



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL, MNRL-S, MNDCL-S, FFL, MNSDS-DR, FFT

Introduction

This hearing was convened in response to cross applications.

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 an Application for Dispute Resolution. This Application for Dispute Resolution names the Landlord with the initials "SS" as the Applicant and both Tenants as Respondents.

The Tenants filed an Application for Dispute Resolution seeking the return of their security deposit and to recover the fee for filing an Application for Dispute Resolution. This Application for Dispute Resolution names both Tenants as the Applicants and both Landlords as Respondents.

The Tenant stated that on July 13, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in July of 2021 was sent to both Landlords, via registered mail. The Landlord stated that these documents were received by the Landlords and that he is representing the Landlord with the initials "AB" at these proceedings. As the Landlord acknowledged receipt of these documents, the evidence was accepted as evidence for these proceedings.

The Landlord stated that on November 28, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in June and November of 2021 was sent to the Tenants, via registered mail. The Tenant stated that these documents

were received by the Tenants and that she is representing the Tenant with the initials "GM" at these proceedings. As the Tenant acknowledged receipt of these documents, the evidence 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.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to compensation for unpaid rent/utilities?

Should the security deposit be returned to the Tenants or retained by the Landlords?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenants moved into the rental unit on February 27, 2021;
- the Tenants signed a fixed term tenancy agreement, the fixed term of which began on March 01, 2021 and ended on March 31, 2022;
- the Tenants agreed to pay rent of \$2050.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,025.00;
- a condition inspection report was completed at the start of the tenancy;
- the Tenants gave the Landlord notice of their intent to end the tenancy on May 31, 2021;
- the Tenants provided a forwarding address, via email, on April 28, 2021; and
- the Tenants also provided a forwarding address on the final condition inspection report.

The Landlord stated that the rental unit was vacated on May 31, 2021. The Tenant stated that the rental unit was vacated on May 30, 2021.

The Landlord stated that on June 04, 2021 he sent the Tenants a cheque for \$277.72, which represented a partial refund of their security deposit. The Tenant stated that this

cheque was received on June 08, 2021, although the Tenants have not cashed it. The Landlord agrees this cheque has not been cashed.

The Landlord and the Tenant agree that they met to complete a final condition inspection report. The Landlord stated that they met on May 31, 2021 and the Tenant stated they met on May 30, 2021. The parties agree that the Tenant did not sign the condition inspection report after the final inspection was completed in May of 2021.

The Landlord stated that he sent a copy of the final condition inspection report to the Tenants on June 04, 2021 when he returned a portion of the Tenants' security deposit.

The Tenant stated that the Landlord did not provide a copy of the final inspection report when he returned a portion of the Tenants' security deposits. The Tenant stated that they were not provided with a copy of the final condition inspection report until they were served with the hearing documents that were mailed on November 28, 2021.

The Tenant stated that she photographed the final condition inspection report after the inspection completed and that those photographs were submitted in evidence. She stated that the Landlord made a significant number of changes after the report was completed and prior to the report being forwarded to the Tenants.

The Landlord stated that he did not make any changes to the final condition inspection report and he does not understand why the photographs taken by the Tenant show differences in the report.

The Landlord stated that the final condition inspection report is dated May 31, 2021 on page 3, just beneath his signature on the right hand side. The Landlord was advised that the copy of the report submitted that was initially submitted to the Residential Tenancy Branch by the Landlord is not dated on page 3. The Landlord was unable to explain this discrepancy, although he insisted he did not change the report after it was completed.

The Tenant stated that the only final condition inspection report sent to the Tenants in November is dated May 31, 2021 on page 3, just beneath the Landlord's signature on the right hand side.

The Landlord is seeking compensation, in the amount of \$318.98, for unpaid utilities. The Tenant agreed that the Landlord is entitled to this amount for utilities.

The Landlord is seeking compensation, in the amount of \$136.67, for rent for February 27, 2021 and February 28, 2021. The Landlord stated that when the Tenants moved into the rental unit, he told them they would not have to pay rent for those two days, provided they stayed in the rental unit for one full year. The Tenant stated that the Landlord allowed them to into the rental unit two days prior to the official start of the tenancy and there was no discussion about paying rent for those two days.

The Landlord is seeking compensation, in the amount of \$3,548.61, to replace tiles in the bathroom.

In support of the claim for replacing the bathroom tiles, the Landlord stated that:

- none of tiles in the bathroom were broken at the start of the tenancy, as indicated in the condition inspection report that was completed at the start of the tenancy;
- two tiles behind the toilet were broken at the end of the tenancy;
- he provided a photograph of the damage to the bathroom floor; and
- he has not yet replaced the bathroom tile.

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

- she noticed the broken tiles in the bathroom the first time she cleaned the bathroom after the start of the tenancy;
- the broken tiles were not noted on the condition inspection report at the start of the tenancy because the damage was behind the toilet and not readily noticeable; and
- the tiles were not broken during the tenancy.

The Landlord is seeking compensation, in the amount of \$1,026.82, to replace tiles on the fireplace hearth.

In support of the claim for replacing the fireplace tiles, the Landlord stated that:

- none of tiles in the tiles on the hearth were broken at the start of the tenancy, as indicated in the condition inspection report that was completed at the start of the tenancy;
- the tiles were broken at the end of the tenancy;
- he provided a photograph of the damage to the fireplace tiles;
- he has not yet replaced the fireplace tiles; and
- he estimates the fireplace tiles are 15 years old.

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

- the tiles on the hearth were broken at the start of the tenancy;
- they were not noted on the condition inspection report that was completed at the start of the tenancy because they had been patched already and they did not consider it important enough to note;
- the tiles were not broken or patched during her tenancy; and
- the tiles seem very old.

The Landlord is seeking compensation, in the amount of \$335.00, for painting the deck. It is not clear to me whether the Landlord is claiming that the deck needed painting because the Tenant painted a portion of the deck with a different color of paint or because the Tenant spilled paint on the deck.

The Tenant stated that they did not spill paint on the deck and that they did not paint any portion of the deck.

The Landlord is seeking compensation, in the amount of \$5.68, for repairing a scratch on a wooden wall. The Landlord submitted a photograph of the damage to the wall.

The Tenant stated that she does not recognize the damage to the wall, although she acknowledges that their couch was in front of that wall.

The Landlord is seeking compensation, in the amount of \$75.00, for cleaning the rental unit. The Landlord stated that the unit required cleaning at the end of the tenancy and the Tenant stated that it did not require cleaning at the end of the tenancy.

The Landlord applied to recover costs for mailing documents to the Tenants.

The Landlord is seeking compensation, in the amount of \$225.00, for costs of re-renting the unit. The Landlord stated that he spent time finding a new tenant for the rental unit, which he incurred because the Tenants ended the fixed term tenancy prematurely. He stated that he spent approximately 5 hours showing the unit to potential tenants and approximately 3.5 hours creating a new tenancy, which included signing a new tenancy agreement and inspecting the unit with the new tenants.

The Tenant did not dispute the amount of time the Landlord spent showing the unit.

Analysis

On the basis of the undisputed evidence, I find that:

- the tenancy officially began on March 01, 2021;
- the Tenants moved into the rental unit on February 27, 2021;
- the Tenants agreed to pay rent of \$2,050.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,025.00;
- a condition inspection report was completed at the start of the tenancy;
- the Tenants gave notice to end the tenancy, effective May 31, 2021;
- the rental unit was vacated on May 30, 2021 or May 31, 2021; and
- a final inspection report was completed on May 30, 2021 or May 31, 2021.

For the purposes of this decision, I do not need to determine whether the rental unit was vacated on May 30, 2021 or May 31, 2021. For the purposes of this decision, I do not need to determine whether the final condition inspection was completed on May 30, 2021 or May 31, 2021.

I favour the testimony of the Tenant, who submits the condition inspection report was altered after it was completed, over the testimony of the Landlord, who testified the report was not altered after it was completed.

In concluding that the final condition inspection report has been altered, I was heavily influenced by the photographs of the report submitted in evidence by the Tenant, which the Tenant testified were taken at the completion of the inspection. Those photographs clearly show a number of changes to the report were made after the report was photographed. For example, in the photograph of page 1 of the report, the kitchen countertop has a check mark beside the final entry, with no notes. In the report initially submitted to the Residential Tenancy Branch by the Landlord, the check mark beside the kitchen countertop has been changed to an X and there is a note beside it that reads “two scratches”. Similar alterations appear in several locations on the report.

I accept the Tenant’s testimony that the photographs she submitted are of the original final condition inspection report, as that is quite obviously the unaltered document. As the Landlord retained possession of the original report and the Landlord submitted the altered report to the Residential Tenancy Branch, I find it reasonable to conclude that the Landlord, or somebody acting on behalf of the Landlord, altered the report.

I note that the photographs taken of the final condition inspection were taken before the Landlord signed the final report, as it is not signed by the Landlord on the right hand side of the third page of the document in the photograph. I note that the condition inspection report the Landlord submitted to the Residential Tenancy Branch on June 13, 2021 was signed by the Landlord in that location, the report had been significantly altered, and there is not date below the signature on the right hand side of page 3. I note that the condition inspection report the Landlord submitted to the Residential Tenancy Branch on November 21, 2021 was dated under the Landlord's signature in that location. I therefore find it reasonable to conclude that the date was added on, or after, June 13, 2021 and on, or before, November 21, 2021.

I find the changes made to the final condition inspection report are highly relevant, as they speak to credibility. As the Landlord consistently denied the final condition inspection report had been altered in the face of obvious evidence that it had been changed, I found his testimony to be less reliable than the testimony of the Tenant, whose evidence was direct, consistent, and forthright.

Section 35(4) of the *Act* stipulates that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. On the basis of the undisputed evidence, I find that the Tenant did not sign the condition inspection report. As previously concluded, the Landlord signed the report sometime on, or after, June 13, 2021.

Section 18(1)(b) of the *Residential Tenancy Regulation* stipulates that a copy of the signed final condition inspection report must be given to the Tenant promptly and, in any event within 15 days after the later of the date the condition inspection is completed, and the date the landlord receives the tenant's forwarding address in writing. As the Tenant did not sign the final condition inspection report, I find that the Landlord was not obligated to provide the Tenant with a copy of the final condition inspection report. I therefore find it is not relevant when the final report was provided to the Tenants.

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. The Landlord bears the burden of proving the rental unit was damaged and that rent/utilities are owed.

As the Tenant agreed that the Landlord is entitled to compensation of \$318.98 for utilities, I grant the Landlord's claim for this amount.

I find that the Landlord has failed to establish that the Tenants agreed to pay rent for February 27, 2021 and February 28, 2021. In reaching this conclusion I was heavily influenced by the absence of evidence, such as an email, that corroborates the Landlord's submission that the Tenants agreed to pay rent for these two days if they did not remain in the rental unit for a full year or that refutes the Tenant's testimony that the parties did not discuss payment for those two days. As the Landlord has submitted insufficient evidence to establish there was an agreement to pay rent for the two days prior to the start of the tenancy, I dismiss the Landlord's application for unpaid rent.

Section 37(2)(a) 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. Section 32(3) of the *Act* stipulates that a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

On the basis of the undisputed evidence, I find that two tiles behind the toilet were broken at the end of the tenancy.

Even if I were to conclude that the tiles were not damaged at the start of the tenancy, I would find that the Tenants are not obligated to repair the damaged bathroom tiles. Given that the tiles are damaged behind the toilet, I find that the damage would not be the type of damage that would typically be caused by a person dropping something on the floor or by applying any other form of unusual pressure. I therefore find that the tile was most likely damaged through normal wear and tear, perhaps as a result of aging subfloor/tiles or pressure from sitting on the toilet in a normal manner.

As the Landlord has failed to establish that the damaged bathroom tiles were caused by something other than reasonable wear and tear, I find that the Landlord has failed to meet the burden of proving that the Tenants must repair the bathroom tiles. I therefore dismiss the claim for repairing the bathroom tiles.

Even if I accepted that the Tenants damaged the tile on the fireplace hearth during the tenancy and that they were obligated to repair that damage, I would dismiss the Landlord's claim for replacing the tiles.

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 tiles is 10 years. On the basis of the Landlord's estimate that the tiles on the fireplace hearth were approximately 15 years old, I find that the tiles on the hearth have long exceeded their life expectancy. As the tiles have exceeded their life expectancy, I dismiss the Landlord's claim for replacing the tiles.

I find that the Landlord has submitted insufficient evidence to establish that the deck needed painting because either a portion of it had been painted a different color or because paint had been spilled on it. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the Landlord's submission that the deck needed painting because of the actions of the Tenants or that refutes the Tenant's testimony that they neither painted nor spilled paint on the deck. As the Landlord submitted insufficient evidence to establish that the deck needed painting as a result of the Tenant's actions, I dismiss the Landlord's claim for painting the deck.

On the basis of the photograph of the wall that the Landlord submits was damaged during the tenancy, I find that the damage is minimal and should be considered reasonable wear and tear. As tenants are not obligated to repair reasonable wear and tear, I dismiss the Landlord's claim for repairing the wall.

I find that the Landlord has submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition, which is the standard required by section 37(2) of the *Act*. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the Landlord's submission that the unit needed cleaning or that refutes the Tenant's testimony that cleaning was not required. As the Landlord submitted insufficient evidence to establish that the unit needed cleaning, I dismiss the Landlord's claim for cleaning.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the

Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim for mailing costs, as those are not costs I am able to award.

I find that the Tenants did not comply with section 45(2) of the *Act* when they ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenants must compensate the Landlord for costs the Landlord incurred as a result of the Tenants' non-compliance with the *Act*, pursuant to section 67 of the *Act*.

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 7.5 hours creating a new tenancy. I find that the Landlord would not have incurred these costs at this time, had the tenancy continued until March 31, 2022. I therefore find it reasonable that the Landlord be compensated for the time he spent creating a new tenancy. I grant the Landlord \$150.00 for this time, which I find reasonable compensation for labor of this nature.

On the basis of the undisputed evidence, I find that the Tenants have not cashed the security deposit refund cheque for \$277.72, was sent to the Tenants on June 08, 2021. As this cheque is now stale-dated and may not be honored by the Landlord's financial institution, I order the Tenants to destroy this cheque and I find that the Landlord is currently holding the Tenants' entire security deposit.

I find that the Tenants' Application for Dispute Resolution has some merit and that the Landlord's Application for Dispute Resolution has some merit. I therefore find that each party is responsible for the cost of filing their own Application for Dispute Resolution and I dismiss each party's application to recover the filing fee.

Conclusion

The Landlord has established a monetary claim, in the amount of \$468.98, which includes \$318.98 for utilities and \$150.00 for time spent creating a new tenancy. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$468.98 from the Tenants' security deposit in full satisfaction of this monetary claim.

As the Landlord has not established the right to retain the Tenants' entire security deposit, I find that the Landlord must return the remain \$556.02 to the Tenants. I

therefore grant the Tenants a monetary Order for \$556.02. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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: March 23, 2022

Residential Tenancy Branch