



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OMNI PROPERTY MANAGEMENT SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDL-S, 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 for money owed or compensation for damage or loss, 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 stated that on June 30, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in June of 2022 was sent, via registered mail, to a forwarding address provided by the Tenant. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

On February 18, 2023 and February 21, 2023, the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on February 08, 2023. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and the evidence was accepted as evidence for these proceedings.

On February 21, 2023 the Tenant submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the

Landlord. As the Tenant did not attend the hearing to establish evidence was served to the Landlord and the Landlord did not acknowledge receiving the Tenant's evidence, the Tenant's evidence was not accepted as evidence for these proceedings.

The Agent for the Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. He affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed he 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, and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on December 01, 2020;
- the tenancy ended on May 31, 2022;
- the Tenant paid a security deposit of \$1,150.00;
- a condition inspection report was completed at the beginning of the tenancy; and
- a condition inspection report was completed at the end of the tenancy, although this final report was not signed by the Tenant.

The Landlord is seeking compensation for repairing and painting the walls in the rental unit. In support of this claim the Agent for the Landlord stated that:

- the walls were damaged and needed repair;
- there were scratches and marks on the walls;
- there were holes in the wall from pictures and from a television that was mounted on the wall;
- the unit was last painted in November of 2020; and
- the Landlord submitted invoices to show that the Landlord incurred costs of \$239.00 for paint supplies and \$231.00 for labor.

The Landlord is seeking compensation for repairing damaged blinds in the rental unit. The Agent for the Landlord stated that the blinds were stained and could not be repaired. The Landlord submitted photographs of the damage blinds. Although I did not recognize the photographs as images of damaged blinds during the hearing, I was able to recognize them as such as I was reviewing them after the hearing.

The Agent for the Landlord stated that the blinds were new in August or September of 2020. The Landlord submitted an invoice to show that the Landlord incurred costs of \$513.51 for replacing the blinds.

The Landlord is seeking compensation for replacing a refrigerator door. The Agent for the Landlord stated that the door was dented and did not seal properly at the end of the tenancy, although the Land did not submit photographs of that damage.

The Landlord is seeking compensation for repairing a countertop in the rental unit. The Agent for the Landlord stated that the glossy finish of the solid countertop was scuffed and had black streaks on it. The Agent for the Landlord referred to a photograph of the countertop which shows a stain on the countertop in front of a sink drain. The Landlord submitted a receipt to show the Landlord paid \$126.00 plus tax for a sealant to repair the countertop.

The Landlord is seeking compensation for replacing a light fixture in the rental unit. The Agent for the Landlord stated that "ballast" of the light fixture was broken, which he describes as the place where the light bulb is screwed into the light fixture. He stated that he does not know how the fixture was damaged and no photographs of the fixture were submitted in evidence.

The Landlord is seeking compensation for discarding boxes, carpets, and other personal belongings that the Tenant left in the garbage area. The Agent for the Landlord stated that the Tenant was not permitted to discard these types of items in the garbage and the Landlord paid a junk removal company to dispose of the items.

The Landlord is seeking compensation for cleaning the rental unit. The Agent for the Landlord stated that the unit required cleaning, although no photographs were submitted that establish cleaning was required.

The Landlord is seeking compensation, in the amount of \$100.00, for a moving out fee. The Agent for the Landlord was unable to refer me to anywhere in the tenancy

agreement where the Tenant agreed to pay a move out fee of any amount. He referred me to section 13(c) in the addendum to the tenancy agreement, however he agreed this does not specify a \$100.00 move out fee was required.

Analysis

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 undisputed evidence, I find that a condition inspection report was completed at the beginning of the tenancy and at the end of the tenancy, although the final report was not signed by the Tenant.

As the condition inspection report that was completed at the start of the tenancy was signed by both parties and there is no evidence to suggest it is inaccurate, I find this report accurately reflects the condition of the unit at the start of the tenancy.

As the condition inspection report that was completed at the end of the tenancy was not signed by the Tenant to indicate he agreed with the content of the report, I cannot rely on this report to determine the condition of the unit at the end of the tenancy.

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) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

On the basis of the undisputed testimony and photographs of the walls submitted by the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair damage to the walls. On the basis of the invoices submitted in evidence, I find that the Landlord incurred costs of \$470.00 to repair and repaint 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 is that the living room was painted at the beginning of the tenancy and was, therefore, approximately 17 months old when the tenancy ended. I therefore find that the paint in the living room had depreciated by 35.4% by the end of the tenancy and that the Landlord is entitled to 64.4% percent of the cost of repainting the living room, which in these circumstances is \$302.68.

On the basis of the undisputed testimony and photographs of the blinds submitted by the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damaged blinds. On the basis of the invoices submitted in evidence, I find that the Landlord incurred costs of \$513.51 to repair the blinds.

The Residential Tenancy Policy Guidelines show that the life expectancy of blinds is ten years. The evidence is that the blinds were new in August or September of 2020. I therefore find that the blinds were approximately 19 months old when the tenancy ended. I therefore find that the blinds had depreciated by 15.8% by the end of the tenancy and that the Landlord is entitled to 84.2% percent of the replacing them, which in these circumstances is \$432.37.

I find that the Landlord submitted insufficient evidence to establish that the damage to the refrigerator door exceeded reasonable wear and tear. In reaching this conclusion I was heavily influenced by the absence of photographs of the damaged door which would enable me to determine whether the damage exceeded reasonable wear and tear. Reasonable wear and tear is a subjective determination and I am unable to make that determination without some independent evidence to corroborate the opinion of the Landlord of the Landlord's agent.

As the Landlord has failed to establish that the damage to the refrigerator door exceeded reasonable wear and tear, I dismiss the claim for repairing the door.

On the basis of the undisputed testimony and photograph of the countertop submitted by the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair damage to the countertop. On the basis of the receipt, I find that the Landlord paid \$126.00 plus taxes of \$15.12 for materials used to repair the countertop and I find the Landlord is entitled to recover that cost.

I find that the Landlord submitted insufficient evidence to establish that the light fixture was damaged due to the actions of the Tenant. In the absence of a photograph or similar evidence to show that the Tenant applied unusual force to the fixture, I cannot conclude that the Tenant is obligated to repair the fixture. I find it entirely possible that the fixture stopped working for reasons entirely unrelated to the actions of the Tenant. I therefore cannot conclude that the Tenant is obligated to replace the fixture.

On the basis of the undisputed testimony, I find that the Tenant disposed of personal items in the residential complex garbage prior to vacating the unit. In the absence of evidence to show that the Tenant was prohibited from disposing of the types of items he left in the garbage area, I cannot conclude that the Landlord is entitled to recover the costs of disposing of this garbage.

I find that the Landlord submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of photographs that enable me to determine whether the unit was left in reasonably clean condition. Cleanliness is a subjective determination and I am unable to determine whether the unit was left in reasonably clean condition without some independent evidence to corroborate the opinion of the Agent for the Landlord's opinion that additional cleaning was required.

As the Landlord has failed to establish that the rental unit was not left in reasonably clean condition, I dismiss the claim for cleaning.

In the absence of any evidence to show that the Tenant agreed to pay a move out fee of \$100.00, I dismiss the claim for this fee.

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 \$976.17, which includes \$302.68 for painting, \$432.37 for replacing the blinds, \$141.12 for repairing the countertop, 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 \$976.17 from the Tenant's security deposit in full satisfaction of this monetary claim.

As the Landlord has not established the right to retain the entire security deposit, the Landlord must return the remaining \$173.83 to the Tenant. Based on these determinations I grant the Tenant a monetary Order for \$173.83. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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 27, 2023

Residential Tenancy Branch