



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PURE SAINT GEORGE PLACE LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDL, MNRL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order unpaid rent and to recover the fee for filing this Application for Dispute Resolution. On May 02, 2022 the Landlord submitted an Amendment to the Application for Dispute Resolution, in which the Landlord added a claim for a monetary Order for damage to the rental unit.

The Agent for the Landlord stated that on May 02, 2022 Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on April 11, 2022 and May 03, 2022 was sent to the Tenant, via email. On April 27, 2022 a Residential Tenancy Branch Adjudicator granted the Landlord authority to serve hearing documents via email. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On May 04, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, on May 05, 2022. As the Agent for the Landlord acknowledged receiving this evidence, 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

The Landlord and the Tenant mutually agreed that I should determine whether the Tenant's security deposit should be returned to the Tenant or retained by the Landlord, even though the Tenant has not provided the with a forwarding address in writing and the Landlord has not applied to retain the deposit.

As the parties mutually agreed that I should determine whether the Tenant's security deposit should be returned to the Tenant or retained by the Landlord, I find it reasonable to do so.

Issue(s) to be Decided

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

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on October 01, 2020;
- the Tenant paid a security deposit of \$837.50;
- the Landlord purchased this rental unit from the original landlord after this tenancy began;
- when the tenancy began, the Tenant agreed to pay monthly rent of \$1,675.00 by the first day of each month;
- on January 01, 2022 the monthly rent was increased to \$1,700.00;
- on March 20, 2022 or March 22, 2022, the Tenant gave the Landlord notice of her intent to vacate the unit by April 01, 2022;
- the Tenant vacated the rental unit on April 01, 2022; and
- the Tenant did not pay rent for April of 2022.

The Landlord is seeking compensation for lost revenue for April of 2022, in the amount of \$1,700.00.

In support of the claim for lost revenue the Agent for the Landlord stated that she advertised the rental unit on at least one popular website on March 22, 2022 or March 23, 2022 and on April 15, 2022 she found a new tenant, who moved into the unit on May 01, 2022.

The parties agree that the Tenant provided the Landlord with the name of an individual who was interested in moving into the rental unit on April 01, 2022 but the Landlord did not allow this individual to move into the rental unit because the Landlord was concerned that the person did not have sufficient income.

The Landlord is seeking compensation, in the amount of \$630.00, for repairing a cabinet toe kick. The Landlord submitted an estimate that indicates it will cost \$600.00 plus GST to replace the toe kick. The Agent for the Landlord stated that the Landlord paid \$630.00 for the repair.

The Agent for the Landlord stated that the damage to the toe kick occurred when the dishwasher leaked on February 20, 2022. The Tenant stated that the damage was present at the start of the tenancy.

The Landlord and the Tenant agree that a condition inspection report was completed by the original landlord when this tenancy began, a copy of which was submitted in evidence. The parties agree that the condition inspection report declares that the cabinet under the kitchen sink is "broken".

The Agent for the Landlord stated that she understands that the reference to the cabinet under the kitchen sink being "broken" relates to the base of the cabinet being broken, which the Landlord has now repaired. The Tenant submitted a photograph of the inside of the kitchen cabinet, which shows that the base, or the floor, is broken.

The Tenant stated that the when she turned on the dishwasher it began leaking onto the floor. She stated that she subsequently turned on the garburator, which caused the sink to back up. She stated that the sink drained after approximately 1 or 2 hours.

In support of the claim for the damaged toe kick, the Agent for the Landlord stated that:

- the leaking dishwasher was initially reported to her by the occupant living below the Tenant, as water was leaking into that unit;
- she contacted the Tenant on February 20, 2022 and was advised that everything was "under control";

- she went to the unit on February 21, 2022 and found a large amount of rice in the sink;
- she believes that the Tenant disposed of an excessive amount of rice in the garburator and did not properly clear it, which blocked the drainage system and prevented the dishwasher from draining properly;
- she watched the Tenant scoop out a large quantity of rice from the garburator on February 21, 2022; and
- she and the Tenant were able to clear the garburator/drain after the rice was removed.

The Tenant stated that the large amount of rice the Agent for the Landlord observed in the sink was introduced into the sink when she was cleaning up from dinner on February 20, 2022, which was after the dishwasher flooded.

The Landlord is seeking compensation, in the amount of \$136.13, to replace two light fixtures. The Landlord submitted one receipt to show that the Landlord painted \$36.13 to purchase two light fixtures and \$100.00 to have them installed.

In support of the claim for replacing the fixtures, the Agent for the Landlord stated that:

- the Tenant removed two ceiling fixtures and left them in the unit;
- the Tenant told her both fixtures were damaged so she replaced them both.

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

- she removed the flush mounted fixture because the glass was broken;
- the glass on the flush mounted fixture was damaged prior to the start of the tenancy;
- the Tenant removed the other ceiling fixture, although she cannot recall why; and
- she did not tell the Agent for the Landlord that the second ceiling fixture was damaged.

The Landlord is seeking compensation, in the amount of \$800.00, to repaint the kitchen and living room. The Landlord submitted a receipt to show that this expense was incurred.

In support of the painting claim, the Agent for the Landlord stated that:

- the Tenant repainted the kitchen and living room, without permission;
- the Tenant changed the color from off-white or beige to white;

- the Tenant did a poor job so the walls are very rough looking and needed re-painting.

In response to the painting claim, the Tenant stated that the Agent for the Landlord gave her verbal permission to paint the kitchen and living room. When asked if the walls “looked good” after they were painted, the Tenant replied, “I don’t know”.

Analysis

On the basis of the undisputed evidence, I find that when this tenancy ended, the Tenant was required to pay rent of \$1,700.00 by the first day of each month.

I find that the Tenant failed to comply with section 45 of the *Act* when the Tenant failed to provide the Landlord with written notice of her intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on March 31, 2022 in accordance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, February 28, 2022. As the Tenant did not give written notice to the Landlord until March 20, 2022 or March 22, 2022, I find, pursuant to section 53 of the *Act*, that the earliest effective date of this notice was April 30, 2022.

I find that the Landlord made reasonable efforts to locate a new tenant for April of 2022 but, in spite of those efforts, was unable to find a new tenant for that month. In spite of the efforts to mitigate their loss, I find that the Landlord suffered a loss of revenue for the month of April of 2022 which the Landlord would not have experienced if the Tenant had remained in the rental unit until April 30, 2022. I therefore find that the Tenant must pay the Landlord \$1,700.00 in compensation for the lost revenue the Landlord experienced in April of 2022.

In considering the claim for lost revenue I considered the undisputed evidence that the Tenant provided the Landlord with the name of an individual who was interested in moving into the rental unit on April 01, 2022 but the Landlord did not allow this individual to move into the rental unit because the Landlord was concerned that the person did not have sufficient income. I find that a landlord is not obligated to accept an individual recommended by a vacating tenant. I find that a concern about the ability to pay rent is a reasonable reason for not accepting a potential tenancy and I cannot, therefore conclude that it was unreasonable for the Landlord to refuse to accept this individual as a tenant.

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 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. On the basis of the condition inspection report submitted in evidence, I find that the report declares that the cabinet under the kitchen sink is “broken”.

I find, on the balance of probabilities, that the reference to the broken cabinet under the kitchen sink is a reference to the base, or the floor, of that cabinet being broken. In reaching this conclusion, I was heavily influenced by the testimony of the Tenant and the Agent for the Landlord, both of whom acknowledge that the base/floor was broken. I was further influenced by the photograph submitted in evidence by the Tenant, which shows the base/floor of the cabinet is broken.

I find that there is nothing in the condition inspection report that establishes the toe kick beneath any of the kitchen cabinets was damaged. I therefore find that I must rely on the condition inspection report submitted in evidence to conclude that the toe kick was not damaged at the start of the tenancy. As there is no dispute that the toe kick was damaged at the end of the tenancy, I must conclude that it was damaged during the tenancy. As there is no dispute that the dishwasher leaked during the tenancy, I find it reasonable to conclude, on the balance of probabilities, that the leak damaged the toe kick.

I find, on the balance of probabilities, that the dishwasher leaked because the Tenant did not properly clear the garburator, which caused the drainage system to become blocked, which resulted in the dishwasher leaking onto the floor. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant and Agent for the Landlord were able to clear the blockage after a large quantity of rice was removed. In the absence of any evidence to show that the drainage system itself was damaged, I find that an excessive amount of rice is the most reasonable explanation for

the drainage block. Even if I accepted the Tenant's evidence that a large amount of rice was introduced into the drainage system after the dishwasher flooded, an excessive amount of food waste in the system remains the only reasonable explanation for the blockage.

As I have concluded that the Tenant's actions caused the dishwasher to overflow, I find, pursuant to section 32(3) of the *Act*, that the Tenant is responsible for the costs of repairing any damage that resulted from the dishwasher leaking. I therefore find that the Tenant must pay \$630.00 to repair the toe kick.

On the basis of the condition inspection report that was submitted in evidence, I find there is no record of a light fixture being broken at the start of the tenancy. In the absence of evidence to corroborate the Tenant's testimony that a light fixture was broken at the start of the tenancy I find, pursuant to section 21 of the *Residential Tenancy Regulation*, that all the light fixtures were in good condition at the start of the tenancy.

On the basis of the undisputed evidence that the flush mounted ceiling fixture was broken at the end of the tenancy, I find it reasonable to conclude that this fixture was damaged during the tenancy. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not repair that damage. I therefore find that the Landlord is entitled to compensation of \$50.00 to replacing the flush mounted fixture and \$18.07 for purchasing a replacement fixture.

On the basis of the undisputed evidence that a second ceiling fixture was removed from the ceiling during the tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not replace the fixture. I therefore find that the Landlord is entitled to compensation of \$50.00 for replacing the second light fixture.

I find that the Landlord has submitted insufficient evidence to establish that the second light fixture was actually broken and that the fixture could simply have been re-installed. In reaching this conclusion I was influenced by the absence of any evidence to establish that the second fixture was not working or to establish that the Tenant told the Agent for the Landlord it was broken. In reaching this conclusion I was further influenced by the absence of any evidence to refute the Tenant's testimony that she did not tell the Agent for the Landlord that this was broken. As the Landlord has failed to establish that the second fixture was broken, I dismiss the Landlord's claim for the cost of purchasing a replacement fixture.

I find that the Tenant painted the living room and kitchen in the unit and that the walls were improperly painted. In reaching this conclusion I was influenced by:

- the Agent for the Landlord's testimony that the walls were rough looking and needed repainting;
- the absence of any testimony from the Tenant to establish that the new paint on the walls was in reasonably good condition and the walls did not need repainting; and
- the photograph of the living room wall submitted in evidence, which supports the Landlord's submission that it needed repainting, even though the photograph is not of particularly good quality.

Even if I accepted the Tenant's testimony that she had permission to paint the walls, I find that she had an obligation to do so in a reasonably aesthetic manner.

As I have concluded that the Tenant's actions resulted in the need to repaint the living room and kitchen, I find, pursuant to section 32(3) of the *Act*, that the Tenant is responsible for the costs of repainting those rooms. I therefore find that the Tenant must pay \$800.00 to repaint the living room and kitchen.

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 \$3,348.07, which includes \$1,700.00 in lost revenue; \$630.00 to repair the toe kick; \$800.00 for painting; \$118.07 for replacing light fixtures; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(1) of the *Act*, I authorize the Landlord to retain the security deposit of \$837.50, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$2,510.57. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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: January 03, 2023

Residential Tenancy Branch