



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Landmark Realty Mission Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNR, MNDC, FF

### Introduction:

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

The Agent for the Landlord stated that the Application for Dispute Resolution and Notice of Hearing were personally served to the female Tenant, in the presence of the male Tenant, on July 29, 2013. In the absence of evidence to the contrary, I find that these documents have been served in accordance with the *Residential Tenancy Act (Act)*, however neither Tenant appeared at the hearing.

On October 22, 2103 the Agent for the Landlord requested an adjournment as the Tenant has moved and did not provided a forwarding address, so the Landlord has been unable to serve evidence to the Tenant. The adjournment was granted.

The hearing was reconvened on December 11, 2013. The parties attending the hearing on December 11, 2013 were given the opportunity to provide relevant oral evidence, to ask relevant questions, and to make relevant submissions.

On November 29, 2013 the Landlord amended the Application for Dispute Resolution to include a claim for damage to the rental unit, a copy of which was served to the Tenant on November 30, 2013. Although this amendment was made after the commencement of the hearing, which would not normally be allowed, the amendment was allowed as the female Tenant consented to the amendment and indicated that the Tenant was willing to consider the claim for damages at these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served

to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Landlord entitled to a monetary Order for unpaid rent/lost revenue, a "move out fee", and damages?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on February 01, 2012; that the Tenant agreed to pay monthly rent of \$1,050.00 by the first day of each month; that the tenancy ended on July 30, 2013 or July 31, 2013; and that the Tenant did not pay rent for July of 2013.

The Landlord is seeking a "move out fee" of \$50.00. The Agent for the Landlord stated that the tenancy agreement requires the Tenant to pay a move out fee of \$50.00 at the end of the tenancy. The female Tenant stated that she does not know if the tenancy agreement requires the Tenant to pay this fee. The tenancy agreement was not submitted in evidence.

The Landlord and the Tenant agree that a condition inspection report was completed at the start of the tenancy.

The Landlord stated that the Tenant was provided with two opportunities to participate in an inspection of the rental unit on July 31, 2013, neither of which was made in writing. The female Tenant stated that the Tenant was not offered the opportunity to inspect the unit on July 31, 2013.

The Landlord and the Tenant agree that they verbally agreed to inspect the rental unit on August 06, 2013 and that the Tenant subsequently cancelled that appointment. The Agent for the Landlord stated that the Tenant was never provided with written notice of a final inspection. The Agent for the Landlord stated that a condition inspection report was completed on August 06, 2013, in the absence of the Tenant.

The Landlord is seeking compensation, in the amount of \$417.54, for painting the rental unit. The Agent for the Landlord stated that the walls were in good condition at the start of the tenancy; that the rental unit is approximately 2.5 years old; and that the walls, baseboards, and doors were damaged in various areas. The Agent for the Landlord stated that there were a variety of scratches and chips on the walls/baseboards, that there was writing on the walls and doors, and that the Tenant had drilled holes in the baseboards.

The Landlord submitted photographs of the damage, which the Agent for the Landlord stated that she took on August 06, 2013 and a receipt to show that \$417.54 was paid to repair and paint the damaged walls.

The female Tenant stated that she does not recognize any of the damage depicted in the Landlord's photographs; and that the photographs could be photographs of damage in a different rental unit. The Tenant submitted photographs that the Tenant took at the end of the tenancy, which the Tenant contends show the walls were in reasonably good condition.

The Landlord is seeking compensation, in the amount of \$83.58, for repairing 2 sets of blinds in the rental unit. The Landlord submitted a receipt to show that \$83.58 was paid to repair the blinds. The Tenant acknowledged that two sets of blinds were damaged during the tenancy.

The Landlord is seeking compensation, in the amount of \$5,000.00, to recover the cost of the deductible charged to the Landlord for an insurance claim. The Agent for the Landlord stated that the Landlord's insurance company repaired water damage to the floor and the kitchen counter.

The Agent for the Landlord stated that the kitchen countertop was in good condition at the start of the tenancy and that it was stained at the end of the tenancy. The Agent for the Landlord speculates that the stains were caused by standing water. The Landlord submitted photographs of the countertop, which show a dark staining on the countertop behind the sink and behind the stove.

The Tenant stated that these stains were discussed at the start of the tenancy and she does not know why they were not noted on the condition inspection report that was completed at the start of the tenancy. She submitted a photograph of a Facebook page, dated February 02, 2012. In the photograph on that Facebook page, there is a stain at the back of the stove that appears to be similar to the damage depicted in the Landlord's photograph. The Tenant contends that this Facebook page shows that the damage occurred prior to the start of the tenancy.

The Landlord and the Tenant agree that the flooring in the rental unit was damaged when water was accidentally spilled during the tenancy. The Landlord submitted photographs of the damaged floor. The Agent for the Landlord stated that the laminate flooring throughout the rental unit needed to be replaced, as the damaged flooring was uniform throughout the unit and replacing a portion of the flooring would not have been appropriate. The Landlord submitted estimates to show that it would cost \$2,530.95 or \$3,141.49 to replace the flooring.

The Landlord is claiming \$100.00 for cleaning the rental unit. The Landlord submitted photographs of the rental unit that the Agent for the Landlord contends show that the rental unit required cleaning at the end of the tenancy. The female Tenant stated that the rental unit was clean at the end of the tenancy, although she did forget to clean behind the stove. The Tenant submitted photographs of the rental unit that the Tenant contends show that the rental unit was left in reasonably clean condition.

The Landlord is claiming \$75.00 for cleaning the carpet in the rental unit. The Landlord submitted photographs of the carpet that show there are some small stains, particularly near the base of the wall. The female Tenant stated that she shampooed the carpet on July 27, 2013 with a friend's carpet cleaner. The Tenant submitted photographs of the carpet in several locations of the unit.

The Landlord is claiming \$45.00 for cleaning stains from the deck of the rental unit. The Landlord submitted photographs of the carpet that show there are some small stains on the deck. The female Tenant stated that she does not recall those stains.

The Landlord and the Tenant agree that the fireplace mantle was damaged in two locations during the tenancy. The Agent for the Landlord stated that the damage was not repaired and that the Landlord is seeking \$100.00 in compensation for the depreciated value of the unit as a result of this damage. The Landlord submitted photographs of the damage.

The Agent for the Landlord stated that the bathtub was scratched in two locations. She stated that the damage was not repaired and that the Landlord is seeking \$40.00 in compensation for the depreciated value of the unit as a result of this damage. The Landlord submitted photographs of the damage. The female Tenant stated that she does not recall the bathtub being scratched.

The Landlord and the Tenant agree that the Tenant did not return two access fobs until December 04, 2013. The Agent for the Landlord stated that by the time the fobs were returned the Landlord had already replaced the fobs. The Landlord submitted a receipt to show that the fobs were replaced on November 06, 2013, at a cost of \$112.00.

The Landlord and the Tenant agree that the Tenant did not return two guest parking passes. The Landlord submitted a copy of a ledger that shows the Landlord was charged \$50.00 to replace the passes.

The Landlord is seeking compensation, in the amount of \$182.70, for a variety of repairs, which include replacing light switch covers, repairing tracking for a sliding closet door, reinstalling an improperly installed bedroom door, repairing a pocket door, disposing of abandoned items, and replacing burned out light bulbs. The Landlord submitted a receipt for these repairs, which indicates the Landlord was charged \$40.00 for dumping fees, \$34.00 for supplies, and \$100.00 for labour.

The Agent for the Landlord stated that two light switch covers were cracked during the tenancy. The Landlord did not submit a photograph of the damaged switches. The female Tenant stated that none of the light switch covers were damaged during the tenancy.

The Agent for the Landlord stated that tracking for a closet door was damaged and did not open or close properly. The Landlord submitted a photograph of the damaged

tracking. The female Tenant stated that she does not recall any of the closet doors being broken.

The Agent for the Landlord stated that a pocket door to the ensuite bathroom was stuck and needed to be realigned. The female Tenant stated that this door worked properly during the tenancy.

The Landlord and the Tenant agree that the door to the master bedroom was replaced during the tenancy by the Tenant and that it was not properly installed.

The Landlord and the Tenant agree that the Tenant left a television, a water cooler, and some planters at the rental unit at the end of the tenancy. The female Tenant stated that she wanted to pick them up on August 06, 2013 when she attended the inspection and that the Landlord would not agree to keep these items for her after she informed the Landlord she would not be attending the inspection on that date.

The Agent for the Landlord stated that there were 8 light bulbs burned out at the end of the tenancy. The female Tenant acknowledged that this was possible.

The Landlord and the Tenant agree that the Landlord served the Tenant with written notice of the Landlord's intent to show the rental unit to potential renters, by posting the notice on the Tenant's door on July 09, 2013. The parties agree that the Tenant subsequently informed the Landlord, via email, that the Landlord could not show the unit. The female Tenant stated that they told the Landlord that the unit could not be shown because they were feeling harassed by the Landlord. The Agent for the Landlord stated that they did not show the rental unit until after this tenancy ended, due to the Tenant's request not to show the unit.

The Landlord is seeking compensation for lost revenue for August of 2013 as the Tenant's actions prevented the Landlord from showing the unit to prospective tenants, which resulted in lost revenue for that month.

The Agent for the Landlord argued that the condition of the rental unit also impaired the Landlord's ability to find new tenants for August of 2013.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant did not pay the \$1,050.00 in rent that was due on July 01, 2013. As the Tenant is required to pay rent, pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay \$1,050.00 in outstanding rent to the Landlord.

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 a damage or loss occurred; 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 Landlord has submitted insufficient evidence to show that the tenancy agreement required the Tenant to pay a move out fee at the end of the tenancy. In circumstances such as these, where the Tenant does not agree that a term of a tenancy agreement exists, the Landlord bears the burden of proving that the term exists. As the tenancy agreement was not submitted in evidence, I find that the Landlord has not met this burden and I dismiss the Landlord's claim for a "move out fee".

Section 17(1) of the *Residential Tenancy Regulation* requires a landlord to offer a tenant an opportunity to schedule the condition inspection by proposing one or more dates and times. Section 17(2)(b) of the *Residential Tenancy Regulation* stipulates that if the tenant is not available at a time offered the landlord must propose a second opportunity, by providing the tenant with a notice in the approved form. On the basis of the undisputed evidence, I find that the Landlord did not comply with section 17(2)(b) of the *Residential Tenancy Regulation*, because the Landlord did not provide the Tenant with written notice of a condition inspection. As the condition inspection report the Landlord completed on August 06, 2013 was not completed in the presence of the Tenant and it was not completed in accordance with the legislation, I find that the report has limited evidentiary value.

I find that the photographs of the walls submitted in evidence by the Landlord accurately reflect the condition of the walls at the end of the tenancy. In reaching this conclusion I was influenced, in part, by the testimony of the Agent for the Landlord, who stated that she took the photographs on August 06, 2013. I find that the Agent for the Landlord's testimony throughout the hearing was consistent and forthright, and I found her to be a credible witness.

In determining that the Landlord's photographs accurately reflect the condition of the walls at the end of the tenancy, I placed little weight on the testimony of the female Tenant, who stated that she does not recognize any of the damage in the Landlord's photographs. I find this testimony to be less compelling than the Agent for the Landlord's testimony as it was somewhat evasive. I specifically note that declaring that she did not recognize the damage is far less compelling than declaring that the walls were not damaged.

In determining that the Landlord's photographs accurately reflect the condition of the walls at the end of the tenancy, I was further influenced by the undisputed evidence that many of the photographs submitted in evidence by the Landlord were photographs of the rental unit. In my view the photographs taken at close range are consistent with the characteristics of the rental unit and I am satisfied they were photographs of the interior of the rental unit.

In determining that the Landlord's photographs accurately reflect the condition of the walls at the end of the tenancy, I placed little weight on the photographs submitted in

evidence by the Tenant. Although the damage depicted in the Landlord's photographs is not depicted in the Tenant's photographs, I find it entirely possible that the Tenant simply did not photograph areas of the wall that were damaged.

For all of the aforementioned reasons, I find that the Tenant failed to comply with section 37(2) of the *Act* when they did not repair the damage to the walls shown in the Landlord's photographs. In my view, this damage exceeds normal wear and tear. I therefore find that the Landlord is entitled to compensation for repairing/painting the walls.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. The evidence shows that the rental unit was approximately 2.5 years old. I therefore find that the paint in the unit has depreciated by 62.5% and that the Landlord is entitled to 37.5% of the cost of repairing and repainting the walls, which is \$156.58.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not repair the damaged blinds. I therefore find that the Landlord is entitled to the \$83.58 paid to repair the damaged blinds.

I find that the Landlord has submitted insufficient evidence to show that the staining on the kitchen countertop was not present at the start of the tenancy. In reaching this conclusion I was heavily influenced by the photograph of the Facebook page, dated February 02, 2012. As the stain on the countertop appears to have been present on February 02, 2012, which is just one day after the tenancy started, I find it highly likely that the stain was present prior to the start of the tenancy.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report 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. In my view, the Facebook entry is sufficient evidence to refute the notation on the condition inspection report which shows the countertop is in good condition.

In determining this matter I was influenced, to some degree, by the nature of the discoloration of the countertop. In my view, this discoloration may not have been noted as "damage" simply because the parties completing the condition inspection report may have considered this to be the natural colour of the granite. I note that it was not readily apparent to me, on the basis of the photographs, that the discoloration was not a natural shade of the countertop, although I do accept the testimony that it is actually a stain.

As the Landlord has failed to establish that the Tenant damaged the countertop, I dismiss the Landlord's claim for compensation for that damage.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not repair the damaged flooring. I therefore find that the Landlord is entitled to compensation for repairing the flooring.

Section 7(2) of the *Act* requires a landlord to do whatever is reasonable to minimize their damage or loss, which includes repairing damage at the most reasonable cost. As I have determined that the Tenant is not obligated to repair the kitchen countertop, it is not reasonable for the Tenant to be expected to pay the \$5,000.00 insurance deductible for the repair of the floor and the countertop, given that the evidence shows that the flooring could be repaired for less than \$5,000.00.

I find that the Tenant is obligated to pay reasonable costs for repairing the flooring, which is generally considered to be the lowest estimate provided by the Landlord.

The Residential Tenancy Policy Guidelines show that the life expectancy of wood flooring is 20 years. The evidence shows that the rental unit was approximately 2.5 years old. I therefore find that the flooring has depreciated by 12.5% and that the Landlord is entitled to 87.5% of the cost of replacing the flooring. On the basis of the lowest estimate to replace the flooring, I find that the Landlord is therefore entitled to compensation of \$2,214.58.

Section 37(2) of the *Act* only requires a tenant to leave a rental unit in reasonably clean condition. I find that the photographs submitted in evidence by the Tenant show that the rental unit was left in relatively clean condition. Although the photographs submitted by the evidence show that some areas required additional cleaning, in particular the stove, and that there are some small stains on the carpet, I do not find that the unit was left unreasonably dirty. I therefore dismiss the Landlord's claim for cleaning the unit, including the claim for cleaning the carpet and the claim for cleaning the small stains from the deck.

On the basis of the undisputed evidence, I find that the fireplace mantle was damaged during the tenancy and that the Tenant failed to comply with section 37(2) of the *Act* when the damage was not repaired. As the Landlord elected not to repair the damage, I am unable to award compensation for the repairs. However, I find that the Landlord is entitled to reasonable compensation for the depreciated value of the unit as a result of this damage. On the basis of the photographs submitted in evidence, I find that the claim of \$100.00 for this damage is reasonable and I award compensation in this amount.

On the basis of the testimony of the Agent for the Landlord and the photographs submitted in evidence, I find that the bathtub was scratched during this tenancy. I find



this evidence more compelling than the female Tenant's testimony that she does not recall the scratches, as it is entirely possible that she simply did not notice them.

As the Landlord elected not to repair the damage, I am unable to award compensation for the repairs. However, I find that the Landlord is entitled to reasonable compensation for the depreciated value of the unit as a result of this damage. On the basis of the photographs submitted in evidence, I find that the claim of \$40.00 for the damaged tub is reasonable and I award compensation in this amount.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when two access fobs were not returned in a timely manner. I find that the Landlord acted reasonably when the Landlord replaced the fobs on November 06, 2013, and I find that the Landlord is entitled to recover the \$112.00 paid to replace the fobs.

On the basis of the undisputed evidence, I find that the Tenant did not return two parking passes that were provided with the tenancy and I find that the Landlord is entitled to recover the \$50.00 paid to replace the passes.

I find that the Landlord submitted insufficient evidence to show that light switch covers were 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 testimony that two covers were damaged or that refutes the Tenant's testimony that no covers were damaged. I therefore dismiss the Landlord's claim for compensation for this repair.

On the basis of the testimony of the Agent for the Landlord and the receipt for the repair, I find that a pocket door needed to be adjusted at the end of the tenancy. I find the receipt for the repair corroborates the Agent for the Landlord's testimony that the door needed realignment, as I find it highly unlikely that the Landlord would have paid for this repair if it was not necessary.

Although I accept that the pocket door needed realignment, I find that the Landlord submitted insufficient evidence to show that the realignment was necessary as a result of the actions or neglect of the Tenant. In reaching this conclusion I was influenced, to a large degree, that pocket doors sometimes require realignment, particularly in a new home. In the absence of evidence that shows the Tenant damaged the pocket door, I find that the Tenant is not required to pay for the cost of realigning the door.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not remove all of their personal property at the end of the tenancy. I find that the Landlord acted reasonably when the Landlord disposed of the property after the Tenant failed to attend the inspection scheduled for August 06, 2013, as the Landlord is not obligated to retain abandoned property that has a resale value of less than \$500.00. I therefore find that the Landlord is entitled to compensation for the \$40.00 the Landlord paid to dispose of the property.

On the basis of the testimony of the Agent for the Landlord and the photograph submitted in evidence, I find that the tracking for a closet door was damaged during the tenancy. I find this evidence more compelling than the female Tenant's testimony that she does not recall the door being damaged, as it is entirely possible that she simply did not notice the damage. I therefore find that the Landlord is entitled to compensation for repairing this door.

On the basis of the undisputed testimony, I find that the Tenant's replaced a bedroom door during the tenancy and that it was not installed in a professional manner. I therefore find that the Landlord is entitled to compensation for repairing this door.

On the basis of the undisputed testimony, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not replace all of the burned out light bulbs at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for replacing the light bulbs.

As the Landlord did not provide a receipt that specifies precisely how much the Landlord paid to repair the closet door, to reinstall the bedroom door, and to replace 8 light bulbs, I find it is difficult for me to determine how much the Landlord paid to repair these three problems. The Landlord submitted a receipt to show that the Landlord paid \$142.70 for supplies and labour to repair 8 deficiencies with the unit plus \$40.00 to dispose of the personal property. I find it reasonable in these circumstances to attribute 1/8<sup>th</sup> of the bill for supplies and labour to each of the deficiencies addressed. As I have determined that the Landlord has established that the Landlord is entitled to compensation for 3 of the 8 deficiencies, I find that the Landlord is entitled to compensation of \$53.51, which is 3/8<sup>th</sup> of the bill.

Section 29(1)(b) of the *Act* authorizes a landlord to enter a rental unit for the purposes of showing the rental unit to prospective tenants, providing proper notice is provided. A tenant does not have the right to refuse entry to the unit for the purpose of showing the unit, providing proper notice is provided. I therefore find that the Landlord was not obliged to comply with the Tenant's request not to show the rental unit in July of 2013.

On the basis of the undisputed evidence, I find that the Landlord did not show the rental unit to prospective tenants during the month of July of 2013. I find that this decision significantly impaired the Landlord's ability to find a new tenant for August of 2013. As the Landlord opted not to show the rental unit in July even though the Landlord had the legal right to do so, I find that the Landlord must assume liability for the lost revenue that resulted from that decision. On this basis I dismiss the Landlord's claim for compensation for lost revenue.

While I accept that the condition of the rental unit may have impaired the Landlord's ability to re-rent the unit on August 01, 2013 to some degree, I find that the primary reason for being unable to rent the unit for August was the Landlord's decision not to

show the unit in July. I therefore cannot award compensation for lost revenue on the basis of the condition of the rental unit.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$3,950.25, which is comprised of \$1,050.00 in unpaid rent, \$2,850.25 in damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution, and I grant the Landlord a monetary Order for this amount. In the event that the Tenant does not 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 *Residential Tenancy Act*.

Dated: December 12, 2013

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Residential Tenancy Branch

