



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE NANAIMO REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNRL-S, MNDCL-S, FFL

Introduction

A hearing was convened on September 29, 2022 in response to the Landlord's 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, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord, hereinafter referred to as BG, stated that on August 31, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on August 12, 2022 was sent to each Tenant, via registered mail. The female Tenant, hereinafter referred to as DZ, acknowledged receipt of these documents. As DZ acknowledged receipt of these documents, the Landlord's evidence was accepted as evidence for these proceedings.

On September 04, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. DZ stated that this evidence was served to the Landlord, via email, on September 04, 2022. DZ stated that she had authority from the Landlord to serve hearing documents via email. DZ stated that the Tenants did not serve any evidence to corroborate her testimony that documents were served by email and/or the Landlord gave authority to serve them with hearing documents via email.

BG stated that the Tenant's evidence package was not received by the Landlord and that the Landlord does not give tenants authority to serve hearing documents via email.

Section 88(j) authorizes parties to serve evidence to the other party by “any other means of service provided for in the regulations”. Section 43(3) of the *Residential Tenancy Regulation* stipulates that documents may, for the purposes of section 88(j) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person. The burden of proving evidence has been properly served to the other party rests with the person serving the evidence.

On October 03, 2022 the Tenants submitted 2 documents to the Residential Tenancy Branch. One of these documents indicates that documents were served to the Agent for the Landlord, via email, on September 04, 2022. The other document appears to indicate that this document was received in the Agent for the Landlord’s email, however it appears she was out of the office until September 11, 2022.

On October 07, 2022 the Tenants submitted an additional document to the Residential Tenancy Branch, in which the Tenants discuss service of the Tenant’s evidence package.

The Tenant stated that the documents submitted to the Residential Tenancy Branch in October of 2022 and evidence previously submitted to the Residential Tenancy Branch by the Tenants were sent to the Landlord on October 04, 2022. The Agent for the Landlord stated that she received all of these documents on October 04, 2022.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord gave the Tenants authority to serve hearing documents to the Landlord via email. I have reviewed the Tenants’ evidence, solely for the purpose of determining if there are documents that support this submission, and I was unable to find any such documents. In the absence of evidence to corroborate DZ’s testimony that the Landlord gave such authority and in light of BG’s testimony that the Landlord did not give such authority, I find that the Tenants have failed to establish that they had the right to serve evidence via email.

As the Tenants have failed to establish that they had the right to serve evidence to the Landlord by email, I find that the Tenants have failed to establish that their evidence was served in accordance with section 88(j) of the *Act*.

Although the document submitted on October 03, 2022 shows that the evidence sent to the Agent for the Landlord’s email was received on September 04, 2022, I am not

satisfied that this document sufficiently refutes the Agent for the Landlord's testimony that it was not received. Given that the Agent for the Landlord was out of the office when the evidence was sent on September 04, 2022, I find it entirely possible that the email was not seen by the Agent for the Landlord when she returned to the office. When a landlord does not specifically give another party permission to serve important documents via email, it is possible that the landlord will not diligently view all emails sent by a tenant.

As the Tenants did not serve their evidence in accordance with section 88(j) of the Act prior to the hearing on September 29, 2022 and the Agent for the Landlord does not acknowledge receiving the Tenant's evidence prior to the hearing on September 29, 2022, the Tenant's evidence was not accepted as evidence for these proceedings.

On the basis of the undisputed evidence, I find that on October 04, 2022 the Agent for the Landlord received the Tenants' evidence of September 04, 2022.

Residential Tenancy Branch Rules of Procedure requires a Respondent to properly serve evidence to the Applicant no later than 7 days prior to the hearing, which in these circumstances was September 22, 2022. As the Tenant's evidence was not received by the Landlord until after the hearing on September 29, 2022, I find it was not served in accordance with the Rules of Procedure and it was not all accepted as evidence for these proceedings.

I will accept the email dated July 21, 2022 which the Agent for the Landlord acknowledged receiving on October 04, 2022. This document was accepted as evidence as the Tenants were given permission to re-serve this document to the Landlord in my interim decision. The Tenants were not given authority to re-serve other evidence served to the Landlord after September 29, 2022 and, as such, that evidence was not accepted.

The hearing on September 29, 2022 was adjourned for reasons outlined in my interim decision. The hearing was reconvened on February 06, 2023 and was concluded on that date.

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, to compensation for unpaid rent/lost revenue, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on July 20, 2020;
- the Tenants agreed to pay monthly rent of \$1,816.00 by the first day of each month;
- the Tenants paid a security deposit of \$895.00;
- a condition inspection report was completed at the beginning of the tenancy;
- a condition inspection report was completed at the end of the tenancy; and
- the Tenants provided a forwarding address, in writing, on July 31, 2022.

DZ stated that the rental unit was vacated on July 29, 2022. BG stated that it was vacated on July 31, 2022

The Landlord is seeking compensation, in the amount of \$430.50, for cleaning the rental unit.

BG stated that the rental unit required additional cleaning at the end of the tenancy. DZ stated that a few more places needed additional cleaning at the end of the tenancy.

The Landlord submitted photographs, which BG stated were taken on July 31, 2022, which she contends fairly represent the condition of the unit at the end of the tenancy. DZ stated that some of those photographs represent the condition of the unit at the end of the tenancy.

The Landlord submitted an invoice to show that the Landlord incurred this expense. (Landlord document #110) DZ acknowledged receiving a copy of this document.

The Landlord is seeking compensation, in the amount of \$1,518.34, for repairing a large mirror which is attached to a living room wall. At the hearing on February 06, 2022 the Agent for the Landlord reduced the amount of this claim to \$1,194.10.

BG stated that the mirrored wall was not damaged at the start of the tenancy, as indicated by the condition inspection report that was completed at the start of the tenancy. DZ agrees that the condition inspection report does not indicate the mirrored wall was damaged at the start of the tenancy, however she did not inspect everywhere during the initial inspection. She stated she does not recall if the mirror was damaged at the start of the tenancy.

BG and DZ agree the mirrored wall was broken at the end of the tenancy. The Landlord submitted a photograph of the damaged mirror.

The Landlord submitted quote to show that the estimated cost of repairing the mirror. (Landlord document #111) DZ acknowledged receiving a copy of this document.

The Agent for the Landlord stated that since the last hearing she received an invoice to show that the Landlord only paid \$1,194.10 to repair the broken mirror.

The Landlord is seeking compensation for lost revenue, in the amount of \$1,816.00. At the hearing on February 04, 2023, the Agent for the Landlord withdrew this claim.

As the claim for lost revenue was withdrawn, testimony provided at the hearing on January 29, 2023 regarding this specific claim is not being recorded here.

Analysis

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.

I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I

therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$430.50.

In reaching this conclusion I was heavily influenced by the condition inspection report that was completed on July 31, 2022, which clearly indicates several areas needed additional cleaning. I note that DZ has signed this report to indicate she agrees with the content of the report and she also agreed, in the report, that the Landlord is entitled to compensation for cleaning the unit.

The photographs the Landlord submitted in evidence, which were apparently taken on July 31, 2022, are black and white images. I do not find that these photographs are helpful in determining whether the unit needed cleaning, as the images are not detailed enough for me to make that determination. The quality of the images is simply not sufficient for me to conclude that the rental unit needed cleaning. I therefore have not relied on those photographs when considering the claim for cleaning.

On the basis of the condition inspection report that was completed at the start of the tenancy, I find that the mirrored wall in the living room was in good condition at the start of the tenancy.

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 the condition inspection report indicates that the living room walls were in good condition at the start of the tenancy and the Tenants have not submitted evidence that convinces me otherwise, I find that I must rely on this report.

As the mirrored wall was not damaged at the start of the tenancy and the parties agree it was damaged at the end of the tenancy, I must conclude that it was damaged by the Tenants during the tenancy. I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair that damage and that the Landlord is entitled to compensation for the cost of repairing the mirror. On the basis of the testimony of the Agent for the Landlord I find that the Landlord paid \$1,194.10 to repair the mirror. As this is less than the written estimate of \$1,518.34, I find the Landlord is entitled to the amount paid.

As the Landlord withdrew the claim for lost revenue at the hearing on February 04, 2023, I will not be considering the claim for lost revenue.

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 \$1,724.60, which includes \$1,194.10 for repairing a mirrored wall, \$430.50 for cleaning, 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 \$895.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$829.60. 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 06, 2023

Residential Tenancy Branch