



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

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords 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.

The male Landlord stated that on June 02, 2021 the Dispute Resolution Package was personally served to the male Tenant. The male Tenant stated that these documents were personally served to them in September of 2021. Regardless of whether the Dispute Resolution Package was served to the Tenant on June 02, 2021 or in September of 2021, I accept that these documents were personally served to the Tenants.

On August 04, 2021 the Landlords submitted evidence to the Residential Tenancy Branch. The male Landlord initially stated that that this evidence was served to the Tenants, via registered mail, although he could not recall the date of service. The male Tenant stated that these documents were personally served to him on August 19, 2021. The male Landlord subsequently stated that they may have been served in person. Regardless of whether the Landlords' evidence was served by registered mail or in person, I find that these documents were served to the Tenants in accordance with section 88 of the *Residential Tenancy Act (Act)*, and the evidence was accepted as evidence for these proceedings.

On February 06, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The parties agree that this evidence was personally served to the Landlord on February 06, 2022 and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

With the consent of both parties the Application for Dispute Resolution was amended to reflect the correct spelling of the male Tenant's surname, as that name was provided at the hearing.

Issue(s) to be Decided

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

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on July 15, 2021;
- the Tenants agreed to pay monthly rent of \$2,200.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,100.00;
- the Tenants did not pay the rent that was due on June 01, 2021; and
- the rental unit was vacated on June 15, 2021 or June 16, 2021.

The Landlords are seeking compensation for unpaid rent from June of 2021, in the amount of \$2,200.00.

The Landlords are seeking compensation, in the amount of \$347.16, for replacing the electronic control panel for the oven. The male Landlord stated that the oven did not

work at the end of the tenancy, that the Tenants told the Landlords the fan in the oven was not working, and that the Tenants never told them the oven was not working.

The male Tenant stated that the fan in the oven began making noise in early March of 2021, that the Landlords were informed of the noise, and that the oven locked itself shut and could not be operated sometime prior to March 17, 2021.

The Landlords are seeking compensation, in the amount of \$73.42, for replacing knobs on the kitchen cabinets. The male Landlord stated that the cabinets did not have knobs when this tenancy began, that the Tenants drilled holes into the cabinets for the purpose of installing knobs, that the Tenants removed the knobs at the end of the tenancy, and that he did not give the Tenants permission to install knobs on the cabinets.

The male Tenant stated that the Landlords gave them permission to install knobs on the cabinets.

The male Landlord stated that he believes he submitted a copy of a receipt for replacing the cabinet knobs, although he was unable to locate that receipt in his evidence package at the time of the hearing.

The Landlords are seeking compensation of \$250.00 for removing a platform that the Landlords describe as a "bandstand". The Landlords and the Tenants agree that this is a reference to a raised platform the Tenants installed in a storage area, that the Tenants installed laminate flooring on the platform, and that the Tenants were not given permission to install the platform/flooring.

The male Tenant stated that by raising the floor in this storage area he improved the quality of the storage area, as it will no longer flood. The male Landlord stated that this storage area is an unheated former carport which is not intended to have a finished floor, as it is where they store items such as a lawn mower.

The Landlords submitted an estimate to that indicates it will cost \$250.00 to remove the raised floor.

The Landlords are seeking compensation, in the amount of \$235.96, for replacing laminate flooring. The Landlords and the Tenants agree that the Tenants used laminate

flooring the Landlord had stored on the property to cover the raised floor in the storage area.

The male Landlord estimates that they used four boxes of laminate flooring that he no longer can use elsewhere. He submitted a photograph of similar flooring on display in a store, which has a price tag of \$58.99 per box.

The Landlords are seeking compensation of \$600.00 for replacing shelving in a storage room. The Landlords and the Tenants agree the Tenants removed some of the shelving in the storage room, without permission from the Landlords.

The male Tenant stated that he left some metal shelving on the property that the Landlords could have used to replace the shelving the Tenants removed. The male Landlord stated that he considered this metal shelving to be garbage and he disposed of it after the rental unit was vacated.

The male Tenant stated that the shelving he removed was very old and was of no value, as it was soaked with rat urine and feces. The male Landlord agreed the shelves were old, however he contends they were in reasonable condition.

The Landlords submitted an estimate to that indicates it will cost \$600.00 to replace the shelving in the storage area.

The Landlords are seeking compensation of \$225.00 for replacing shelving in the master bedroom closet. The Landlords and the Tenants agree the Tenants removed the shelving in the closet, without permission from the Landlords.

The male Tenant stated that the metal shelving he removed was rusty and old. He stated that he left it on the property and the Landlords could have reinstalled this shelving if they wished. The male Landlord stated that he located the metal shelving on the property, it was rusted, and he opted not to replace that shelving. He stated that he replaced the missing shelving with 2 curtain rods, which is what he prefers to have in the closet.

The Landlords submitted an estimate to that indicates it will cost \$225.00 to replace the shelving in the storage area.

The Landlords are seeking compensation of \$178.23 for disposing of garbage. The Landlords submitted photographs of the garbage that was removed from the property at the end of the tenancy, some of which was in garbage bins and some of it was left in various areas on the property.

The female Tenant stated that the garbage which can be seen in photographs near the garbage bins was left by the Tenants, although the garbage bins were not tipped over when they vacated the rental unit.

The male Tenant stated that some of the property that can be seen in the photograph of the Landlords' truck belonged to the Tenants, such as the metal shelving, but some of it was on the property prior to the start of the tenancy.

The Landlords are seeking compensation of \$400.00 for removing laminate flooring that the Tenants used to cover the backsplash in the kitchen. The Landlords and the Tenants agree that this was installed over ceramic tile that had been painted prior to the start of this tenancy and that the "flooring" was installed without permission from the Landlords.

The male Landlord stated that he has not attempted to remove the laminate backsplash so he does not know if it can be removed without damaging the painted tiles. The male Tenant stated that the laminate backsplash will be easy to remove as it was installed with a bead of glue at the top and sides.

Analysis

On the basis of the undisputed evidence, I find that the Tenants agreed to pay rent of \$2,200.00 by the first day of each month; that they were living in the rental unit for a portion of June of 2021; and that they have not paid the rent that was due on June 01, 2021.

As the Tenants are required to pay rent when it is due, pursuant to section 26 of the *Act*, I find that the Tenants still owe the Landlords \$2,200.00 in unpaid rent for June of 2021.

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)(a) of the *Act* requires a tenant to leave a rental unit reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear.

On the basis of the undisputed evidence, I find that the oven stopped working during this tenancy. In the absence of evidence to establish that the oven stopped working as a result of the neglect or inappropriate actions of the Tenants, I find it possible that the oven stopped working as a result of normal use. As the Tenants are not obligated to repair damage that is normal wear and tear, I find that the Landlords have failed to establish that the Tenants are obligated to repair the oven. I therefore dismiss the claim for repairing the oven.

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

- 1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.*
- 2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.*

In the absence of clear evidence that establishes the Landlords agreed the Tenants could install knobs on the cabinets, I find that the Tenants had an obligation to either repair the holes they drilled into the cabinets or leave the knobs attached to the cabinets at the end of the tenancy. As the Tenants removed the knobs at the end of the tenancy, I find that the Landlords have the right to compensation for replacing the knobs, which is as close as the Landlords can reasonably get to restoring the cabinets to their original condition without replacing the cabinets.

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 cabinet knobs. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the male Landlord's testimony that he paid \$73.42 for replacing the knobs.

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. Although the male Landlord stated that he thought he submitted a copy of a receipt for the knobs, he could not find one in his evidence package and I could not find one in the evidence submitted to the Residential Tenancy Branch by the Landlords.

As the Landlords have failed to establish the true cost of replacing the cabinet knobs, I dismiss their claim for replacing them.

In the absence of clear evidence that establishes the Landlords agreed the Tenants could raise the floor in the storage area and install laminate flooring, I find that the Tenants had an obligation to remove the raised platform and flooring at the end of the tenancy. As the Tenants did not remove the platform and flooring, I find that the Landlords are entitled to compensation for the cost of removing the flooring, which is estimated to be \$250.00.

In reaching this conclusion I have placed no weight on the Tenants' submission that the flooring improves the quality of the storage area, as it is clear the Landlords do not agree with that submission and they do not want the platform/flooring to remain.

On the basis of the undisputed testimony that the Tenants used laminate flooring the Landlords had stored on the property to cover the raised platform, I find that the Landlords are entitled to compensation for the cost of that flooring, given that they do not wish to leave it installed. On the basis of the photograph of similar flooring which has a price tag of \$58.99 per box, I accept that this is the cost of purchasing the flooring and I grant the claim for \$235.96.

In the absence of clear evidence that establishes the Landlords agreed the Tenants could remove shelving from a storage area, I find that the Tenants had an obligation to replace the shelving they removed from that area. As the Tenants did not replace the shelving in that area, I find that the Landlords are entitled to some compensation for replacing the shelving.

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.

Although the Landlords submitted an estimate to show it will cost \$600.00 to replace the shelving in the storage area, I cannot conclude that the Landlords are entitled to compensation for the full cost of replacing the shelving. As the parties agree that the shelving was very old, I find that the value of the shelving in the storage area has deteriorated by at least 50%. I therefore find that the Landlords are entitled to compensation for half of the cost of replacing the shelving, which is \$300.00.

In reaching this conclusion I have placed no weight on the Tenants' submission that he left some metal storage on the residential property, as it is clear the Landlords did not wish to use this replacement shelving.

In the absence of clear evidence that establishes the Landlords agreed the Tenants could remove shelving from the master bedroom closet, I find that the Tenants had an obligation to replace the shelving they removed from that area. As the Tenants did not replace the shelving in that area, I find that the Landlords are entitled to some compensation for replacing the shelving.

Although the Landlords submitted an estimate to show it will cost \$225.00 to replace the shelving in the closet, I cannot conclude that the Landlords are entitled to compensation for the full cost of replacing the shelving. As the parties agree that the shelving was old, I find that the value of the shelving in the storage area has deteriorated by at least 50%. I therefore find that the Landlords are entitled to compensation for half of the cost of replacing the shelving, which is \$112.50.

In reaching this conclusion I have placed no weight on the Tenants' submission that he the old shelving on the residential property, as it is reasonable for the Landlords not to want to reinstall old shelving.

In the absence of evidence that establishes garbage removal was not included with the tenancy, I cannot conclude that the Landlords are entitled to compensation for removing any of the garbage seen in the photographs of the garbage bins. Although these garbage bins are tipped over in the photographs, there is no evidence to refute the female Tenant's testimony that it was properly disposed of when the rental unit was vacated.

On the basis of the male Tenant's testimony that some of the garbage seen in the photograph of the Landlords' truck was left by the Tenants, I find that the Landlords are entitled to at least some compensation for disposal costs.

In the absence of clear evidence that establishes that all of the garbage seen in the photograph of the Landlords' truck was left by the Tenants, I find that the Landlords are not entitled to compensation for disposing of all of these items.

Although it is difficult for me to determine precisely how much compensation the Landlords are entitled to for disposal costs, I find that 1/3 of the overcall cost is reasonable. I therefore grant the Landlords compensation for disposing of garbage, in the amount of \$59.41.

In the absence of clear evidence that establishes the Landlords agreed the Tenants could install laminate flooring over the kitchen backsplash, I find that the Tenants had an obligation to remove that "flooring" at the end of the tenancy.

I find that the Landlords failed to establish the true cost of removing the laminate backsplash. As the Landlords have made no attempt to remove the backsplash, I find their estimate that it will cost \$400.00 to remove it is highly speculative. As such, I dismiss the claim for \$400.00.

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 \$3,257.87, which includes \$2,200.00 in rent, \$250.00 for removing the raised platform/flooring in a storage area, \$300.00 for replacing shelving in the storage area, \$112.50 for replacing shelving in the master bedroom closet, \$235.96 for laminate flooring, \$59.41 for garbage removal, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$1,100.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$2,157.87. In the event the Tenants do not voluntarily comply with this Order, it may be

served on the Tenants, 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: February 15, 2022

Residential Tenancy Branch