



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding URBAN PACIFIC PROPERTY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 17, 2020, wherein the Landlord sought monetary compensation in the amount of \$3,730.96 including compensation for loss of rent, cleaning and repairs, authority to retain the Tenant's security deposit, and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference on September 21, 2020 and January 14, 2021. The Tenant, as well as the Landlord's Property Manager, W.H., and a witness on behalf of the Landlord, J.L., called into the hearings. All in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

In support of the Landlord's claim, W.H. testified as follows. He confirmed that the tenancy began February 1, 2016. The Tenant paid a \$725.00 security deposit. At the time the tenancy ended the rent was \$1,486.25.

The Tenant moved from the rental unit on May 2, 2020. W.H. stated that he tried to re-rent the unit for May 15, 2020. He confirmed that he put a sign out in front of the building, as well as on Craigslist and Kijiji on May 2, 2020. W.H. stated that he had six showings of the unit in May 2020 but only two applications were received.

The unit was re-rented as of June 1, 2020 for \$1,800.00 per month. In terms of the increase in rent, W.H. stated that the rental unit has a large square footage (530 square feet) and is the top floor of the three-level building. He also stated that the unit was completely renovated five years ago, including: new cabinetry, new appliances, new drywall and fresh paint, refinished floors, such that the unit was nearly "brand new". He also noted that they did not raise the rent during the tenancy. While the Landlord was able to secure a rental for a higher amount, W.H. confirmed that the Landlord sought loss of rent in the amount of \$1,486.25 for the month of May 2020 as this was the amount paid by the subject Tenant.

W.H. stated that the Tenant was not there at the time the tenancy ended, rather the Tenant had two agents, M.B., and J.S. attend on his behalf for the move out condition inspection. J.S. signed the move out condition inspection report on behalf of the Tenant and confirmed that he agreed the report accurately represented the condition of the rental unit on move out.

The Landlord sought monetary compensation in the amount of \$966.00 for cleaning. W.H. stated that when the tenancy ended the unit still smelled of cannabis and that the majority of the cleaning involved removing the smoke smell from the unit. W.H. also stated that at the time the inspection occurred the windows were open; conversely, when the cleaner came and the windows were closed, it was clear that the unit had been smoked in extensively. The entire building is non-smoking and as such they had to extensively clean the unit.

W.H. testified that he brought in the cleaner to give a quote on what it would cost to clean the unit. She provided a fixed price which included an additional amount for the supplies to remove the smoke smell. She also wiped down most of the surfaces to

remove the smoke as best as they could. W.H. noted that the roller blinds smelled extensively, and they had to be cleaned at least twice.

In terms of the amount claimed for paint, W.H. testified that the damage to the walls were from nails, and chips from moving items. W.H. also testified that the Tenant made no attempt to fill in the holes or repair the damage. The contractors had to attend on numerous separate occasions to fix the holes, then return to sand and prime and then to paint. He also noted that they have used these painters in other areas of the building, and they receive the lowest price possible.

In terms of the Landlord's claim for the replacement cost of the stove top, W.H. stated that during his inspection he noticed that the stovetop was not cleaned. Upon closer inspection he noticed there were scratches and chips on the cooktop. W.H. stated that all the Tenants are provided with the original operating manual which provided cleaning instructions as well as acceptable cookware; he suggested that the Tenants must have used the wrong type of cookware based on the scratches. W.H. testified that the Landlord wanted it to be replaced because it was "not in the original condition" it was when the tenancy began.

The cleaner, J.L., also testified. She stated that she had two of her workers do the cleaning, and she was there to supervise and to assist due to the urgency of the Landlord's request to have the rental unit re-rented as soon as possible. J.L. stated that she charges her cleaners out at \$50.00 per hour, for a total of \$100.00 per hour.

J.L. stated that when she entered the rental unit the windows were open, and it smelled very strong of cannabis. She stated that they had to remove the roller blinds, disinfect the walls and the ceiling, clean the bathrooms and the closets because there was a very strong odour due to the smoke. She stated that W.H. came to inspect and could still smell it and they cleaned again. J.L. stated that they were not able to completely remove the smell, but they did their best.

J.L. also stated that the hood fan was dripping with grease, the closets were very dirty. She stated that some of the areas were mouldy in the corners. J.L. stated that the oven was not cleaned, and the stove top was scratched and chipped. She also stated that the back of the appliances was covered in caked on food and dirt and they had to get a tool to scrape it off the back of the appliance. She also testified that they had to clean under the fridge and stove as it was full of dirt and debris. J.L. also noted that they had to clean the light fixtures, the entrance door, the windowsills, and the baseboards. J.L.

stated that it was one of the dirtiest units she had ever cleaned, and it “smelled really bad”.

In cross examination, J.L. stated that the dirt and smoke needed to be removed from the walls, and that painting over was not an option. She noted that the walls were chipped and scratched as well and would have needed to be washed before it was painted in any case. In terms of the window coverings, J.L. reiterated they had to remove the roller blinds to clean them and to remove the odour.

W.H. also called the painter, R.G., as a witness to support the amount claimed by the Landlord for repairs to the walls and repainting. R.G. stated that there were nail holes, scratches in the walls and trim that had to be repaired and repainted. R.G. confirmed that it took two days as he had to return to sand and prime and paint. R.G. further confirmed that he charged the sum of \$577.50.

In cross examination R.G. stated that he pulled out three or four nails or screws and patched 15-20 holes in the entire unit. R.G. stated that there were nail holes and scratches and gouges in the drywall and baseboard.

R.G. stated that he believed the damage was not normal wear and tear after a four-and-a-half-year tenancy. He stated that some of the gouges were very deep, and not simple wear and tear. R.G. stated that there were some spots where there was an attempt to patch, but then they painted over, so it was raised. R.G. stated that there were some spots where the paint didn't even match so R.G. had to repaint the entire area. R.G. also confirmed that he was not able to tell how old the patches and painting were, but guessed the paint was “not old”.

In response to the Landlord's claim for loss of rent the Tenant stated that he was agreeable to paying the \$1,486.25 for the month of May as he was not in a position to dispute the Landlord's efforts of re-renting the unit.

In terms of the Landlord's claim for \$966.00 for cleaning, the Tenant stated that based on his photo and video evidence he does not believe this was a necessary expense, and that it was inflated.

In terms of the Landlord's claim for wall and trim repair the Tenant submitted that this was reasonable wear and tear for the duration of the tenancy. He also denied patching or painting the walls during the tenancy and said that when he moved in there was

evidence of patches on the walls and the back of the door such that he believed it was done before me moved in.

The Tenant also stated that the Landlord's agent, W.H., was not present during his move in. He stated that W.H. simply unlocked the unit and then left. The Tenant claimed that there was no move in condition inspection report completed when the tenancy began. The Tenant confirmed that the move in report provided by the Landlord in evidence was not completed with the Tenant during a formal inspection at move in. He could not recall if that report was ever provided to him.

In response to the Landlord's claim for the cost to repair the cooktop, the Tenant stated that he did not damage the stove top. He stated that any scratches were from normal wear and tear from moving a pot around on the cooktop. In any case, there is no indication that the stove did not work or required replacement.

The Tenant also called A.O. as a witness. She confirmed she was present when the tenancy began and further confirmed that there was no move in condition inspection when the tenancy began. She stated that she didn't really remember the Landlord's representative being there, and if he was there it wouldn't have been for long.

A.O. further testified that she was at the rental unit the day before the tenancy ended as she was taking some of the items that the Tenant could not take. She confirmed that she is the Canada post letter carrier and is at the rental unit every day. She stated that this is a non-smoking building, and to her knowledge people do not smoke there. She stated that she never noticed the rental unit smelling like cannabis and from her observations the rental unit was clean and tidy, no smells, no damage and it looked perfect when the tenancy ended.

In cross examination A.O. stated that she could not recall the exact date the tenancy ended, only that she was there the day before and may have been there the day the tenancy ended or the day after. She confirmed she did not observe any damage to the walls when the tenancy ended and testified the unit was left clean.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) 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.

The Tenant conceded that he did not give proper notice to end his tenancy and that the Landlord was entitled to rent for the month for May 2020. I therefore award the Landlord the **\$1,486.25** claimed.

The Tenant claimed the Landlord did not perform a move in condition inspection. His witness confirmed she was at the rental at this time and did observe the Landlord performing an inspection. Although offered the opportunity to cross examine the Tenant and his witness on this point, the Landlord's representative did not question them nor did the Landlord's representative dispute this testimony.

A review of the move in inspection suggests it was not completed by the parties during a formal inspection as it was typed up and included general information. On balance I find it likely the report was not completed at time of move in.

Pursuant to section 23 and 35 of the *Act*, a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and tenant an opportunity to review the condition of the rental unit at the material times, and make notes of any deficiencies.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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.

The importance of condition inspection reports is further highlighted by sections 24 and 36 of the *Act* as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.)

I accept the Tenant's evidence that the Landlord failed to perform a move in condition inspection. I therefore give the move in inspection report no evidentiary value. As such,

I was not provided with documentary evidence as to the condition of the rental unit at the start of the tenancy.

The move out condition inspection report indicated that some additional cleaning was required.

The Landlord's representative and the cleaner testified the rental unit required extensive cleaning when the tenancy ended. The witness testified the rental unit smelled of cannabis smoke and required additional cleaning to remove this smell. She also testified that they cleaned under and behind the appliances. She described the rental unit as "one of the dirtiest units she had every seen".

The Tenant provided photos and videos taken of the rental unit at the time of move out. I have reviewed these photos and videos and confirm they show the rental unit as being left reasonably clean. The Tenant's witness also testified that she was present at the end of the tenancy and stated that the rental unit was left clean and undamaged.

The Tenant's evidence is in stark contrast to the Landlord's witness' testimony. While it is the case that the back of the appliances and under the appliances were not shown in the Tenant's photos and video, and as such it is possible those areas required additional cleaning, this digital evidence does not support a finding that the rental unit was left in the condition alleged by the Landlord. Even in the event the unit required additional cleaning to remove the smell of smoke, I find the \$966.00 claimed by the Landlord to be excessive. As I find some cleaning was required, I award the Landlord the nominal sum of **\$200.00** for the cost to clean the rental unit

The Landlord claimed the rental unit required repainting. The painter was also called a witness by the Landlord. He stated that he filled approximately 15-20 nail holes in the rental unit.

Residential Tenancy Branch Policy Guideline 1—Landlord and Tenant Responsibilities provides that a tenant is not responsible for repairing nail holes, provided that there are not an unreasonably number of such holes. I find that 15-12 nail holes is not unreasonable.

The Landlord's witness also testified that due to improper patch work and previous painting the unit required painting. The Tenant denied patching or painting the walls. The Tenant also testified that he was not the first tenant in the unit after the unit was previously renovated. As I have found the move in condition inspection report to be of

no evidentiary value, I have no corroborating evidence to support the Landlord's claim as to the condition of the walls at move in, nor his claim that the Tenant damaged the walls. I therefore find the Landlord has failed to meet the burden of proving the Tenant patched and spot painted the rental unit.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, guidance can be found in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements and provides that interior paint has a useful life of four years. Notably this tenancy started in February of 2016 and ended in May of 2020. As such I find the interior paint had reached its useful life and the rental unit would have required painting in any case.

The Landlord claimed the cost to replace the glass cooktop. I was not provided any evidence to support a finding that the stove required replacement. The Tenant provided a video of the kitchen which included videos of the cooktop; these videos do not show scratches to the cooktop over and above reasonable wear and tear. For these reasons I dismiss this portion of the Landlord's claim.

As the Landlord has only been partially successful, I award them recovering of one half the filing fee in the amount of \$50.00.

Conclusion

The Landlord's monetary claim is granted in part; the Landlord is entitled to the sum of **\$1,736.25** calculated as follows:

Cleaning	\$200.00
Loss of rent for May 2020	\$1,486.25
Filing fee	\$50.00
TOTAL AWARDED	\$1,736.25

I authorize the Landlord to retain the Tenant's \$725.00 security deposit towards the amount awarded and I grant the Landlord a Monetary Order for the **\$1,011.25** due. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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

Dated: February 12, 2021

 Residential Tenancy Branch