent was \$2,232.00;
- a condition inspection report was not completed at the beginning of the tenancy; and
- the Landlord scheduled a time to complete a condition inspection report at the end of the tenancy;
- the Landlord and the Tenant met at the time of the scheduled final inspection, but the Tenant left the unit prior to the start of the final inspection.

The Landlord is seeking compensation for damage to the wood floors. The Landlord and the Tenant agree that the wood floors were in new condition at the start of the tenancy.

The Landlord stated that the floors were damaged and scratched in several locations at the end of the tenancy. On September 10, 2020 the Landlord submitted photographs of the flooring. The Landlord stated that these photographs are representative of damaged flooring in the living room and both bedrooms at the end of the tenancy. The Landlord stated that he took the photographs of the flooring on December 31, 2018.

The Tenant stated that the photographs of the flooring submitted in evidence by the Landlord “may” represent the condition of the flooring at the end of the tenancy, although he is not “certain”. The Tenant submits that the damage shown in the photographs “may” have occurred when the Landlord was repairing the rental unit, after the Tenant had vacated the unit. The Tenant submits that the Arbitrator should view the damage to determine if it constitutes “normal wear and tear”.

The Landlord stated that he and others spent approximately 70 hours sanding and refinishing the floors in the unit. The Landlord is seeking compensation for labour, at a

rate of \$30.00 per hour, plus supplies. The Landlord identified two receipts for supplies totalling \$48.72 plus tax of \$5.85.

The Landlord is seeking compensation for replacing tiles and repairing drywall. In support of this claim the Landlord stated that:

- a significant amount of mold accumulated on the tiles surrounding the bathtub and behind the kitchen sink during the tenancy;
- he frequently asked the Tenant to clean the mold, but he refused;
- the mold accumulated behind the tiles and, as such, the tiles needed to be replaced;
- the Landlord also needed to replace drywall behind the tiles;
- the photograph on page 18, which the Landlord submitted to the Residential Tenancy Branch on September 10, 2020, demonstrates the need to replace the tiles due to mold;
- the photograph on pages 18 was taken on December 31, 2018, which was the day the Tenant vacated;
- there were several large holes in the walls, which the Tenant had partially repaired by applying drywall compound;
- the Tenant did not sand the partially repaired holes;
- the holes the Tenant partially repaired can be seen in the photographs on pages 5, 6, 21, and 24, which the Landlord submitted to the Residential Tenancy Branch on September 10, 2020;
- the photographs on pages 5, 6, 21, and 24 were taken on December 31, 2018, which was the day the Tenant vacated;
- the several videos he took at the end of the tenancy also demonstrate the condition of the walls at the end of the tenancy;
- the rental unit was last painted in 2012, prior to the start of the tenancy;
- the tiles were installed in 1995; and
- he and others spent approximately 83 hours replacing the tile, repairing drywall, and repainting the unit.

In response to the claim for tiling and repairing drywall, the Tenant stated that:

- he cleaned the tiles at the end of the tenancy, and they did not need to be replaced;
- he applied vinegar to the moldy areas around the tile, which successfully eliminated the mold;
- the Landlord did not ask him to clean the mold during the tenancy;
- he cleaned the mold on the tiles during the tenancy;

- on one occasion he caulked the tiles;
- on one occasion he spray-painted the ceiling in the bathroom after cleaning mold from the ceiling, as shown in the photograph on page 29 of the evidence the Landlord submitted to the Residential Tenancy Branch on September 10, 2020;
- he spray-painted the ceiling to improve the appearance of the ceiling;
- the photograph on page 18, which the Landlord submitted to the Residential Tenancy Branch on September 10, 2020, does not demonstrate the condition of the tiles at the end of the tenancy;
- the photograph on page 18 was taken several months prior to the end of the tenancy;
- the video he took at the end of the tenancy, which was submitted in evidence, more accurately reflects the condition of the tiles at the end of the tenancy;
- the mold in the bathroom accumulated, in part, because there was no window and the vent did not work well;
- the Landlord inspected the rental unit regularly and was aware there was a problem with mold;
- there were several large holes in the walls, which he partially repaired by applying drywall compound;
- he did not sand the partially repaired holes;
- the holes he partially repaired can be seen in the photographs on pages 5, 6, 21, and 24, which the Landlord submitted to the Residential Tenancy Branch on September 10, 2020;
- he partially repaired all of the damages that occurred to the wall during the tenancy; and
- he did not repair the holes in the wall that were present at the start of the tenancy, such as the holes that were the result of the Landlord mounting a television on the wall.

The Landlord is seeking compensation for replacing the kitchen counter. In support of this claim the Landlord stated that:

- the laminate counter was in perfect condition at the start of the tenancy;
- the laminate counter was burned and cut during the tenancy;
- the photographs on page 8, which the Landlord submitted to the Residential Tenancy Branch on September 10, 2020, demonstrates the damages to the counter;
- he replaced the counter with a granite counter;
- he spent approximately 25 hours installing the granite counter, which took significantly longer than it would to install a laminate counter;

- he purchased a used granite counter for \$400.00, for which he was not given a receipt; and
- the counter was approximately 23 years old at the end of the tenancy.

In response to the claim for the damaged counter the Tenant stated that:

- the laminate counter had some damage prior to the start of the tenancy; and
- the counter was burned and scraped during the tenancy.

The Landlord is seeking compensation for cleaning the rental unit. In support of this claim the Landlord stated that:

- his video shows that the rental unit was not left in clean condition;
- his video was taken on the last day of the tenancy;
- he did not smear dirt on the washing machine or pour liquid into the refrigerator prior to recording the video;
- the Landlord spent approximately 30 hours cleaning the rental unit, for which he is seeking compensation of \$900.00.

In response to the claim for cleaning the Tenant stated that:

- his video shows the rental unit was left in clean condition;
- the Landlord's video is a fair representation of the cleanliness of the unit at the end of the tenancy, with the exception that the Landlord smeared dirt on the washing machine and poured liquid into the refrigerator;
- some of the dirt that can be seen in the Landlord's video was present at the start of the tenancy, and
- he thinks the rental unit was left in reasonably clean condition.

The Landlord is seeking compensation for replacing the kitchen cabinets. In support of this claim the Landlord stated that:

- the kitchen cabinets are delaminating in several places;
- he does not know why the cabinets are delaminating, although he believes it is possible the Tenant intentionally peeled away the surface of the cabinets;
- the cabinets were in good condition in 2016;
- the cabinets are 23 years old;
- the same cabinets in the bathroom are not damaged; and
- no expert evidence was submitted to establish the cause of the damage to the cabinets.

In response to the claim for the cabinets the Tenant stated that:

- the cabinets are 23 years old;
- the cabinets began cracking and peeling during his tenancy;
- he does not know why they began cracking and peeling;
- he did not purposely damage the cabinets; and
- the damage may have been caused by the humidity of cooking.

The Landlord is seeking compensation for replacing 5 sets of blinds. In support of this claim the Landlord stated that:

- the blinds in the kitchen, living room, and master bedroom were damaged;
- the blinds were 23 years old;
- all the blinds were in good condition at the start of the tenancy;
- the Landlord submitted a receipt that show a set of blinds cost \$159.00 plus tax to replace (p. 17); and
- the Landlord is seeking to recover the cost of replacing 5 sets of blinds.

In response to the claim for the blinds the Tenant stated that:

- the blinds in the master bedroom were damaged at the start of the tenancy;
- the rest of the blinds were in good condition at the start of the tenancy;
- the blinds in the master bedroom were in the same condition at the end of the tenancy as they were at the start of the tenancy;
- the blinds in the kitchen were not damaged at the end of the tenancy; and
- the blinds in the living room were bent during the tenancy.

The Landlord is seeking compensation for repairing the refrigerator. In support of this claim the Landlord stated that:

- the new refrigerator was provided to the Tenant in 2017 or 2018;
- at the end of the tenancy the seal around the freezer portion of the refrigerator was damaged;
- at the end of the tenancy the seal around the main portion of the refrigerator was damaged;
- at the end of the tenancy the door handle was missing from the refrigerator door; and
- he did not submit receipts for the cost of repairing the refrigerator, but he estimates the repair parts will cost \$550.00.

In response to the claim for the refrigerator the Tenant stated that:

- the refrigerator was provided to him in 2017;

- the door handle came off the refrigerator when he opened the door approximately one month after the refrigerator was provided;
- he thinks the screws on the handle were tightened excessively, which may have caused the handle to break;
- he thinks the seal around the freezer cracked due to the cold temperature;
- he used the refrigerator normally; and
- he did not maliciously damage the refrigerator.

The Landlord is seeking compensation for replacing the microwave. In support of this claim the Landlord stated that:

- the microwave was 23 years old;
- it was extremely dirty; and
- at the end of the tenancy the door handle was missing from the microwave.

In response to cleaning the microwave the Tenant stated that the handle fell off the microwave during normal use.

The Landlord is seeking compensation for replacing 18 light bulbs which were either missing or not working when the tenancy ended. The Landlord's video shows numerous missing light bulbs.

The Landlord submitted a receipt that shows he paid \$9.98 for a package of two light bulbs, which the Landlord contends demonstrates each light bulb costs approximately \$5.00. The Landlord is seeking \$90.00 to replace the missing/burned out light bulbs.

The Tenant acknowledged that there were several missing/burned out light bulbs in the unit at the end of the tenancy. He stated that approximately 3 were burned out at the start of the tenancy and approximately 10 were missing at the end of the tenancy.

The Landlord is seeking compensation for replacing the bathtub. In support of this claim the Landlord stated that:

- the bathtub was so dirty it simply could not be cleaned;
- when the bathtub was removed mold was discovered in the walls and underneath the tub;
- the bathtub was replaced with a shower, which was cheaper than replacing it with a bathtub;
- a receipt for the shower, in the amount of \$477.96, was submitted, which is the amount the Landlord is claiming in compensation.

In response to the claim for replacing the bathtub, the Tenant stated that:

- the bathtub was cleaned thoroughly at the end of the tenancy;
- the bathtub was in “perfect condition” at the end of the tenancy;
- the bathtub was 17 years old; and
- the caulking around the tub was moldy.

The Witness for the Tenant stated that:

- she is the Tenant’s friend;
- she did not live in the rental unit, although she stayed overnight when they were dating;
- the Tenant’s video of the rental unit accurately reflects the condition of the rental unit at the end of the tenancy;
- she and the Tenant cleaned for approximately one week prior to the end of the tenancy;
- she did not see any damage in the rental unit;
- she did not notice mold in the bathroom until after the roof had been repaired;
- she observed the Tenant clean the mold around the bathtub; and
- she observed the Tenant paint over mold in the bathroom.

Legal Counsel for the Landlord stated that the Landlord is not seeking any further compensation for damages to the unit, even though the Landlord has mentioned other damages in his evidence.

The Landlord is seeking compensation for lost revenue. At the hearing Legal Counsel for the Landlord stated that the Landlord is seeking compensation for 4 months of lost revenue, which is \$8,928.00. In the Monetary Order Worksheet, the Landlord declared that he is seeking compensation for 4 months of lost revenue. In the Application for Dispute Resolution, the Landlord declared that he is seeking compensation for 2 months lost revenue, which is \$4,464.00. In support of this claim Legal Counsel for the Landlord stated that:

- the Landlord opted to repair the unit himself, with the help of friends;
- the repairs took several months to complete;
- the rental unit was not ready to re-rent until January 01, 2020; and
- the unit was re-rented on March 01, 2020.

In response to the claim for lost revenue the Tenant stated that the rental unit could have been re-rented without making any repairs.

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* 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.

Residential Tenancy Branch Policy Guideline #1 suggests that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. The guideline further suggests that an arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

On the basis of the undisputed testimony, I find that the wood floors were in new condition at the start of the tenancy. On the basis of the testimony of the Landlord I find that the photographs/video of the flooring the Landlord submitted are representative of the damage done to the flooring during the tenancy. As the damage can be seen in the video taken by the Landlord at the end of the tenancy, I find that the Tenant's suggestion that the damage may have occurred while the Landlord was repairing the unit is not plausible.

I find that the damage to the flooring exceeds "reasonable and wear and tear". I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the damaged flooring.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Landlord spent approximately 70 hours repairing the flooring. Based on an hourly rate of \$25.00, which I find to be reasonable for labor of this nature, I find that \$1,750.00 is reasonable compensation for time spent cleaning the unit. On the basis of the receipts referred to during the hearing, I find that the Landlord paid \$54.57 for supplies needed to repair the floor.

The Residential Tenancy Policy Guidelines show that the life expectancy of wood floors is 20 years. The evidence shows that the floors were approximately 6.5 years old at the end of the tenancy. I therefore find that the counters had 13.5/20 years of value left at the end of the tenancy and that the Landlord is entitled to 13.5/20 of the cost of repairing the flooring, which is \$1,218.08.

On the basis of the undisputed evidence, I accept that mold accumulated around the bathtub and the kitchen sink during this tenancy. I find that the Landlord has submitted insufficient evidence to establish that the tiles in the rental unit and/or the drywall behind it needed to be replaced due to this mold accumulation.

In considering the claim for replacing tile/drywall due to mold, I was influenced by the video evidence submitted by both parties. Although this video evidence shows that some of the caulking and grout in the kitchen may need to be replaced, it does not establish that the tiles needed to be removed or that the drywall behind the tiles needed to be replaced.

In my extensive experience with mold accumulation during tenancies, I find that the presence of mold as demonstrated by the video evidence is not atypical of tiles of this era. I therefore find that the mold present at the end of the tenancy should be considered “reasonable wear and tear”. As the Tenant is not obligated to repair damage that is “reasonable wear and tear”, I dismiss the Landlord’s claim for replacing the tiles and drywall behind it.

In adjudicating the claim for replacing tile/drywall, I considered the photograph of the drywall around the bathtub, after the tile had been removed. While I accept that the photograph shows that the drywall has been impacted by moisture, there is no evidence from a qualified tradesperson that establishes this moisture was the direct result of the Tenant failing to clean mold from the grout/tiles. I find it entirely possible that the caulking failed, which allowed water to seep behind the bathtub. Ensuring the caulking remains in good condition is generally considered routine maintenance, which is beyond the responsibility of the Tenant.

In adjudicating the claim for replacing tile/drywall, I considered the testimony of the Witness for the Tenant, who stated that she did not notice mold in the bathroom until after the roof had been repaired. I find that this testimony provides an alternate explanation of the mold accumulation that occurred around the bathtub and in the walls behind it.

On the basis of the undisputed evidence, I find that the drywall was damaged in several places during the tenancy; that the Tenant partially repaired the holes in the drywall by applying drywall compound; and that he did not sand the partially repaired holes. I find that the Tenant failed to comply with section 37(2) of the *Act* when he did not fully repair the damaged drywall. I therefore find the Landlord is entitled to compensation for the time he spent sanding the partially repaired areas. On the basis of the amount of drywall damage shown in the video evidence, I find \$300.00 is reasonable compensation for the time it would take to sand the repaired areas.

On the basis of the undisputed evidence, I find that the rental unit required painting at the end of the tenancy to cover the drywall repairs and other wall marks that occurred during the tenancy.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. The evidence shows that the rental unit was painted prior to the start of the tenancy and was, therefore, over six years old at the end of the tenancy. I therefore find that the paint has exceeded its life expectancy and that the Landlord is not entitled to compensation for painting.

I find that the Landlord submitted insufficient evidence to support his testimony that the kitchen counter was in “perfect” shape at the start of the tenancy or to refute the Tenant’s testimony that there was some damage to the counter at the start of the tenancy.

On the basis of the undisputed evidence, I find that the counter was burned and scraped during the tenancy. On the basis of the video and photographic evidence, I find that the burns on the counter exceed “reasonable wear and tear”. I find that the Tenant

failed to comply with section 37(2) of the *Act* when he failed to repair the damage that occurred to the counter during the tenancy.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Landlord paid \$400.00 for a used granite counter. I accept that the Landlord was unable to provide a receipt of the counter, as he did not receive a receipt for the used counter.

Although the counter in the rental unit was laminate and the Landlord is not entitled to compensation for replacing it with a more expensive granite counter, I find it reasonable to conclude that the Landlord paid less for the used granite counter than he would have paid for a new laminate counter. I therefore find that the Landlord is entitled to recover at least a portion of the \$400.00 he paid for the used counter.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Landlord spent approximately 25 hours installing a granite counter in the kitchen. By the Landlord's own admission, I find that installing a granite counter takes significantly longer than installing a laminate counter. I find that the Landlord is entitled to compensation for the time he would have spent installing a laminate counter. Although I do not have evidence of the time it would take to install a laminate counter, based on my experience with such claims I find \$300.00 is reasonable compensation for the time it would take to install a laminate counter.

The Residential Tenancy Policy Guidelines show that the life expectancy of counters is 25 years. The evidence shows that the counters were 23 years old at the end of the tenancy. I therefore find that the counters had 2/25 years of value left at the end of the tenancy and that the Landlord is entitled to 2/25 of the cost of purchasing and installing the counter, which is \$56.00.

Residential Tenancy Branch Policy Guideline #1 suggests that I may 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. It further suggests that the tenant is not responsible for cleaning to bring the premises to a higher standard than that set out in the *Act*.

On the basis of the video evidence submitted by the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition. I find that the Landlord's video evidence is more reliable than the Tenant's video evidence in regard to determining cleanliness, simply because it

provides numerous close up images, while the Tenant's video very quickly passes over various areas.

In adjudicating the claim for cleaning, I have placed limited weight on the testimony of the Witness for the Tenant. Although she testified that the Tenant's video of the rental unit accurately reflects the condition of the rental unit at the end of the tenancy, she does not state that the Landlord's video does not accurately reflect the condition of the unit. Although she testified that she and the Tenant cleaned for approximately one week prior to the end of the tenancy, that does not refute the Landlord's video evidence that more cleaning was required.

On the basis of the Landlord's video evidence, I find it reasonable that it would have taken 30 hours to bring the unit to a reasonable state of cleanliness. Based on an hourly rate of \$25.00, which I find to be reasonable for labor of this nature, I grant the Landlord compensation of \$750.00 for time spent cleaning the unit.

I find that the Landlord has submitted insufficient evidence to establish that the cabinets were damaged by the actions or neglect of the Tenant. Although it is clear that the cabinets were damaged during the tenancy, I find there is no evidence to show the cabinets were misused or intentionally damaged by the Tenant. In my view, the damage seen in the Landlord's video is not typical of intentional damage.

In the absence of evidence from an expert that establishes the damage to the cabinets could not have been the result of a manufacturing flaw or normal wear and tear after 17 years of use, I cannot conclude that the Tenant is required to replace the cabinets. I therefore dismiss the Landlord's claim for replacing the cabinets.

I find that the Landlord submitted insufficient evidence to establish that the blinds in the master bedroom were in good condition at the start of the tenancy. The purpose of completing a condition inspection report at the start of each tenancy, as is required by section 23 of the *Act*, is to establish the condition of each item at the start of the tenancy. In the absence of such a report, or equally compelling evidence, it is very difficult for a Landlord to establish that the blinds in the master bedroom were not damaged at the start of the tenancy.

As the Landlord has failed to establish that the blinds in the master bedroom in good condition at the start of the tenancy, I cannot conclude that they were damaged during the tenancy. As the Landlord has failed to establish that the blinds in the master

bedroom were damaged during the tenancy, I cannot conclude that the Tenant is obligated to repair those blinds. I therefore dismiss the claim for replacing those blinds.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair two blinds in the living room that were damaged during the tenancy. Although the Tenant contends the blinds in the kitchen were not damaged at the end of the tenancy, I find that the Landlord's video shows they were damaged. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the blinds in the kitchen that were damaged during the tenancy.

On the basis of the receipt submitted in evidence, I find that the Landlord paid \$159.00 plus tax for each blind, which is \$356.16 for both blinds. The Residential Tenancy Policy Guidelines show that the life expectancy of blinds is 10 years. The evidence shows that the blinds were 23 years old at the end of the tenancy. Although the blinds had exceeded their life expectancy, I find that they would have had some nominal value to the Landlord if they had not been damaged, and I therefore grant the Landlord compensation of \$50.00 for the damaged blinds.

On the basis of the undisputed evidence, I find that the refrigerator door handle and some of the refrigerator/freezer seal was broken during this tenancy. Although the Tenant suggests this damage was the result of reasonable wear and tear, I find his submission lacks credibility. In the absence of evidence to show that the door handle was installed incorrectly, I find it reasonable to conclude that the handle broke as a result of excessive force. In the absence of evidence to show that the refrigerator/freezer seal was broken as a result of some design flaw, I find it reasonable to conclude that the damage was the result of excessive force. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the damage to the refrigerator.

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. In these circumstances, I find that the Landlord failed to establish the true cost of repairing the refrigerator. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that repair parts for the refrigerator will cost \$550.00. When receipts or estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. As the Landlord did not submit sufficient evidence of the

cost of repairing the refrigerator, I dismiss the Landlord's claim for compensation for repairing the refrigerator.

I find that the Landlord has submitted insufficient evidence to establish that the microwave handle fell off the door as a result of inappropriate actions or neglect of the Tenant. Given that the microwave was 23 years old, I find it entirely possible that the handle fell off the door as a result of reasonable wear and tear. Although I accept the Landlord's evidence that the microwave required cleaning, I cannot conclude that the microwave was so dirty that it needed to be replaced. As the Landlord has failed to establish that the microwave needed replacing, I dismiss his claim for replacing the microwave.

On the basis of the undisputed evidence, I find that there were several missing/burned out light bulbs at the end of the tenancy. I find the Tenant's testimony that there were approximately 10 missing light bulbs at the start of the tenancy simply not credible. On the basis of the video evidence submitted by the Landlord, I find it highly unbelievable that the Tenant would accept a rental unit without those missing light bulbs and that the Tenant would have lived in the unit for six years with those missing light bulbs.

I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to replace the missing/burned out light bulbs at the end of the tenancy. On the basis of the receipt submitted in evidence, I find that it costs approximately \$5.00 to replace each light bulb and I grant the Landlord compensation of \$90.00 for the missing/burned out bulbs.

I favor the evidence of the Landlord, who submits that the bathtub was so dirty it could not be cleaned, over the evidence of the Tenant, who testified that the bathtub was thoroughly cleaned and in "perfect condition" at the end of the tenancy. I find the video evidence and photographs submitted by the Landlord clearly refute the Tenant's evidence that it was in perfect condition at the end of the tenancy. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the bathtub in reasonably clean condition at the end of the tenancy.

On the basis of the testimony of the Landlord and the images of the bathtub, I accept that it simply could not be cleaned at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for replacing the bathtub.

On the basis of the receipt submitted in evidence, I find that the Landlord paid \$477.96 to replace the bathtub with a shower, which I find was reasonable. The Residential

Tenancy Policy Guidelines show that the life expectancy of a bathtub is 20 years. The evidence shows that the bathtub was 17 years old at the end of the tenancy. I therefore find that the bathtub had 3/20 years of value left at the end of the tenancy and that the Landlord is entitled to 3/20 of the cost of purchasing the replacement shower, which is \$71.69.

In adjudicating the claim for damages, I have placed limited weight on the testimony of the Witness for the Tenant, who stated that she did not see any damage. I find that her testimony does not refute the video evidence submitted by the Landlord, which clearly shows damage.

As the Landlord has failed to establish that the Tenant was obligated to repair many of the items that would have taken a long time to repair, such as replacing the tile and drywall damaged by mold, I find that the Landlord is not entitled to compensation for lost revenue he experienced as a result of those repairs.

As I have concluded that the Tenant was obligated to repairs some damages, such as repairing the flooring, replacing the kitchen counter, replacing the bathtub, repairing the flooring, and cleaning, I find that the Landlord is entitled to compensation for lost revenue he experienced as a result of those repairs. I find that with reasonable diligence these repairs could have been completed in one month. I find that to be particularly true if the Landlord had hired professionals, who would likely have completed the repairs in a timelier manner. I therefore grant the Landlord compensation for lost revenue, in the amount of \$2,232.00.

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 \$4,867.77, which includes \$1,218.08 for repairing the flooring; \$300.00 for time spent repairing drywall; \$56.00 for replacing the kitchen counter; \$750.00 for cleaning; \$50.00 for the damaged blinds; \$90.00 for light bulbs; \$71.69 for replacing the bathtub; \$2,232.00 for lost revenue; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order \$4,867.77. In the event the Tenant does not voluntarily comply with this Order, it may be served on the

Tenant, 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: December 14, 2020

Residential Tenancy Branch