Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, RP, RR, MNDCT, FFT (March 22, 2018 Application)
LAT, LRE, MNDCT, RR, FFT (June 19, 2018 Application)

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution, filed on March 22, 2018, wherein the Tenant requested the following relief:

- an Order that the Landlord:
    - comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation,* or the residential tenancy agreement;
    - make repairs to the rental unit; and,
    - be restricted from entering the rental unit;

- monetary compensation from the Landlord for
    - an alleged illegal rent increase;
    - compensation for the cost of repairs, services or facilities;
    - breach of the Tenant's right to quiet enjoyment, and,
    - recovery of the filing fee.

The hearing of the March 22, 2018 Application was originally conducted by teleconference on June 5, 2018. Although the parties engaged in significant settlement discussions, the matter was not resolved at the hearing; further, the hearing did not complete within the scheduled time such that more time was required.

On June 7, 2018 I made an Interim Order adjourning the March 22, 2018 Application as well as Ordering that the Landlord make repairs to the rental unit. This Decision must be read in conjunction with my Interim Decision.

The hearing continued on August 10, 2018. That hearing also did not complete and required a further adjournment.
On June 19, 2018 the Tenant filed a further Application for Dispute Resolution seeking the following relief:

- an Order that the Landlord:

    - make repairs to the rental unit; and,
    - be restricted from entering the rental unit;

- monetary compensation from the Landlord in the form of a rent reduction of $25.00 per month from June 2018 onwards for lack of a bike storage space.

The June 19, 2018 Application was heard on August 17, 2018. At that time I joined the Tenant's two Applications pursuant to *Rule* 2.10 of the *Residential Tenancy Branch Rules of Procedure* which reads as follows:

> **2.10 Joining applications**
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> Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:
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> a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
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> b) whether all applications name the same landlord;
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> c) whether the remedies sought in each application are similar; or
>
> d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

The hearing on August 17, 2018 also did not complete. As such the matter was adjourned to October 11, 2018 at which time it completed. In total, the hearing of the Tenant's Applications occupied 378 minutes of hearing time, or 6.3 hours.

Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Amend Tenant's Application

On her Application for Dispute Resolution the Tenant personally named the Landlord's Agent in addition to the owner of the property as Landlord. The Landlord's agent, P.L., confirmed that he is an agent of the owner, A.Y. He further advised that T.M., the management company named by the Tenant, is merely an email address and not a legal entity.

Pursuant to section 64(3)(c) of the *Act,* I amended the Tenant's Application for Dispute Resolution to name the owner of the rental property as the Landlord.

Preliminary Matter—Issues to be Decided

As the matter did not completed on the initial hearing date of June 5, 2018, the Tenant's request for a repair order pursuant to section 32 of the *Act* was considered. The Landlord's agent confirmed the Landlord's agreement to making the requested repairs and by Interim Decision dated June 7, 2018 I ordered that the Landlord make the following repairs:

1. By no later than June 20, 2018, the Landlord shall retain the services of a qualified electrician to inspect, and repair if possible, the lights in the kitchen and the under cabinet lighting. The Landlord shall also request the electrician to provide a written opinion as to the reason the lights have been burning out.

2. By no later than June 20, 2018, the Landlord shall retain the services of a qualified appliance repair person to inspect, and repair if possible, the glass in the oven door and request the repair person to provide a written opinion as to the reason the glass broke.

3. By no later than June 20, 2018, the Landlord shall retain the services of a qualified appliance repair person to inspect, and repair if possible, the refrigerator freezer and request the repair person to provide a written opinion as to the reason ice accumulates on the bottom of the freezer.

When the hearing reconvened on August 10, 2017, the parties provided testimony as to these repairs. While the parties disagreed as to whether the Landlord's Agent complied with the above Orders in terms of timing of the repairs and obtaining the required written opinions, the parties agreed that the repairs were completed such that a further repair order was not required.

Preliminary Matter—Monetary Claim

Rule 2.2 of the *Residential Tenancy Rules of Procedure* provides that a claim is limited to what is stated on the application

The Tenant failed to indicate a monetary amount on her March 22, 2018 original Application for Dispute Resolution. As well, when the Tenant filed her second application in June of 2018 she claimed only $25.00 per month for loss of the bike locker from June 1, 2018 onwards.

The Landlord's Agent confirmed that he was expecting to deal with the Tenant's monetary claim as set out on her Monetary Order's Worksheet. As such, I amend the Tenant's claims to include a claim for monetary compensation consistent with her Monetary Order's Worksheet.

Preliminary Matter—Date of Delivery of Final Decision

Section 77(1)(d) of the *Act* provides that a Decision must be rendered within 30 days of the conclusion of the hearing.

Hearings before the Residential Tenancy Branch are scheduled for one hour. This hearing occupied 6.3 hours of hearing time over four separate days. The duration of the hearings, in addition to the documentary evidence filed by both parties, as well as the statutory holiday on November 12, 2018, resulted in this Decision being finalized beyond the 30 day deadline.

I confirm pursuant to section 77(2) that the delivery of this Decision beyond the 30 days has no effect on my authority or the validity of my Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord for rent paid pursuant to two alleged illegal rent increases?

2. Is the Tenant entitled to monetary compensation from the Landlord?

3. Is the Tenant entitled to a rent reduction as of June 1, 2018 in the amount of $25.00 for the loss of a bike storage unit?

4. Is the Tenant entitled to an Order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation,* or the residential tenancy agreement?

5. Is the Tenant entitled to an Order that the Landlord be restricted from entering the rental unit?

6. Is the Tenant entitled to recovery of the filing fee for both applications?

Background and Evidence

In support of her claim, the Tenant testified as follows. She confirmed that the tenancy began July 1, 2015. Monthly rent was payable in the amount of $1,500.00 and she paid a $750.00 security deposit.

In the within action, the Tenant filed a Monetary Orders Worksheet wherein she confirmed that she sought the following:

Compensation for illegal rent increase from January 1, 2017 to January 31, 2018	$565.50
Compensation for illegal rent increase from February 1, 2018 to April 31, 2018	$185.22
Compensation for cost to paint the rental unit at start of tenancy	$384.41
Compensation for cost to clean rental unit at start of tenancy	$350.00
Cost to replace the Tenant's clothes iron	$50.38
Cost to replace lightbulbs due to faulty electrical	$88.49
Cost to replace the Tenant's parking fob	$120.00
Return of deposit due to no inspection report	$750.00
"Late lease fee"	$1,500.00
Compensation for Breach of quiet enjoyment due to Landlord's "frequent visits to attend to the same issue"	$1,291.00
TOTAL CLAIMED	**$5,285.00**

Rent Increase

In terms of her claim for monetary compensation related to two rent increases the Tenant testified as follows.

She stated that the first rent increase was delivered to her via email on July 28, 2016, and was not issued in the proper form.

A copy of the email from the Landlord's Agent to occupants of the rental building was provided in evidence. In this email the Landlord's Agent writes that he will be coming around to deliver the "official notices".

The Tenant denies receiving the promised official notice. Further, neither party submitted a copy of the *Notice of Rent Increase* Form #RTB-7 for this rent increase.

The Tenant also stated that initially the Landlord's agent asked her to pay the rent increase September 12, 2016 but then he moved the start date to January 1, 2017. The requested amount was $43.50 per month such that her monthly rent increased to $1,543.50. The Tenant testified that the Landlord also did not issue a proper Notice of Rent Increase at the time of moving the start date to January 1, 2017.

The Tenant confirmed that she paid the rent increase as of January 1, 2017. In this action she sought return of the funds paid pursuant to this increase, for the calendar year 2017 as well as the month of January 2018 for a total of $565.50.

The Tenant testified that the Landlord then issued a second Notice of Rent Increase on October 23, 2017 raising the rent to $1,605.24 as of February 1, 2018. Introduced in evidence was an email exchange between the Tenant and the Landlord's Agent on October 25, 2017 wherein she confirms receipt of the second Notice of Rent Increase.

The Tenant's Advocate submitted that the second rent increase was also in contravention of the *Act* because it was left on her kitchen table and therefore not properly served. Her advocate also noted that there was no service address noted on the Notice and at that time the Tenant did not have an address for the Landlord.

The Tenant stated that due to the illegal rent increase from 2017, the second rent increase was higher than the amount permitted by the *Regulations.* She confirmed that she sought compensation for the amount paid over and above the allowable amount (4% for 2018) for a total of $185.22 for the months February, March and April 2018. She also sought an Order setting her rent at the allowable amount for the balance of the year as well as related compensation for any amounts paid pursuant to the illegal increase.

Cleaning and Painting Costs

The Tenant also sought compensation for expenses she incurred at the start of the tenancy; namely: $350.00 in compensation for the cost to clean the rental unit and $348.41 for the material costs to paint the rental unit at the start of the tenancy.

The Tenant testified that when she moved into the rental unit the unit was incredibly dirty and required painting due to "gouges in the wall". She claimed this was not initially visible as the previous' tenants furniture covered up the "filth".

The Tenant testified that she brought this to the Landlord's Agent's attention at the time, and he confirmed that the Landlord did not want to paint so the Tenant did it herself. She also stated that they refused to reimburse her the out of pocket expense relating to cleaning and painting. She stated that she did not pursue the issue before as the tenancy was more positive in its infancy. She confirmed that she was asking for her time to clean and the cost of the paint, but not her labour associated with painting.

The Tenant provided in evidence two photos of the walls and trim taken when she first moved in and which showed visible scratches. Other photos of the rental unit taken when the tenancy began depict small amounts of debris under appliances, a bathroom mirror with some water spots, and a refrigerator which required light cleaning.

Replacement Cost of Iron and Lightbulbs

In terms of her claim for the replacement cost of her iron, the Tenant submitted that her iron malfunctioned because of faulty wiring at the rental unit.

The Tenant also sought compensation for the cost to replace lightbulbs which she claimed kept burning out, again, due to electrical wiring issues. In support she provided receipts for new bulbs for kitchen and bathroom lights. She also submitted that the electrician who attended on June 23, 2018 (pursuant to my Interim Order) noted on his invoice that overheating was an issue.

Fob Issues

The Tenant also sought compensation for expenses related to her malfunctioning fob; the Tenant testified that her fob began malfunctioning about three weeks before it stopped working. The Landlord only took action when it broke, and not before her car was towed because of the fob being broken. The Tenant submitted that she did her best to mitigate her losses by asking that the fob be repaired as soon as it malfunctioned and should be reimbursed the cost of the towing charge.

Bike Locker

In her second application the Tenant also sought a rent reduction in the amount of $25.00 for loss of use of a bike locker. She confirmed that it was not a term of her tenancy agreement that she had a bike locker; however, she stated that she has had a bike locker since June 2016.

She advised that the procedure for obtaining a bike locker is by lottery such that every June owners must apply. She confirmed that as she moved in July 2015 she was not able to apply for one until June of 2016. The Tenant stated that you have to apply every year and she asked the Landlord's agent, P.L., to apply this year and he responded that the owner was not applying.

Quiet Enjoyment

In terms of her claim that the Landlord has breached her right to quiet enjoyment and her request that his right to enter the rental unit be restricted, the Tenant testified that the Landlord's Agent regularly comes into her rental unit and yells and raises his voice at her such to such an extent that she is afraid of him. She also stated that he attempts to do repairs on his own without hiring professionals which prolongs the repairs and interruptions. She also stated that he knocked on her door to deliver papers without giving her notice.

The Tenant confirmed that her second Application arose primarily due to the Landlord's Agent's attendance at the rental unit for the purposes of making repairs pursuant to my Interim Order. She characterized this as the most egregious breach of her right to quiet enjoyment.

The Tenant testified that on Saturday June 16, 2018, between 9:00 a.m. and 10:00 a.m. in the morning she heard knocking at her door. She looked through the door and saw P.L. and another man.

She claimed that she did not receive proper written notice that they were intending to enter the rental unit. She stated that when P.L. unlocked the door she asked him what he was doing and he said he was there to make repairs. He also told her that he sent an email to her giving her notice. She stated that she did not receive such an email, and that in any case, that is not proper notice as required by the *Act.*

The Tenant stated that due to the very strained relationship with P.L. she wanted to have someone else at the rental unit when those repairs occurred. She was not aware they were coming and as such did not have anyone there with her. She also testified that she was dressed in her undergarments at the time they arrived.

The Tenant closed the door and locked it and told P.L. that he did not have permission to enter. She stated that she made some calls to see if someone could come over and be there with her and was unsuccessful. After approximately five minutes P.L. unlocked the door again following which she called the police.

The Tenant stated that she was very startled by all of this and hid in her bedroom. She noted that her apartment is very small, and as such she didn't really have anywhere to hide and therefore went into her bedroom.

She confirmed that the police arrived at approximately 30 minutes later. At that time P.L. was no longer in the hallway. The officer took the Tenant's report. During her discussion with the police P.L. knocked on the door again. The officer then went out into the hallway and spoke to him and then came back to talk to the Tenant to try to mediate.

She confirmed that following this incident P.L. then gave her notice by email of another time he wanted to attend the rental unit to make repairs. She stated that she needed proper notice and that, as she is a teacher, it was difficult to take time off as it was the end of the school year and the busiest time of year. She responded that she needed him to provide proper legal notice so that they were both following the law.

The Tenant testified that on June 18, 2018 she received written notice from the Landlord's Agent that he intended to enter the rental unit on June 25, 2018. The Notice informed her that he would attend "June 25, 2018 exact time TBD on day of for the inspection and repair of Viking range".

These notices were provided in evidence by the Landlord. The Tenant submitted that the font of the text was large, included allegations against her and were posted to her door such that they were visible to all the other residents. She claimed that she had to explain to the neighbours what was going on so that they would not distrust her.

The Tenant confirmed that she sought monetary compensation for the Landlord's Agent's breach of her right to quiet enjoyment as well as an Order restricting the Landlord's right to enter the rental unit.

Landlord's Reply

In response to the Tenant's claims the Landlord's agent, P.L., testified as follows.

Rent Increase

P.L. testified that he issued the first rent increase on the proper form. He also claimed that he complied with section 42 and 43 of the *Act* and increased the rent by the allowable amount.

P.L. testified that on July 28, 2016 he sent an email to the Tenant confirming that he would be issuing a rent increase. He was not able to serve her in person until September 12, 2016 which is why the rent increase did not come into force until January 1, 2017. He claimed that on September 12, 2016 he personally served the Notice (on the proper form) on the Tenant when he was attending the rental unit to reimburse her for the cost of repairing a door lock.
The Landlord also submitted copies of her cheques (which included the increased rent amount) thus confirming that she received the Notice of Rent Increase.

P.L. stated that he followed the section 42 and 43 of the *Act* with respect to both rent increases. He also submitted that if the Tenant did not receive proper notice, how did the Tenant know about the new amounts?

P.L. further submitted that if the Tenant had an issue with the increased rent, she did not mitigate her losses pursuant to section 7(2) by raising the issue at the time.

Cleaning and Painting Costs

P.L. confirmed that the Landlord is not willing to compensate the Tenant for the cost to paint or clean the rental unit at the start of the tenancy.

P.L. stated that before the Tenant moved in in July 2015, they hired a professional cleaner to clean the unit at a cost of $300.00 (a copy of this receipt was provided in evidence). Further, the Landlord notes that the standard of cleanliness is a *reasonable person's* standard, not the

Tenant's standards, and that the photos submitted by the Tenant are of behind the stove, minor water stains on the vanity, and wall scuffs in the closet, areas which are normally hidden.

P.L. confirmed that the Tenant is only the second tenant to live in the rental unit, and the rental unit was built in 2014. The Tenant's tenancy began in 2015 such that the paint was essentially new. P.L. also stated that he told the Tenant that she was welcome to paint the rental unit to a colour to her liking, but the Landlord would not be paying for it.

Replacement Cost of Iron and Lightbulbs

In terms of the Tenant's request to replace her iron, P.L., stated that he was not sure why her iron was defective, or why she is claiming this amount. He also stated that he hired an electrician to replace the outlet because it was burnt out.

P.L. stated that the Landlord was not willing to compensate the Tenant for the cost or replacing the light bulbs as this is the responsibility of the Tenant pursuant to the *Guidelines*. He also confirmed that the fixtures were not faulty as alleged by the Tenant; rather, the light bulbs are overheating due to the use of halogen light bulbs. He confirmed that the Landlord replaced all of the light bulbs with LED bulbs and was not seeking reimbursement from the Tenant for this cost.

Fob Issues

In response to the Tenant's request for $120.00 for expenses relating to the forb, he also confirmed that the Landlord was not willing to pay this amount as she was violating the strata bylaws by parking in the visitor's parking lot.

P.L. stated that he was first notified in early October 2017 that a rubber button on her fob had fallen off. P.L. stated that he was willing to replace the fob, but it would be at her cost as it was damaged, not malfunctioning. P.L. stated that they continued discussing this issue for 3-4 weeks and the Tenant refused to pay the cost for a replacement fob.

On November 4, 2018 the Tenant notified P.L. that her fob did not work at all and she could not get into the parking. He stated that he called her right away and she said she could not get into the gate. P.L. stated that he set up a time on November 5 to test the fob and discovered that it was indeed malfunctioning. The building manager was not in the building until Monday and on that date (November 6) he obtained a new fob for the Tenant.

P.L. stated that the Tenant told her about the car being towed and he informed her that she violated the strata rules regarding the visitor's parking. He also claimed that there is also all day free parking near the building.

Bike Locker

In terms of the Tenant's claim for $25.00 per month for lack of a bike locker, P.L. responded that this was never part of her tenancy agreement. He confirmed that bike lockers are allocated by way of a lottery draw which happens every year.

P.L. confirmed that in the past the Tenant asked for a bike locker and he filled out the application for her. He confirmed that he did not apply for a bike locker for this year as the Landlord has no need for it and she plans on moving back into the rental unit.

Quiet Enjoyment

P.L. confirmed that Landlord opposes the Tenant's request for compensation for breach of quiet enjoyment.

He denied yelling and raising his voice at the Tenant and stated that the only time he has entered the rental unit was to make repairs. He noted that on November 9, 2017 and February 15, 2018 he entered the rental unit for repairs at the request of the Tenant.

He further testified that since the first hearing, he has entered the rental unit a further 5-6 times, all pursuant to the Interim Order. He also submitted that the entry in June was not illegal as he was ordered to have the repairs completed as quickly as possible. He claimed to have given her notice of entry via email. He also noted that the Landlord was charged extra due to the Tenant refusing entry to the repairperson.
P.L. stated that he does not yell at the Tenant, nor does he verbally abuse her, rather it is the other way around. He noted that in the most recent incident in June of 2018 he has audio recording of the Tenant verbally abusing him.

Tenant's Reply

In reply to the Landlord's submissions, the Tenant stated that the Landlord should be responsible for the $120.00 cost to tow her car because this cost is directly related to the malfunctioning fob which he failed to replace in a timely manner.

The Tenant provided documentary evidence which confirms that she told the Landlord's Agent, in early October 2017, that her fob was broken and he refused to replace it.

In terms of the towing charge, the Tenant stated that she came home from work on a Friday evening and could not access her parking. She stated that all the available parking near the rental building is 2 hours max, paid parking, or no parking after 6pm. When she could not access her parking, she put a visitors parking decal on her dashboard 7:00 a.m. and parked in the visitor's parking.

The Tenant stated that they did a parking check and she put a note saying that she lived there and could not get in touch with the Landlord. She also contacted the Landlord's agent, P.L., by email at 6:00 p.m. on Saturday night. On Sunday morning they towed her vehicle.

Landlord's Compliance with Interim Repair Order

At the hearing on October 11, 2018 the Tenant claimed that she did not receive any written opinions from the repair persons who attended the rental unit in June and July 2018 as required by my Interim Order.

The Landlord's Agent, P.L. stated that he asked for a written opinion from the repair persons regarding the repairs and they said they wrote it on the invoice. P.L. confirmed that he told them that there was an Interim Decision from the Residential Tenancy Branch, but he did not show the Decision to them.

The invoices from the repairpersons were provided in evidence. The opinions of the repairpersons were included on the invoices.

Analysis

After consideration of the testimony, evidence and submissions before me, and on a balance of probabilities I find as follows.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website**:** **www.gov.bc.ca/landlordtenant**.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Rent Increase

A Landlord must not raise rent unless such an increase is done in accordance with Part 3 of the *Act* and Part 4 of the *Regulations.*

I accept the Tenant's evidence that the Landlord failed to issue the first notice of rent increase in the proper form as required by section 42(3). While documentary evidence submitted by the parties confirms that the Landlord's Agent's sent a general email to all tenants on July 28, 2016 indicating he would be delivering the "official notice", neither party submitted a copy of the #RTB-7 Form. I therefore find it more likely that the Landlord failed to use the approved form when raising the rent at this time.

I therefore find that first rent increase notice fails to comply and therefore any rent paid in furtherance of that increase is recoverable by the Tenant pursuant to section 42(3). The Tenant is therefore entitled to recover of the **$565.50** claimed.

The Tenant's Advocate submitted that the second rent increase is unenforceable as it was left on the Tenant's dining table. I disagree. I find that this is an acceptable means of service as the dining table is a "conspicuous place" as contemplated by section 89(g) of the *Act* which reads as follows:

> **88** All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
>
> **…**
>
> **(g)** by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

However, as the first rent increase is not enforceable, and the second increase was based on the unenforceable amount the Tenant is also entitled to the additional **$185.22** collected pursuant to the second rent increase.

Cleaning and Painting Costs

The Tenant seeks monetary compensation for cleaning and painting costs at the beginning of the tenancy. Section 32 of the *Act* provides as follows:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Photos submitted by the Tenant indicate some cleaning was required; however I do not find that the photos support a finding that the rental unit was not suitable for occupation at the time the tenancy began. While landlords and tenants often have differing standards of cleanliness, I find the rental unit was reasonably clean at that time. **I therefore dismiss the Tenant's claim for compensation for cleaning of the rental unit at the start of the tenancy.**

Further, I find the Tenant has failed to submit sufficient evidence to support a finding that the rental unit required painting at the start of the tenancy. I accept the Landlord's Agent's evidence that the rental unit had been painted a year prior to the tenancy beginning as documentary evidence submitted by the Landlord confirms that the rental building was built in 2014 (a year prior to the tenancy beginning.)

Residential Tenancy Branch Policy Guideline 40 provides that interior paint has a useful building life of four years. Although the Tenant submitted photos of the rental unit which showed some minor scuffs, these photos do not indicate that painting was required. As such, **I dismiss her claims for compensation for the cost to paint and clean the rental unit.**

Replacement Cost of Iron and Light Bulbs

I accept the Tenant's evidence that her iron stopped working due to a faulty plug. The Landlord's agent conceded that the plug was "burnt" and required replacement. I therefore find it probable that the damage to her iron was caused by the faulty plug. The Tenant is entitled to the **$50.38** claimed.

Although a Tenant is responsible for the cost of replacing light bulbs, I find that the bulbs prematurely burned out due to overheating issues.

The June 23, 2018 invoice from the electrician confirmed that overheating was an issue with respect to lighting in the rental unit. For greater clarity I include the electrician's notes:

> LIGHTING INSPECTION:
>
> Pot-lights in kitchen visually have no issues, however once examining the wiring and push-in pin for the MR16 bulbs I determined that over heating was an issue. With most incandescent light bulbs heating is a huge issue, and with a pot-light the heat has no chance of escaping or venting out. Pot-lights are designed with a over heat protection strip located in close proximity to the socket. With the overheating the over heat protection becomes activated, thus the issue of lights flashing on/off. The solution to this issue was to swap out the incandescent MR16 to LED MR16. The LED lighting will operate with less heat and will not cause nuisance tripping to occur. If the issue continues further measures must be taken, and the pot-lights maybe need to be replaced. However, with my professional opinion I strongly believe the issue will be resolved.
>
> -Pot-light push-in tails need to be used with high temp wire-nuts or barrel lugs.
>
> UNDER CABINET LIGHTING:
>
> Transformer is incompatible with LED lighting since it is designed to be used with halogen bulbs. Therefore, issues such as dimming of lights or flickering will occur. Covers are missing also. The issue would have not occurred if the developers had used LED puck lights. Incandescent/ Halogen bulbs simply just give off to much heat. The heat over time destroys the coverings/housings and ultimately they fall off on their own.
>
> I would strongly try having the developer/strata purchase LED replacement puck lights and bulbs for all the units. This is not just an issue for one unit.

The electrician recommended the lights be changed to LED lights to prevent reoccurrence. The Landlord's agent confirmed that the Landlord followed this advice and replaced all the lights; this suggests to me that the Landlord accepted that the problem was not related to the Tenant.

For these reasons I award the Tenant the **$88.49** claimed for the replacement cost of light bulbs.

Fob Issues

Both parties spent a considerable amount of time providing testimony and submissions during the hearing with respect to the Tenant's malfunctioning fob. This was obviously a highly contentious issue between the parties.

The documentary evidence supports a finding that the Tenant brought this issue to the Landlord's attention following which they disagreed as to who would be responsible for the cost to replace the fob.

Section 31 of the *Act* provides that a Landlord must not change locks or other means that give a Tenant access to the residential property. I find that this provision includes an obligation on the part of the Landlord to ensure the Tenant has uninterrupted access to the residential property.

In the case before me, it is clear the Tenant's fob stopped working such that she was denied access to the rental property.

However, I find that the Tenant parked in the visitor parking contrary to the strata rules such that she knowingly put her vehicle at risk of towing. In doing so, the Tenant failed to mitigate her losses as required by section 7 of the *Act.*

I therefore find the parties should share the cost of the tow charge and award the Tenant compensation in the amount of **$60.00.**

Return of Security Deposit and "Late Lease Fee"

The Tenant also sought compensation in the amount of $750.00 representing return of her security deposit as she claimed the Landlord did not perform an incoming condition inspection.

The Tenant was informed during the hearing that the security deposit is held in trust until the tenancy ends and is to be dealt with in accordance with section 38 of the *Act.* **As such, the Tenant's claim for return of her security deposit is dismissed with leave to reapply.**

The Tenant also sought compensation in the amount of $1,500.00 on the basis that the Landlord provided her with a copy of the tenancy agreement after the time required by the *Act.* Documentary evidence submitted by the Tenant confirms she signed June 18, 2015 and the Landlord signed October 29, 2015.

While section 13(3) of the *Act* provides that a landlord must provide a copy of the tenancy agreement to a tenant within 21 days of entering into an agreement, there is no authority under the *Act* to award $1,500.00 in the event the landlord fails to comply. Similarly, I find the Tenant has failed to prove any loss arising from the late delivery of the tenancy agreement. For these reasons, **the Tenant's claim for $1,500.00 for a "late lease fee" is dismissed.**

Quiet Enjoyment

The Tenant seeks monetary compensation for an alleged breach of her right to quiet enjoyment.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act,* which reads as follows:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment also provides the following additional guidance when considering such claims:

"…

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

…

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

…

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

…

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

…

Although the Tenant and the Landlord's Agent clearly have an acrimonious relationship, I am not persuaded that the Landlord's Agent regularly enters the rental unit and yells and raises his voice at the Tenant as alleged. The evidence submitted by both parties suggests these in person interactions, as well as written communication between the parties, are conflictual; however I am unable to find that the Landlord's Agent is more responsible for the conflict than the Tenant.

The Tenant submitted that the most egregious breach was on June 16, 2018 when the Landlord's Agent attended the rental unit to complete repairs at the rental unit, entered without proper notice, following which she called the police.

A Landlord's right to enter a rental unit is restricted by section 29 of the *Act* which reads as follows:

> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
>
> (d) the landlord has an order of the director authorizing the entry;
>
> (e) the tenant has abandoned the rental unit;
>
> (f) an emergency exists and the entry is necessary to protect life or property.
>
> (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The Landlord's Agent's testified that he provided the Tenant with written notice of his intention to enter the rental unit on June 16, 2018. This notice was allegedly provided by email, which, based on the documentary evidence submitted by both parties, appears to be a regular form of communication between the parties.

The Tenant testified that the Landlord's Agent entered her rental unit without providing the proper Notice. She claimed that she did not receive the email purportedly sent by the Landlord's Agent.

Neither party submitted a copy of this email in evidence. I am therefore unable to find that the Landlord provided proper written notice as required by section 29.

However, I find that this breach/entry was a temporary discomfort and inconvenience. The Tenant's reaction to the Landlord's Agent's entry does not in and of itself determine the severity of the breach.

The parties were keenly aware of the Landlord's need to enter the rental unit to complete repairs as required by my Interim Order, as well as the strict timelines imposed by my Order. As such, although the Tenant may not have been prepared at that time for the Landlord's Agent's arrival, it would not have been entirely surprising that he was attending to complete the repairs.

The documentary evidence confirms that all subsequent entries were pursuant to written notice of entry posted to the rental unit door. The Tenant submitted that these notices were inappropriate as they were in large font and contained allegations which are not related to the notice of entry and were designed to embarrass her. As posting to the rental unit door is an acceptable means of service of documents, and the email communication has proven problematic, I am unable to find the Landlord breached the *Act* by posting notices of entry to the door.

For these reasons I dismiss the Tenant's claim for **$1,291.00** for breach of her right to quiet enjoyment. I also dismiss her claim for an Order restricting the Landlord's right to enter the rental unit.

The Landlord is directed to post Notices of Entry to the rental unit door in accordance with section 29.

Bike Locker

The parties agreed that the allocation of bike lockers is by lottery. While it is unfortunate the Landlord did not put her name in the draw for the June 2018 to May 2019 time period, there was no guarantee that she would have received a locker even if her name had been included in the draw.

Further, although the Tenant had access to a bike locker during some of her tenancy, this was not a term of her tenancy agreement.

I find that the use of a bike locker is not a *service or facility* as contemplated by section 27 of the *Act* as it is neither essential to the Tenant's use of the rental unit as living accommodation or a material term of the tenancy agreement.

I therefore dismiss the Tenant's claim for compensation for the lack of bike storage.

As the Tenant has been partially successful in her application I find she is entitled to recover the $100.00 filing fee paid for both Applications pursuant to section 72 of the *Act.*

Conclusion

The Tenant is awarded monetary compensation in the amount of **$1,581.77** for the following:

Compensation for illegal rent increase from January 1, 2017 to January 31, 2018	$565.50
Compensation for illegal rent increase from February 1, 2018 to April 31, 2018	$185.22
Compensation for illegal rent increase from May 1, 2018 to November 1, 2018	$432.18
Cost to replace iron	$50.38
Cost to replace lightbulbs	$88.49
Cost to replace fob	$60.00
Filing fee (x2)	$200.00
TOTAL AWARDED	**$1,581.77**

The Tenant may recover the $1,581.77 by reducing her next months' rent accordingly.

In furtherance of this my Decision, and pursuant to section 62(3) I find that the Tenant's rent is payable in the amount of $1,560.00, which includes the original rent of $1,500.00 in addition to the allowable 4% for 2018, effective February 1, 2018.

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: November 13, 2018

Residential Tenancy Branch