Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0963553 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDL, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit pursuant to Sections 26, 38, 46, 62, and 67 of the Act;
2. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy pursuant to Section 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Representatives, and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord applied to substitutionally serve the Tenants. On May 3, 2022, a substitutional service Order was granted to the Landlord. The Landlord served the Tenants with the Notice of Dispute Resolution Proceeding package and their evidence for this hearing by using a permitted email address for service purposes on May 5, 2022 (the "NoDRP package"). The Landlord uploaded printouts of sent emails to both Tenants. The Tenants confirmed receipt of the email from the Landlord. I find that the Tenants were sufficiently served with the NoDRP package on May 8, 2022, in

accordance with Sections 43(2) and 44 of the *Residential Tenancy Regulation* (the "Regulation") and Section 71(2)(b) of the Act.

The Landlord served the Tenants with their Amendment to the Landlord's claim by using a permitted email address for service purposes on December 15, 2022 (the "Amendment"). The Landlord did not provide printouts of sent emails to both Tenants; however, the Tenants confirmed receipt of the email from the Landlord on December 15, 2022. I find that the Tenants were sufficiently served with the Landlord's Amendment on December 15, 2022, in accordance with Section 71(2)(b) of the Act.

The Tenants stated they served their evidence on the Landlord via email on December 19, 2022. The Landlord stated that the Tenants have no agreement or authority to serve legal documents via email to them. I note I do not see an email address for service on the Landlord, none was provided in the tenancy agreement or via form #RTB-51. Section 43(1) of the *Residential Tenancy Regulation* allows service via email if an email address was provided for this purpose. Policy Guideline #12 says:

> *At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. … A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - "Address for Service" form and provide it to the other party.*
>
> *If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method. … Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.*

I decline to accept the Tenants' evidence which was emailed to the Landlord, but I advised the Tenants that I will take their viva voce evidence describing the important emails/text/messages they want to provide into their oral testimony.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?

2. Is the Landlord entitled to an Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy in August 2009. Several fixed term leases were subsequently entered, and in 2017 the tenancy continued on a month-to-month basis. Monthly rent was $3,558.28 payable on the first day of each month. A security deposit of $1,669.00 was collected at the start of the tenancy and is still held by the Landlord. The Landlord testified that this home was built in the 1920s, it has a long history, and the Tenants have a responsibility to maintain its character.

Agreed Facts:

It is an undisputed fact that the Landlord seeks two months unpaid rent for March and April totalling $7,116.56 from the Tenants and the Tenants agreed they owe this amount to the Landlord.

The Landlord submitted an invoice for general repairs to the rental unit totalling $949.20. The Tenants agreed to all items on the general repair invoice except the painting. They refer to Policy Guideline #40-Useful Life of Building Elements (“PG#40”) which states interior paint has a useful life of four years. They lived in the rental unit 13 years. The Landlord agreed, so the painting total is taken off the invoice. The calculated total for the general repairs that both parties agreed to is as follows:

Repair holes in office walls-taping, sanding, priming	$285.00
Fix similar holes on dining room walls	$85.00
Remove and re-install original light fixture	$68.50
Install 4 glass doors	$278.00
Subtotal:	$716.50
GST:	$35.83
TOTAL:	$752.33

The parties agree that the Tenants are responsible for carpet cleaning despite the fact the Tenants had been in the rental unit 13 years, and PG#40 states the useful life of carpets are 10 years. The Tenants agree to the Landlord's submitted amount of $294.00.

The parties agree that the Tenants are responsible for $79.82 of the Fortis BC gas bill uploaded into evidence.

Disputed Facts:

Hardwood Floors:
The parties do not agree on the level of responsibility for the hardwood flooring in the rental unit. The Landlord paid a hardwood flooring company to sand and refinish the oak flooring in the home. The work involved sanding and refinishing the oak flooring with 2 coats of semi-gloss polyurethane totalling $2,310.00, plus $500.00 for additional sanding which was deemed required because of damage done to the oak flooring.

The Landlord uploaded an email written by the hardwood flooring repair company which states, "[t]here appear to be a pet urine stain in the dining room … an area in the dining room and also the front bedroom with excess wear. There are deep scratches in the living room which will need aggressive sanding or board replacement to correct." The Landlord maintained that a cat hung around outside the front door, and that this strongly suggests this cat was used to coming inside the home.

The Landlord did not complete a move-in condition inspection report describing the condition of the rental unit on move-in. They rely on a three-page, homemade report written up at move-in. This document notes that the floor was "cleaned, waxed w/oil –

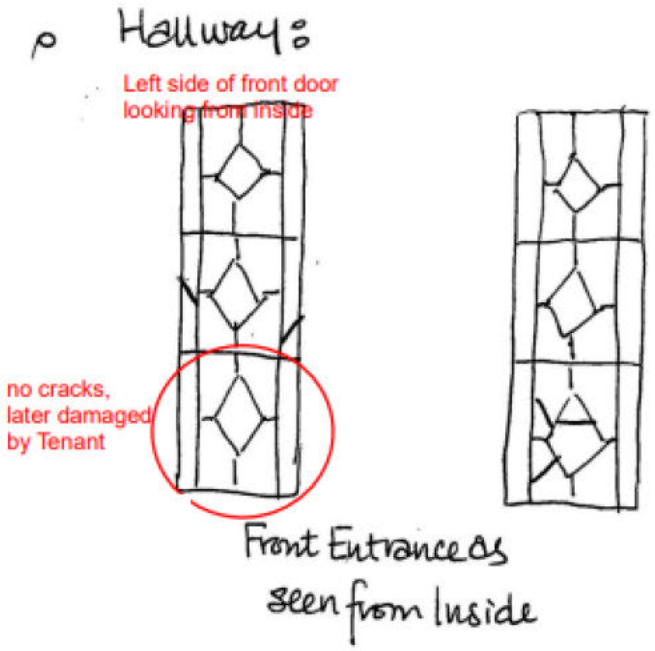
hardwood-orig." in the living room and the dining room and each page was initialled by the male Tenant. The Landlord said the wear and tear was beyond normal wear and tear and was deep gouges in the hardwood.

The Tenants say there is no possible way there is a pet urine stain on the hardwood flooring as the Tenant wife is "super, super allergic" and cannot have pets in her home. A pet allergist said there is no pet that the Tenant wife can live with in her home, her allergies are too extreme. The wear and tear over the 13 years the Tenants resided in the rental unit is normal wear and tear and is not extreme.

The Tenants rely on the PG#40 that states the useful life of hardwood flooring is 20 years. The floor was not new when the Tenants moved in and state it is unreasonable that they should be held responsible for the full revarnishing of the hardwood floors. The Landlord's expert says that varnishing only lasts five to seven years. The Tenants state the Landlord has not met their burden to prove the Tenants are responsible for the full revarnishing of the hardwood floors based on a cat outside the front door.

The Tenants state that the Landlord has not proven that the Tenants caused the deep gouges; however, the Tenants described that the only possible repair to the floor for which they may be responsible is the $500.00 additional sanding due to damage done to the oak flooring.

Leaded glass window beside front door:
The Landlords claimed $572.25 for 'smashed in leaded glass next to front door'. In the move-out condition inspection, the window next to the front door was covered in cellophane. The Landlord supposes the Tenants had a piece of furniture by this part of the leaded glass, and they assume the furniture broke the leaded glass in the window. The Landlord claims that the Tenants have a responsibility to take care/maintain this character home. The Landlord again relies on the three-page, homemade report written up at move-in. It shows:



The Tenants stated that the Landlord must prove that the window was broken from their negligence. The Landlord's speculation that there was furniture outside and that is what broke the window is not proof on a balance of probabilities. The Tenants testified that they genuinely do not know how that window was broken. In that context, it is not okay to say that the Landlord established the window was broken by the Tenants' negligence. There are other windows in the home with hairline cracks that the Tenants also did not break. The Landlord is asking for the Tenants to pay to bring the window up to new that was already past its useful life according to PG#40 which for windows is 15 years.

Venetian Blinds:

The Landlord claims $693.00 to replace missing blinds in the living room. The Landlord stated that the blinds were in the windows in the move-in video they uploaded, but were not in the video that the Tenants uploaded. I asked the Landlord if he wanted to accept the Tenants' emailed evidence, but he declined. The Landlord did state that the blinds were not a big issue.

The Tenants disagree with the Landlord and testified that the blinds remained in the windows in the living room. What was missing were the white curtains that cover over the blinds. The Tenants stated that the curtains were valueless. PG#40 state that the useful life of venetian blinds is 10 years. These blinds are at least 13 years old. They have zero value and they remained in the rental unit.

Bamboo Blinds:
The Landlord claims that the bamboo blinds in the master bedroom were gone after the Tenants vacated. The Landlord testified that the bamboo blinds were probably about five years old when the Tenants moved in. They submitted a quote for replacement being $170.17.

The Tenants testified that they took the blinds down many years ago. They claimed they were beyond their useful life, they were not new when the Tenants moved into the rental unit and were a terrible eyesore in the bedroom.

Replacement of Kitchen Tiles:
The Landlord stated that the kitchen, breakfast nook and a powder room had a black and white 1920s retro tile theme. A brand new kitchen was installed in 2017. Nine tiles on the kitchen floor had punctured cracks in them which was akin to a sunray splattered outward. The Landlord said that something dropped on the tiles that caused this damage. When they did a walk through with the female Tenant, one Landlord asked how that happened and she said the female Tenant told her, “I don’t know, nonchalantly.” The Landlord’s repairman said it is very hard to find matching tiles to replace these, so the Landlord said, “he said it’s not a very big kitchen, we have to redo them again.”

The Landlord testified that the Tenants would not clean out the food debris from the filter in the dishwasher, and because of the Tenants’ non-actions, the water leak occurred. The Landlord stated because it is impossible to find matching tiles for this new floor, this justifies their request for a whole new replacement of the kitchen floor totalling $4,063.50.

Soon after the Tenants got the new kitchen, there was a substantial water leak from the dishwasher behind the kitchen which left a large amount of water that also leaked down into the basement. The Tenants said the water leak occurred where water was filling up the dishwasher. The Tenants reported it immediately to the Landlords in 2017. The male Tenant said they had big industrial fans for a number of weeks running in the kitchen, and the tiles cracked weeks after the leak. To say that the Tenants dropped something on the tiles, they submit is a full misrepresentation of the events that followed the leak.

There was an email exchange between the male Tenant and the female Landlord on July 28, 2017. He asked her to give him the evidence that proves the Tenants are

responsible for the leak within ten days. The female Landlord did not provide any evidence to the Tenants, although she wrote to the Tenants on July 31, 2017 saying, “I just want to make a request that you would keep a watchful eye for any water leaks in the future so the problem can be addressed immediately. This is something I would say to all my tenants and not just to you. So please take its meaning plainly at what it says.” So, the Tenants considered the matter closed. The Landlord asked the Tenants for a quick acknowledgement of a July 9, 2017 status report that the Landlord had written up, but the Tenants declined acknowledging it saying on October 31, 2017, “I can’t sign the status report because it doesn’t address the cracked tiles which are due to the flooding. It doesn’t list them, and so I can’t sign it.”

The male Tenant submits that the Landlord is now saying that objects dropped on nine different locations in the kitchen breaking nine separate tiles. It is not plausible.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Leaving the rental unit at the end of a tenancy

37 *…*

(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

Liability for not complying with this Act or a tenancy agreement

7 *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Settlement

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of some issues currently under dispute at this time:

AGREED ITEMS	AMOUNTS
Unpaid rent-March & April	$7,116.56
General repairs	$752.33
Carpet cleaning	$294.00
Fortis gas bill-April	$79.82
TOTAL AGREED AMOUNT:	**$8,242.71**

Disputed Items from the Landlord's Monetary Worksheet

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*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 who is claiming compensation to provide evidence to establish that compensation is due.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Hardwood Floors:
The Landlord stated that the damage to the hardwood floors is over and above normal wear and tear, effectively the Tenants have breached Section 37(2)(a) of the Act. The Landlords did not complete a move-in condition inspection report of the rental unit before the Tenants moved in. They submitted a three-page, homemade report written up at move-in. This document notes that the floor was “cleaned, waxed w/oil – hardwood-orig.” in the living room and the dining room and each page was initialled by the male Tenant. The Landlord provided an invoice for work done to the hardwood floors totalling $2,950.50. Of this total bill, a $500.00 portion is highlighted for additional sanding because of deep damage to the floors.

The Landlord also uploaded an email written by the hardwood flooring company that states part of the hardwood floors appear to have a pet urine stain, and that deep scratches in the living room need aggressive sanding or board replacement to correct.

The Tenants deny that there are any pet urine stains on their floors as the female Tenant is super allergic and cannot have pets in her home. The Tenants resided in the rental unit for 13 years. The Tenants rely on PG#40 that states the useful life of hardwood floors is 20 years. The floors were not new when the Tenants moved into the rental unit, and assert it is unreasonable that they are to be held responsible for the full revarnishing of the hardwood floors. The Tenants agreed that the only possible repair for which they could be held responsible for would be the $500.00 for the additional sanding.

I find that the Tenants are not responsible for the full revarnishing of the Landlord’s hardwood floors as the Tenants resided in the rental unit for 13 years, and the floors were not new at that time. However, I agree that the Tenants are responsible for the additional sanding of the deep gouges in the hardwood floors pursuant to Section 7 of the Act. I award $500.00 plus GST totalling **$525.00** to the Landlord for compensation for their damage and loss in this part of their claim.

Leaded glass window beside front door:
The Landlord stated that the damage to the stained glass window panes is over and above normal wear and tear, effectively the Tenants have breached Section 37(2)(a) of the Act. In the Landlord’s three-page, homemade report written up at move-in, it shows some minor cracks in panes of glass around the door, but in the affected section, the leaded glass is undamaged. The Tenants initialled this page attesting to its report at move-in. At move-out, the broken leaded glass was covered with cellophane.

The Tenants assert that the Landlord must prove that the window was broken from the Tenants' negligence. The Tenants never reported to the Landlord that the leaded glass had been damaged, but must have known about it as it was covered with cellophane at move-out to protect the inside of the home from the outside elements. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence; however, in these circumstances, the Landlord must provide evidence to establish that compensation is due.

There were other windows with hairline cracks, but the Landlord is not seeking compensation for those. The Tenants assert that PG#40 states the useful life for windows is 15 years, but I find this quantification of useful life does not include leaded glass windows. Leaded glass windows have a significantly longer useful life.

I find the Tenants were aware of the damage, most probably because it was caused by them, and are responsible for the repair to the leaded glass window. The Landlord is not seeking repair of all the leaded glass panes, just the lower part of the window that was badly broken. Pursuant to Section 7 of the Act, I find the Landlord is entitled to compensation for the leaded window, and I award **$572.25** to the Landlord for compensation for their damage and loss in this part of their claim.

Venetian and Bamboo Blinds:
The Landlord claims compensation for blinds they say were removed from the rental unit. They are seeking $693.00 for the venetian blinds in the living room and $170.17 for the bamboo blinds in the master bedroom.

The Tenants testified that the venetian blinds in the living room remained in the rental unit when they left. The Landlord's move-out condition inspection report also note that the blinds were present at move-out.

The Landlord testified that the master bedroom bamboo blinds were approximately five years old when the Tenants moved into the rental unit. The Tenants stated they had taken the blinds down many years prior as they were beyond their useful life and were a terrible eyesore. The blinds would have been 18 years old at move-out.

I find the Landlord has not proven that the living room venetian blinds were missing at move-out and I do not grant compensation for those blinds. I find the bamboo blinds in the master bedroom were well beyond their useful life and the value of those blinds was

zero dollars. I decline to grant compensation for the bamboo blinds in the master bedroom window.

Replacement of Kitchen Tiles:
The Landlord stated that the damage to the kitchen tile flooring is over and above normal wear and tear, effectively the Tenants have breached Section 37(2)(a) of the Act. The Landlords said because the Tenants did not clean out the food debris from the filter in the dishwasher, that this caused the water leak behind the kitchen and into the basement. The Landlord did not provide expert evidence, e.g. plumber testimony, that the Tenants were responsible for the water leak.

The Tenants notified the Landlord immediately after discovering the water leak into their basement which originated after the new kitchen install. The Landlord did not provide the Tenants with any proof that the Tenants were responsible for the damage from the water leak after the Tenants sent this request to the Landlord. The Tenants testified that the tiles broke weeks after the leak was discovered. The Tenants said it is unreasonable, and not plausible that nine tiles broke after the Tenants supposedly dropped items on them.

I find, based on the totality of the evidence from both parties, that the Tenants are not responsible for the water leak or the broken tiles in the kitchen of the rental unit. The Tenants are not responsible for a full tile re-install in the kitchen of the home, and I decline to make an award for such compensation.

Having been mostly successful, I find the Landlord is entitled to recover the **$100.00** application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

The Landlord’s monetary award is calculated as follows:

Monetary Award

Agreed Items	$8,242.71
Hardwood floors	$525.00
Leaded glass	$572.25
Application filing fee	$100.00
Less: Security deposit	-$1,669.00
TOTAL Monetary Award:	$7,770.96

Conclusion

I grant a Monetary Order to the Landlord in the amount of $7,770.96. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: January 24, 2023

Residential Tenancy Branch