



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-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 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 October 08, 2021 the Dispute Resolution Package was sent to the Tenant, via email. The Tenant stated that she received this email but was unable to access these documents, so she contacted the Residential Tenancy Branch to obtain the information needed to access this teleconference. She stated that she understands the claims being made by the Landlord and that she is prepared to those claims today, without the need for an adjournment.

On September 29, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The male Landlord stated that on October 08, 2021 this evidence was sent to the Tenant, via email. The Tenant stated that she was able to access these documents and this evidence was accepted as evidence for these proceedings.

On April 19, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that on April 19, 2022 this evidence was sent to the Landlords, via email and text message. The Landlords acknowledged receipt of this evidence 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.

Issue(s) to be Decided

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

Background and Evidence

The Landlords and the Tenant agree that:

- the tenancy began on December 01, 2020;
- the rental unit was vacated on September 01, 2021;
- the Tenant paid a security deposit of \$700.00;
- the Landlord still holds the security deposit;
- the Tenant did not give the Landlords written authority to retain any portion of the security deposit;
- the parties spend approximately 20-30 minutes jointly inspecting the rental unit on September 01, 2021;
- the parties did not agree on the condition of the rental unit during that final inspection;
- a final condition inspection report was not completed on September 01, 2021; and
- a completed final condition inspection report was not provided to the Tenant for signing at any time.

The male Landlord stated that a final condition inspection report was not completed on September 01, 2021 because the Tenant would not go through the individual items on the report with the Landlords. He agrees that a report was not completed after the Tenant left the rental unit.

The Tenant stated that she provided the Landlord with a forwarding address, via mail, although she does not recall the date it was provided. The male Landlord stated that the forwarding address was provided, via email, on September 29, 2021. Residential Tenancy Branch records show the Landlords filed this Application for Dispute Resolution on September 29, 2021.

The male Landlord stated that on November 23, 2020 a condition inspection report was completed. The Tenant stated that the rental unit was jointly inspected on November 30, 2020 but a condition inspection report was not completed at any time prior to the start of the tenancy.

The Landlord submitted a copy of a condition inspected report, dated November 23, 2020. The Tenant stated that this inspection report was not included in the evidence package served to her by the Landlords, which the Landlords dispute. The Tenant stated that she is willing to accept the condition inspection report as evidence if the Landlords could provide it to her by email. A copy of that document was sent to the Tenant by the Landlords during the hearing. Upon viewing the document, the Tenant stated that she has not previously seen that document; that she did not sign the document; and that the signature on the document does not look like her signature.

The male Landlord stated that the original conditions inspection report was left with the Tenant on November 23, 2020 and he scanned a copy of that report. The Tenant denies this submission. Both Landlords signed the condition inspection report dated November 23, 2020 and both Landlords stated that the Tenant also signed the report on that date.

The Landlords are seeking compensation, in the amount of \$347.50, for cleaning the rental unit. The Landlords submitted photographs of the rental unit which show that some cleaning is required in various areas of the rental unit.

The male Landlord stated that the photographs that show the rental unit required cleaning were all taken on September 01, 2021. He stated that these photographs represent the condition of the rental unit when it was jointly inspected on September 01, 2021.

The Tenant stated that she moved her furniture out of the rental unit on August 31, 2021, that she returned to the unit to clean on September 01, 2021, that the photographs submitted by the Landlords were taken prior to her cleaning the unit on September 01, 2021, and that these photographs do not represent the condition of the rental unit when it was jointly inspected on September 01, 2021. She stated that the only photograph that represents the condition of the rental unit on September 01, 2021 is the one that shows a dirty window track.

The Tenant submitted video evidence of the unit which she stated was taken on September 01, 2021. She stated that this evidence represents the condition of the rental unit on September 01, 2021.

The male Landlord stated that the entire unit was covered in cat urine and feces and that it had a very strong smell of cat urine, which is difficult to capture with photographs. The Tenant denies this submission.

The male Landlord stated that the Landlords spent between 18 and 20 hours cleaning the rental unit, which included time spent eliminating cat odors.

The Landlords are seeking compensation, in the amount of \$567.50, for repairing the walls and trim. This includes \$347.50 for the 20 hours they spent repairing the walls/trim and \$220.00 for supplies.

The Landlords submitted a photograph of a bedroom wall with a relatively large hole and some patched areas. The male Landlord stated that the hole had been patched but the putty fell into the wall and that the patched areas had been sanded, but not painted.

The Tenant stated that she repaired a small screw hole in the bedroom wall and that the hole was not present when she vacated the rental unit. She agrees that the patched areas on that wall were sanded, but not painted.

The Landlords submitted a photograph of a damaged baseboard in the bedroom. The Landlords submit that the baseboard was damaged during the tenancy. The Tenant stated that this damage was present at the start of the tenancy, which the Landlords deny.

The Landlords submitted a photograph of a damaged windowsill. The Landlords submit that the windowsill was damaged during the tenancy. The Tenant stated that some of this damage was present at the start of the tenancy, and that the area continued to be damaged by the curtains, which she considers to be normal wear and tear.

The Landlords submitted a photograph of the wall in the living room. The male Landlord stated the areas in the wall had been puttied, sanded, and painted by the Tenant. He stated that the Landlords provided the Tenant with the code for the paint number and advised her that the paint was from Sherwin Williams. He stated that she obtained the

paint from Home Depot and, because they could not match the paint exactly, the repair is insufficient.

The Tenant agreed that she obtained the touch-up paint from Home Depot using the Sherwin Williams code provided by the Landlords. She stated that Home Depot did not tell her that they could not perfectly match the paint provided by Sherwin Williams.

The Tenant stated that all of the holes in the walls she repaired were small holes that should be considered normal wear and tear. She stated that she repaired the holes to “avoid drama”.

The male Landlord stated that the Landlords provided receipts for costs related to repairing the walls/trim. The Landlords were advised that copies of those receipts were not before me. The Tenant stated that there were no receipts in the evidence served to her by the Landlords.

At the hearing the Landlords withdrew their claim for repairing the floor, for repairing a cupboard door, for repairing a faucet, and for repairing landscape.

Analysis

On the basis of the undisputed evidence, I find that this tenancy began on December 01, 2020 and that the rental unit was vacated on September 01, 2021.

I favour the evidence of the Landlords, who both testified that a condition inspection report was completed on November 23, 2020, over the testimony of the Tenant, who stated that a condition inspection report was not completed prior to the start of the tenancy. In reaching this conclusion I was heavily influenced by the condition inspection report that was submitted in evidence.

Although the Tenant testified that the signature on the condition inspection report did not look like her signature, I must disagree. Although I am not a handwriting expert, I have compared the Tenant's signature on the condition inspection report with the Tenant's signature on the tenancy agreement, and I find them to be reasonably similar. I find that this document corroborates the Landlords' testimony that the report was completed on November 23, 2020.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties 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. As I have concluded that the parties signed a condition inspection report on November 23, 2020, I find that it represents the condition of the rental unit at the start of the tenancy.

Section 35(1) of the *Act* stipulates that the landlord and tenant must jointly inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. On the basis of the undisputed testimony, I find that the rental unit was jointly inspected on September 01, 2021.

Section 35(3) of the *Act* stipulates that the landlord must complete a condition inspection report at the end of the tenancy. On the basis of the undisputed evidence, I find that the Landlords did not complete a condition inspection report during, or after, the unit was inspected on September 01, 2021.

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. As no report was completed, I find that neither party signed a report and a copy could not be provided to the Tenant.

Even if I accepted the Landlords' submission that the Tenant would not go through the individual items on the report with the Landlords, I find that they remained obligated to complete that final report. When a tenant is not cooperative during an inspection of the unit, the landlord is free to simply record their observations on the report and then have the tenant sign the report to indicate they either agree or disagree with the content of the report.

Section 36(2)(c) of the *Act* stipulates that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the Landlords and the Tenant jointly inspected the rental unit on September 01, 2021 and the Landlords did subsequently complete a final condition inspection report, I find

that the Landlords' right to claim against the security deposit for damage to the unit is extinguished, pursuant to section 36(2)(c) of the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. On the basis of the testimony of the male Landlord and in the absence of evidence to the contrary, I find that the Landlords received a forwarding address for the Tenant on September 29, 2021.

In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished pursuant to section 36(2)(c) of the *Act*, the Landlords do not have the right to file an Application for Dispute Resolution claiming against the security deposit and the only option remaining open to the Landlords is to return the security deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

As the Landlords have not yet returned the security deposit, I find that the Landlords did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section 38(6) of the *Act*, I find that the Landlords must pay double the security deposit to the Tenant, which is \$1,400.00.

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* 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.

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

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. 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.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I favour the testimony of the male Landlord, who stated that the Landlord's photographs of the rental unit were taken on September 01, 2021 over the testimony of the Tenant, who testified that they were taken prior to her cleaning the rental unit on September 01, 2021. I find the testimony of the male Landlord is simply more probable, as I can find no reason to conclude that a Landlord would photograph the condition of the rental unit one day prior to a scheduled inspection. I therefore find that the photographs submitted in evidence by the Landlords fairly represents the cleanliness of the rental unit on September 01, 2021.

On the basis of the testimony of the male Landlord, which is corroborated by the Landlord's photographs, I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy.

In reaching this conclusion I placed little weight on the video evidence submitted by the Tenant. While I accept her testimony that the videos were recorded on September 01, 2021, I find that they have less evidentiary value than the Landlords' photographs, as

the videos are taken from a distance and do not show the close detail provided by the Landlords' photographs.

As the rental unit was not left in reasonably clean condition, I find that the Landlords are entitled to compensation for the time they spent cleaning the rental unit. On the basis of the photographs submitted and the testimony that they spent 18 to 20 hours cleaning the unit, I find the claim of \$347.50 for cleaning is reasonable.

On the basis of the undisputed testimony and photographs submitted in evidence by the Landlords, I find that the Tenant repaired several areas on the walls and that those repairs were inadequate. I find they were inadequate because some of the repairs were not fully sanded and some were faulty because the putty fell into the wall, leaving a large hole. I find that some of the repairs were painted with the incorrect paint, leaving an area on the wall that does not properly blend with the wall.

On the basis of the undisputed testimony, I find that the Tenant "touched up" some of the repairs with the incorrect paint. I find that she was provided with a paint code from Sherwin Williams and that she went to Home Depot to obtain the paint. Even if Home Depot erred in their responsibility to inform the Tenant that they could not precisely match a paint code from another company, that is an issue between the Tenant and Home Depot.

I find that the Tenant did not comply with section 37(2)(a) of the *Act* when the Tenant improperly repaired the walls to the rental unit. Even if I concluded that the initial damage to the walls constituted reasonable wear and tear and the Tenant was not obligated to repair that damage, I find the subsequent repairs made by the Tenant exceeds normal wear and tear. Upon deciding to make the repairs, I find that the Tenant had an obligation to properly repair the damage. I find the manner in which the walls were left required the Landlords to make repairs and that the Landlords are entitled to compensation for the time they spent repairing the damage.

On the basis of the condition inspection report that was completed on November 23, 2022, I find that none of the trim or windowsills were damaged at the start of the tenancy. As the parties agree they were damaged at the end of the tenancy, I must conclude that they were damaged during the tenancy.

On the basis of the photographs submitted in evidence by the Landlords, I find that the damage to trim/windowsills exceeds normal wear and tear. I therefore find that the

Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair that damage and that the Landlords are entitled to compensation for the time they spent repairing the damage.

On the basis of the photographs submitted and the testimony that the Landlords spent 20 hours repairing the unit, I find the claim of \$347.50 for time spent making the repairs is reasonable.

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 the supplies used to repair the walls/trim. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the male Landlord's testimony that they spent \$220.00 on supplies. When receipts are available, or should be available with reasonable diligence, I find the party seeking compensation for those expenses has a duty to present the receipts.

Although the male Landlord testified that receipts for supplies were submitted to the residential tenancy branch, they were not before me and I therefore could not consider them. I therefore dismiss the Landlords' claim for compensation supplies in the amount of \$220.00.

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 Tenant is entitled to the return of double the security deposit, which is \$1,400.00.

The Landlord has established a monetary claim, in the amount of \$795.00, which includes \$347.50 for cleaning, \$347.50 for repairing walls/trim, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

After offsetting the two amounts, I find that the Landlords must pay the Tenant \$605.00. Based on these determinations I grant the Tenant a monetary Order \$605.00. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, 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: May 02, 2022

Residential Tenancy Branch