



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SORVAN INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDL, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The male Agent for the Landlord stated that sometime prior to August 01, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in May of 2022 was personally served to the Tenant. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 22, 2023 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via registered mail, on July 25, 2022. The male Agent for the Landlord acknowledged receiving 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?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on September 01, 2016;
- the rental unit was a furnished unit;
- the tenancy ended on August 15, 2020;
- at the end of the tenancy the monthly rent was \$1,150.00;
- rent was due by the first day of each month.

The Agent for the Landlord stated that the Landlord and the Tenant jointly inspected the rental unit prior to the start of the tenancy. He stated that the Tenants were provided with a copy of a condition inspection report that was completed but the Landlord did not keep a copy of that report. The male Tenant stated that the unit was not jointly inspected at the start and they were not given a copy of an inspection report.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the stove. The male Agent for the Landlord stated that the oven needed cleaning at the end of the tenancy. The male Tenant stated that he does not think the oven needed additional cleaning at the end of the tenancy.

The male Agent for the Landlord stated that he believes the Landlord submitted a photograph that shows the oven needed cleaning. He was advised that I could not locate such a photograph in the evidence submitted and he was not able to direct me to such a photograph.

The male Agent for the Landlord stated that he spent 2 hours cleaning the oven.

The Landlord is seeking compensation, in the amount of \$149.95, for cleaning the carpet. The male Agent for the Landlord stated that the carpet needed cleaning at the end of the tenancy. The male Tenant acknowledged that they did not clean the spots on the carpet that can be seen in the photograph submitted by the Landlord. The Landlord submitted an invoice to show this expense was incurred.

The male Tenant stated that he is not certain, but the spots on the carpet could have been caused by tradespeople who were in the unit during their tenancy and who did not remove their shoes when entering the unit.

The Landlord is claiming compensation of \$200.00 for damage to the refrigerator. The male Agent for the Landlord stated that the fridge was not damaged at the start of the tenancy; that the door was dented at the end of the tenancy; and that the inside of the refrigerator door was cracked.

The male Tenant stated that he does not know how the refrigerator door was damaged during the tenancy, but he speculates it may have been caused by the tradespeople who were in the unit. He stated that there was a hairline crack in the shelving unit on the refrigerator door prior to the start of the tenancy, which subsequently broke during normal use.

The Landlord is claiming compensation of \$200.00 for replacing missing and damaged kitchenware. The male Agent for the Landlord stated that the 2 wine glasses, 2 baking sheets, and some cutlery were missing at the end of the tenancy. The male Tenant stated that they did not take or discard wine glasses, baking sheets, or cutlery.

The male Agent for the Landlord stated that two glass baking dishes were so dirty they had to discard them. The male Tenant agrees that the Landlord's photographs of the baking dishes fairly represent the condition of those items at the end of the tenancy.

The Landlord is claiming compensation of \$319.73, for clearing the kitchen sink drain. The male Agent for the Landlord stated that the sink was not draining properly at the end of the tenancy so they hired a plumber to clear the drain. The male Tenant stated that the kitchen sink was draining properly when the tenancy ended. The Landlord submitted an invoice to show this expense was incurred.

The Agent for the Landlord referred to a photograph in which someone is holding a small black item in their hand. The Landlord stated that this was removed from the drain, which he speculates came from one of the Tenants' plants.

The Landlord is claiming compensation of \$150.00 for repairing three stools. The male Landlord stated that the faux leather covering of the stools was severely worn. The male Tenant stated that these stools were used regularly and that any wear on them would be due to normal use.

The Landlord is claiming compensation of \$180.00 for repairing damaged walls and a damaged windowsill. The Agent for the Landlord stated that he spent approximately 3 hours repairing this damage.

The Landlord submitted photographs that show the walls are scratched in several places. The male Tenant agrees that the walls were scratched during the tenancy, which he submits is normal wear and tear.

The Landlord submitted photographs of a windowsill with damage to the paint. The male Tenant agrees that this damage occurred during the tenancy although he believes the sill damage was the result of a leaking window and that the water must have seeped under one of their potted plants. He stated that he reported this window was leaking on August 25, 2019 but it was not inspected by the Landlord.

The male Agent for the Landlord agreed that a leak was reported in 2018 but when he inspected the window, he determined that the window was not leaking. He suspects that the water damage occurred when one of the Tenants' planters leaked onto the windowsill.

The Landlord is claiming compensation of \$40.00 for repairing a damaged electrical outlet. The Landlord submitted a photograph of the damaged outlet.

The male Agent for the Landlord stated that this outlet was not damaged at the start of the tenancy. The female Tenant stated that the outlet was behind a couch, they never moved the couch, they do not know if the outlet was damaged at the start of the tenancy, and they do not know if it was damaged at the end of the tenancy.

The Landlord is claiming compensation of \$60.00 for rebuilding a desk that the Tenants dismantled during the tenancy. The male Tenant acknowledged dismantling the desk during the tenancy. He stated that he simply forgot to rebuild the desk at the end of the tenancy. The Agent for the Landlord stated that he spent approximately 2 hours rebuilding the desk.

The Landlord is claiming compensation of \$1,052.80 for replacing a mattress, which the Agent for the Landlord stated was stained at the end of the tenancy. The female Tenant stated that they always used a mattress cover and that the mattress was not stained at

the end of the tenancy. The male Agent for the Landlord stated that a photograph of the stained mattress was not submitted in evidence.

The Landlord is claiming compensation of \$200.00 for repairing water damage to a dresser. The Agent for the Landlord stated that he believes he submitted a photograph of the water damage. He was advised that I could not locate such a photograph in the evidence submitted and he was not able to direct me to such a photograph. The male Tenant stated that he does not have a photograph of a damaged dresser and that he was not aware of any damage to a dresser.

The Landlord is seeking compensation for water damage in the bathroom. The Landlord and the Tenant agree that there was an extensive amount of water damage in the bathroom. The Landlord contends that the source of the leak was from an "unauthorised "bidet" toilet seat added to toilet and caused severe/ongoing leak needing significant remediation only partially covered by my landlord insurance".

The Tenants acknowledge installing a bidet toilet seat but they submit it did not leak and it was not the source of the water damage in the bathroom. The female Tenant stated that no screws were used to install the seat.

The Landlord is seeking compensation for a damaged bathroom cabinet. The Agent for the Landlord stated that the cabinet was damaged by moisture, perhaps because the Tenants did not allow the room to dry properly or they dried items in the bathroom. The female Tenant stated that the Tenants always used the fan when showering.

The Landlord submitted photographs of bathroom cabinets that appear to have been damaged by moisture.

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.

Section 37(2)(a) of the *Residential Tenancy Act (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.

Although I was unable to find a photograph of the oven during the hearing, I was subsequently able to find one in the photographs attached to the file labelled “email at check out”. I find that this photograph supports the Landlord’s submission that the oven needed additional cleaning at the end of the tenancy and that it refutes the Tenants’ submission that additional cleaning was not required.

I therefore find that the Tenants failed to comply with section 37(2)(a) of the *Act* when the Tenants failed to leave the oven in reasonably clean condition at the end of the tenancy and I find that the Landlord is entitled to compensation of \$50.00 for the two hours spent cleaning the oven. I find that an hourly wage of \$25.00 is reasonable for labor of this nature.

On the basis of the undisputed evidence and the photograph submitted in evidence, I find that the carpet needed cleaning at the end of the tenancy. On the basis of the photograph, I find it likely that the marks on the carpet were caused by the Tenants during their tenancy, as those stains are typical of stains that occur as a result of something being spilled.

I find it highly improbable that those stains were created by tradespeople entering the unit, as they are not the type of stains that would typically be caused by footwear. I also find that the stains are highly visible and that the Tenants would have known they were caused by tradespeople if they appeared after the tradespeople had been in the unit.

I therefore find that the Tenants failed to comply with section 37(2)(a) of the *Act* when the Tenants failed to leave the carpet in reasonably clean condition at the end of the tenancy and I find that the Landlord is entitled to compensation for the cost of cleaning the carpet, which was \$149.95.

Even if I concluded that the Tenants damaged the refrigerator during the tenancy, I would dismiss the claim for compensation of \$200.00 for that damage, as the Landlord submitted no evidence to establish the cost of repairing the damaged refrigerator door and interior shelf. Even if I concluded that the Tenants damaged or discarded cookware belonging to the Landlord, I would dismiss the claim for compensation of \$200.00 for replacing those items, as the Landlord submitted no evidence to establish the cost of

replacing them. When evidence to support the cost of a repair or replacement can be submitted with reasonable diligence, I find it reasonable that evidence such as an invoice, estimate, or receipt should be submitted.

Even if I accepted the Agent for the Landlord's testimony that the sink was not draining properly, I find there is insufficient evidence to establish that it was not draining properly because it was misused by the Tenants. In reaching this conclusion I was heavily influenced by the absence of evidence from the plumber that establishes anything "foreign" was found in the drain.

In considering the claim for clearing the drain I have considered the photograph in which someone is holding a small black item in their hand. In my view this small item is not likely to have caused a blockage in the drain. In the absence of a photograph that establishes the drain was blocked by a foreign object, I cannot conclude that the drain was misused.

In the absence of evidence that shows the drain was misused, I cannot conclude that the Tenants are required to pay for the cost of clearing the drain, as the drain could have become clogged due to normal use, which would constitute "reasonable wear and tear". Tenants are not required to repair damage caused by reasonable wear and tear.

I find that the Landlord has submitted insufficient evidence to establish that the stools in the unit were damaged beyond what would be considered normal wear and tear. In reaching this conclusion I was heavily influenced by the absence of a photograph that would establish the damage exceeded normal wear and tear. As the Landlord has failed to establish that the damage exceeded normal wear and tear, I dismiss the claim for the damaged stools.

On the basis of the undisputed evidence, I find that the walls and one windowsill were damaged during the tenancy. On the basis of the photographs submitted in evidence, I find that the damage to the walls exceeds normal wear and tear.

I find the Tenants' submission that the window leaked and that the ingress of water is damaged the windowsill is less likely than the Landlord's speculation that the windowsill was damaged by one of the Tenants' planter/pots. In reaching this conclusion I was influenced, by the photograph that was submitted in evidence. As this photograph shows no evidence of a water leak, I find it more likely that the sill was damaged by a planter/pot that the Tenants acknowledge was kept on the sill.

I therefore find that the Tenants failed to comply with section 37(2)(a) of the *Act* when the Tenants failed to repair the damage to the walls/windowsill that the Landlord is entitled to compensation of \$75.00 for the three hours spent repairing this damage. I find that an hourly wage of \$25.00 is reasonable for labor of this nature.

I find that the Landlord submitted insufficient evidence to establish that the electrical outlet was in good condition at the start of the tenancy. In reaching this conclusion I was influenced by the absence of a condition inspection report that was completed at the start of the tenancy. I find it would be decidedly unfair to the Tenants to rely on the Agent for the Landlord's memory that this small item was undamaged, when there is insufficient evidence to establish the Tenants were given the opportunity to inspect it at the start of the tenancy.

As there is insufficient evidence to determine that the outlet was in good condition at the start of the tenancy, I cannot conclude that the outlet was damaged during the tenancy. I therefore dismiss the claim for repairing the outlet.

I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when the Tenants failed to rebuild the desk that they dismantled during the tenancy. I therefore find that the Landlord is entitled to compensation of \$50.00 for the two hours spent rebuilding the desk. I find that an hourly wage of \$25.00 is reasonable for labor of this nature.

I find that the Landlord submitted insufficient evidence to establish that the mattress was stained at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the Landlord's submission that it was stained or that refutes the Tenants' submission that it was not stained. As the Landlord has failed to establish that the mattress was stained during the tenancy, I dismiss the claim for replacing the mattress.

I find that the Landlord submitted insufficient evidence to establish that a dresser was damaged during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the Landlord's submission that a dresser was damaged and by the fact the Tenants do not acknowledge damaging a dresser. As the Landlord has failed to establish that a dresser was damaged during the tenancy, I dismiss the claim for a damaged dresser.

I find that the Landlord has submitted insufficient evidence to establish that the bidet toilet seat installed by the Tenants caused water damage in the bathroom. In reaching this conclusion I was heavily influenced by the absence of any evidence, such as a photograph, that corroborates the Landlord's submission that the bidet leaked or that refutes the Tenants' submission that it did not leak.

In considering the claim for water damage in the bathroom I was further influenced by the plumbing invoice dated June 31, 2020 which was submitted in evidence. This invoice suggests several reasons for water leaking in the bathroom, including a screw in a pipe and a leak on the base of a stack. There is nothing in this report that attributes a water leak to an improperly installed bidet seat.

As the Landlord has failed to establish that the bidet toilet seat installed by the Tenants was the source of a water leak in the rental unit, I dismiss the claim for water damage.

I find it is mere speculation on the part of the Landlord to conclude that the bathroom cabinet was damaged by the actions of the Tenants. Given the obvious issue with water in this rental unit, I find it entirely possible that the cabinet was damaged as a result of the leaks detected in the unit by the plumber. As the Landlord has failed to establish that the Tenants' actions damaged the bathroom cabinet, I dismiss the claim for this damage.

I find that the Landlord's Application for Dispute Resolution has some 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 \$424.95, which includes \$50.00 for cleaning the oven, \$149.95 for cleaning the carpet, \$75.00 for repairing walls/windowsill, \$50.00 for rebuilding the desk, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$424.95. 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 07, 2023

Residential Tenancy Branch