



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damages of \$870.00 for the Landlord, retaining the security deposit to apply to the claim; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, T.W., and an agent for the Landlord, N.T. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on September 1, 2019, running to August 31, 2020, and then operating on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of \$1,750.00, due on the first day of each month. They agreed that the Tenants paid the Landlord a security deposit of \$875.00, and a pet damage deposit of \$875.00.

The Parties agreed that the vacancy ended on October 24, 2020, although they acknowledged that the Tenants paid until the end of October 2020. They agreed that the Tenants gave the Landlord their forwarding address in a letter given to the building manager on October 1, 2020.

The Parties agreed that they conducted condition inspections of the rental unit at the start and the end of the tenancy, although the Tenants did not sign the move-out condition inspection report ("CIR"). The Parties agreed that the Landlord provided the Tenants with a copy of the CIR.

The Agent said that the residential property is about 40 years old, but that the rental unit was renovated prior to the tenancy starting, which included new carpets and new paint throughout. The Agent said: "We ticked off what was new and what wasn't [on the CIR]. New floors, window coverings, new walls. But we weren't able to show it to [potential] tenants, because of damage to the walls."

In their Application, the Landlord said:

The landlord is filing to hold the damage deposit due to multiple holes, marks and damages throughout the Unit. Additionally, there were several areas that were not cleaned upon moving out. Clear guidelines were issued to the tenant and washing walls, filling holes or leaving the unit in reasonable condition was not attempted.

The Agent submitted a monetary order worksheet that set out the claims in this Application.

	Receipt/Estimate From	For	Amount
1	Invoice Handyman	Painting/Repairing [2 techs at 6 hrs each at \$45.00 per hour]	\$676.56
2	[Paint retailer] Receipt	Painting [\$109.56 - included in #1]	\$0.00
3	Cleaning invoice	Cleaning for 3 hrs @ \$40/hr [+ GST]	\$126.00
		Total monetary order claim	\$802.56

The Agent submitted invoices for these costs, including:

Repairs and Painting

A “handyman” hours invoice, which included:

\$540.00 → Handyman Hours
\$109.56 → Materials
 \$649.56 = Subtotal
27.00 → GST
\$676.56 = TOTAL

Materials invoice, which included:

\$95.55 = Materials Subtotal
 \$ 2.25 → Eco-Fee
 \$ 6.86 → PST
 \$104.66 = Subtotal
\$ 4.90 → GST
\$109.56 = Total

The Agent submitted photographs of the rental unit that he said demonstrated the damage done by the Tenants. These photographs included:

- nail holes in the walls throughout the unit;
- electrical outlet plates held on by electrical tape;
- a closet door off its hinges;

- scratches and/or marks on walls and doors; and
- a puncture in the middle of a door.

I find that the holes in the picture package labelled: “Holes throughout Unit...” look a little bigger than nail holes for hanging something like pictures. It appears that these are holes in the kitchen, dining room and living room. There were also pictures of a hook in the ceiling with additional holes around the hook, as if it had been moved three or four times.

I find that the holes in the picture package labelled: “Additional Marks & Holes – Bedroom...” are close ups and appear to be small nail holes from hanging something like a picture. It is difficult to tell how many holes there are in the bedroom photos.

The Agent said:

We did also submit a move out notice information form we give to all tenants. Numbers 10, 24, and 25 are marked off, requesting they wash down all walls and.... if beyond reasonable wear and tear, to repair any holes in the walls from hanging picture frames, mirrors, etc. As you can see from pictures – there are four packs of pictures. The first pictures show ‘holes throughout’, which is beyond wear and tear. You have to fill and sand these and paint them.

The Landlord submitted a form with their header entitled: “Move Out Information Notice”, although it had an address from another town handwritten on the top of it. Still, I infer that it is used as an example of the type of move-out notice given to tenants, which sets out their responsibilities, according to the Landlord.

The Agent submitted a “Move Out Charge Form”, which says “The following charges will be deducted from your security deposit”, and the following items were checked: \$750.00 for paint and drywall for a two-bedroom unit, and \$120.00 for cleaning for three hours at \$40.00 an hour.

Cleaning

The Agent said that the last package of pictures shows:

...additional marks that could have been cleaned off with a cloth... easy stuff you can do on move out. Overall, the main reason we held the deposit was we had to incur these costs. The Tenants lived there about 13 months; generally, you don’t

see that many repairs and damage in that much time. They were required to repair anything beyond normal wear and tear.

The Tenant said:

I'd like to start by saying we had no issue with a portion of the deposit being withheld; a lot of what he is saying is right. Normally, I would go around and fill these holes, but unfortunately our life circumstances prevented that in a lot of ways. We are new parents – that's not a concern for landlords – but it's a back story. Our dispute mainly is the majority of the holes are in the living room and dining area, but as far as the rest of the suite – we didn't hang anything in the second bedroom. It was primarily used for storage. We didn't hang much in our bedroom, either.

The first package are close ups... but if you look at the other photos – they're all close ups without establishing a shot [for perspective].

Regarding cleaning, we did our best and I did include in some evidence an attempt to negotiate in good faith with [the Agent]. I added the cleaning fee as a sweetener. There was some extra cleaning, but it shouldn't have taken four plus hours. There's also a photo I submitted of years and years of grime on the cupboards. We cleaned half and left half. He suggested after 13 months, it not looking as it should, but that's because it's years and years on us. Things like behind appliances hadn't been done in years.

The Agent said that the rental unit was painted "just before the tenancy started. After the last tenant there was a complete overall – it's outlined in the move-in CIR. That's why the building manager wrote 'new'." The Agent said that the Landlord's own staff did the repair work after the tenancy ended.

When asked if they looked for a company with the best price to do this work, and why they charge \$45.00 an hour for filling holes and painting a suite, the Agent said: "No, we have around 2,000 plus units, and we have our preferred technicians – we have our main guys for a reason: they're much more efficient than people at a lower rate."

The Tenant responded:

\$45.00? I can see if they were doing electrical - that requires pretty high standards, but to fill some holes and paint? Having their best of the best

shouldn't be top priority in that sense, given how easy it is to do. It doesn't require much talent. There was probably a cheaper option.

The Agent provided the name of the national paint brand that the Landlord's technicians used to paint the rental unit. He said:

The receipt is attached – we get preferred rates. I was going to say – re the holes – this is a lot of holes. It's a ton of photos – the reason we used the close up for the bedrooms was because there was no attempt to clean the walls, and these aren't pin holes. There were things hung up on all walls in the kitchen, the dining room – there was extensive damage to the walls. The plugs were taped together. The bathroom door was smashed in. It's not your average wear and tear. There was little to no attempt to resolve issues.

The Tenant said:

I'm just not buying that these close ups can have any sort of illumination of the number of holes. The fact that there were establishing shots in the first package paints a clear picture, but it seems a little too cute to put close up photos where there could be one or two holes. Yes, there were holes, but it doesn't require a new paint job to the whole suite. They could have done spot checks.

I contacted a secondary painting company for a professional opinion - less biased than the applicant's company. I submitted an email: [P.'s] painting or... what we talked about was what's reasonable. They said that \$350.00 to cover the cost would be sufficient. We agree that for the dining room and living room it would be nice to paint the whole wall, but to spot paint and fill from the other ones. [N.] from [S.] Painting said that fill and spot painting is fine, if it was painted in the last few years.

It shouldn't affect the feel of the apartment, if they did a spot clean up. That's what I offered to [the Agent], which offer was not responded to by him. They had no interest in trying to negotiate. We received your dispute resolution package in the mail. We tried to resolve it without an arbitration. \$350.00 was offered and with the sweetener of the cleaning fee, leaving us with them keeping \$470.00 and returning some . . . we just want what's fair.

Also, I wanted to point out – see our cleaning receipts from doing the carpets and a pest inspection. We did our due diligence on that. We didn't just run out of the apartment....

Going back to an email I sent to [the Agent] re a leaky window. I believe it shows the ambivalence of their cleaning standards while occupants are there in the suite. [The Agent] had no interest in coming to have it fixed. Basically, if they're not worried about a leaking window, it seems their eagerness to paint an entire suite to cover a few holes – and keeping security deposits at the end – they're updating the suite on the Tenant's dime. That's why that email is there.

Also, I submitted emails between myself and [C., the building manager]. While we still had stuff in there – no one wanted it – they couldn't rent the suite. Their intent is rooted in their inability to rent the suite, not the nail holes. They lost the money on the rent for the month, so they're cutting their losses.

The Agent said:

First, to respond to the Tenants' evidence – I don't see any photos – you can't see what was sent to the painting company. I don't know – it could have been photos of the best walls sent. In the packages of photos I submitted, I don't take random photos of any units – I took an oath, I have integrity; you can't just spot paint on that many holes – it looks horrible. You have to do the whole wall. If it were a few pin holes, maybe you could dab a little.

As for position, I understand that [the Tenant] sent an email requesting \$350.00 or \$450.00 – I still think there's more room to come to an agreement. We gave them notice on what is required and what's beyond reasonable wear and tear. We don't hold deposits, if we don't get a unit rented. The building manager was just doing her job. Showing to prospective tenant a messy unit with holes in the walls, and damage in one door – that was one of the reasons we couldn't rent it. We had to repair it. When the tenant doesn't leave it in reasonable condition.... I stand on our point that it was signed off as good as new at the start. It shouldn't have been in that condition after 13 months.

The Parties tried to negotiate a settlement, but they were unable to come to an agreement, therefore, they left it with me to decide what is warranted under the Act, given this set of circumstances – the evidence before me.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16 ("PG #16"), sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Section 32 of the Act requires a tenant to maintain reasonable health, cleanliness standards throughout the rental unit. It also requires tenants to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets.

Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 ("PG #1") helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. 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. 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.

As set out in PG #16: "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

The Tenant acknowledged that they did not do a lot of cleaning and repairs, themselves, because of their current circumstances – they are new parents. I find that there were a number of holes in the kitchen, living and dining rooms that are more than normal wear and tear. However, I find from the pictures of the bedrooms, that the holes are small and form part of normal wear and tear. This finding is supported by the Tenant's testimony that they did not hang anything in the second bedroom and very little in the master bedroom.

Repairs and Painting

The Handyman invoice lists 12 hours of work combined for two technicians. I find these hours applied to work in the kitchen, living room, dining room, bathroom, halls, and two bedrooms, for a total of seven work areas. I find that the bedrooms contained normal wear and tear, and therefore, that the technicians did not need to do anything to these rooms. Seven work areas divided by 12 hours equals approximately 1.7 hours per work area. I, therefore, deduct 3.4 hours from the total billed as an approximate reduction of the labour hours doing the bedrooms. I find that the total of hours of labour for repairs and painting is reasonably **8.6 hours**.

I also find that charging \$45.00 per hour for this type of work is unreasonable. From my experience as an arbitrator and given common sense and ordinary human experience, I find a more reasonable rate would be \$30.00 per hour. I, therefore, find that reasonable billing for this work was 8.6 hours at \$30.00 per hour for a total labour cost of \$258.00 plus \$12.90 for GST for a total of \$270.90. In addition, I find the materials cost of \$109.56 to be reasonable (even though this includes paint for the bedrooms), and when added to the labour cost equals \$380.46. I note this is more consistent with the Tenants' evidence of what other companies would charge to do this work.

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is not an opportunity for a landlord to profit from returning a rental unit to a state of reasonable

cleanliness and repair. I award the Landlord with **\$380.46** for repair and painting costs, pursuant to section 67 of the Act.

Cleaning

Section 37 of the Act states that tenants must leave the rental unit “reasonably clean and undamaged”.

As noted above, PG #1 helps interpret section 37. It says that a tenant is not responsible for . . . cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*. Further, it states:

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.

In the hearing, the Tenant acknowledged that they did not do a complete cleaning of the rental unit, and that extra cleaning needed to be done. The Tenant said he did not think it should take four hours to complete this extra cleaning. However, I note that the Landlord billed for three hours of cleaning. Based on the evidence before me, I find that the rental unit needed to be cleaned at the end of this tenancy and that three hours was reasonable in the circumstances.

The Landlord submitted an invoice for cleaning at \$40.00 per hour for three hours for a total of \$120.00 plus \$6.00 GST equals \$126.00. Again, I find that the hourly rate for this work is unreasonably high, and I find that \$30.00 per hour is a more reasonable, standard rate for this work. I, therefore, award the Landlord with recovery of **\$94.50** for cleaning, including GST, pursuant to section 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants’ security deposit of \$875.00 in complete satisfaction of the Landlord’s monetary awards.

The Landlord is awarded a total of **\$474.96** from the Tenants. Given their success, the Landlord is also awarded recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act. I, therefore, award the Landlord with a total of **\$574.96** from the Tenants for this Application.

The Landlord is authorized to deduct this much from the Tenants' security deposit, and to return the remaining \$300.04 of the security deposit to the Tenants as soon as possible. I grant the Tenants a Monetary Order of **\$300.04** in this regard.

Conclusion

The Landlord is successful in their claim for compensation from the Tenants in the amount of \$574.96, including recovery of the \$100.00 Application filing fee. This included a reduction of the Landlord's charges, due to unreasonably high billing rates.

The Landlord is authorized to deduct this award from the Tenants' \$875.00 security deposit, and to return the remaining \$300.04 to the Tenants as soon as possible.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$300.04**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 10, 2021

Residential Tenancy Branch