



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S MNDL-S MNRL-S (landlord);
FFT MNDCT MNSD (tenant)**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38;
- Reimbursement of the filing fee pursuant to section 72.

Both parties attended the hearing and provided affirmed testimony. Each party had the opportunity to make submissions, call witnesses, present documentary evidence and cross examine the other party.

Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party was served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38;
- Reimbursement of the filing fee pursuant to section 72.

Background and Evidence

The parties agree they entered into a tenancy agreement beginning May 15, 2017 and ending when the tenant vacated on August 31, 2018. Rent was \$1,155.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$575.00 which the landlord holds. The tenant has not provided the landlord with permission to retain any of this amount.

The parties agreed the tenant provided the landlord with her forwarding address on the last day of the tenancy.

The landlord clarified her claim as follows:

ITEM	AMOUNT
Flooring – replacement	\$1,087.41
Utilities	\$116.34
Rent - May 13 and 14, 2017 (\$38.50 a day x 2 days)	\$77.00
Lights – interior	\$15.00
Lights exterior	\$15.00

Cleaning and filling nail holes in walls	\$50.00
TOTAL	\$1,360.75

I will address each of the landlord's claim in turn.

Flooring

The parties agreed the tenant resided in a unit immediately below one occupied by the landlord. The flooring in the unit was damaged when a leak occurred in the landlord's unit. The landlord testified the flooring in the unit was laminate and was 9 years old. The landlord stated the flooring required replacement and submitted an invoice of \$1,087.41.

The landlord stated the tenant was responsible for the damage as the tenant failed to promptly inform her of the leak; as a result, the landlord could not promptly make efforts to stop the leaking. By the time the landlord learned of the leak, the flooring was wet for long enough to permanently damage it.

The tenant testified that as soon as she saw the small pool of water by her refrigerator, which she estimated to be "about one cup", she immediately informed the landlord. She stated she used towels to absorb the water and made every effort to stop water damage. She testified the landlord did not do anything for several days. Any delay in remedying the situation was because of the landlord's failure to promptly respond.

Utilities

The tenancy agreement included the provision of utilities. The landlord controlled the thermostat for the unit and the operation of the hot water tank. The landlord testified the tenant willfully and vengefully consumed hydro and gas during the final period of the tenancy thereby increasing her utility bills in the total amount of \$116.34. the landlord requests reimbursement in this amount.

The tenant denied that she used more than a normal and reasonable share of the utilities. The tenant testified that the landlord wanted her to move out; accordingly, in the last two months of the tenancy, the landlord made the tenant's unit as uncomfortable as

possible. At times, the landlord drained the hot water, had the cable TV disconnected, and adjusted the thermostat so the unit was unbearably hot.

Rent - May 13 and 14, 2017 (\$38.50 a day x 2 days)

The landlord claimed the tenant owed her rent as set out above. The landlord testified the tenant moved in to the unit two days early. The landlord acknowledged she had never asked the tenant to pay for these two days until this application.

The tenant denied she is responsible for rent for these two days. She testified the landlord agreed she could move some of her possessions in to the unit a day or two in advance. The tenant stated she was not expected to pay the landlord and had never been asked for payment.

Lights – interior

The tenant agreed to compensate the landlord for the \$15.00 the landlord requested for reimbursement of interior light bulbs.

Lights – exterior

The landlord claimed reimbursement cost of \$15.00 for replacement of an exterior light bulb. The tenant denied that it was her responsibility to replace the exterior light bulb which was missing from its socket when she vacated the unit.

Cleaning and filling nail holes in walls

The landlord claimed \$50.00 from the tenant for cleaning (\$15.00 an hour x 2 hours) and filling nail holes in the wall caused by the tenant (\$20.00). The landlord submitted photographs of nail holes in the wall in support of her claim.

The tenant denied that the unit needed cleaning when she left and stated it was reasonably clean. The tenant acknowledged leaving pin holes in the walls from hanging pictures. The tenant testified she did not cause any other damage claimed by the landlord. In any event, the tenant stated the landlord was planning extensive

renovations of the unit to comply with city by-law requirements; any damage would be repaired as part of those renovations.

Tenant's claim

In her application, the tenant claimed \$17, 529.00 from the landlord for compensation for damages as well as return of her damage deposit of \$575.00.

During the hearing, the tenant clarified her claim was for seven months' rent for a total of \$8,085.00 (\$1,155.00 x 7= \$8,085.00). In summary, the tenant stated her claim was as follows:

ITEM	AMOUNT
Reimbursement of 7 months' rent (\$1,155.00 x 7)	\$8,085.00
Reimbursement of 10 months' rent (September 2018 to June 2019) at \$650.00 a month	\$6,500.00
Security Deposit	\$575.00
TOTAL	\$15,160.00

Reimbursement of 7 months' rent

The tenant claimed damages from the landlord for the rent she paid for seven months, that is, from February 2018 to August 2018.

The parties agreed that on February 8, 2018, the city bylaw enforcement notified the landlord that the unit was an "illegal suite" and significant renovations had to take place within a strict deadline.

The parties differ in their versions of what happened next. The tenant testified she works twelve hours a night (7 PM to 7 AM), four nights a week. As a result, she stated she slept during the day.

The tenant described the ensuing months of construction and renovation as completely disturbing, inconvenient and traumatic. Other than one or two notices from the landlord, the tenant stated that the landlord sent her texts in the mornings notifying her of the

arrival of trades and repair persons that day and not proper notification. She said she had no control over who came and when they came. She said she gave up trying to assure peace and quiet; she left her unit unlocked, used noise blocking ear plugs, and let people come and go at will. She described this situation as distressing to her sense of security as she could not lock her bedroom door.

The tenant testified she did not move out for two reasons.

The first reason was the tenant described being “terrified” of getting a notice of eviction without having an alternate place arranged. She stated new accommodation would be difficult to find. She determined to be as accommodating as possible on the ongoing promises by the landlord that the renovations would be short-lived and would soon be over. The tenant testified the landlord deceived her and manipulated her into believing the renovations were minor and superficial, which they were not.

The second reason is that the tenant testified she was diagnosed at this time with a potentially fatal illness. She stated she did not have the energy to look for a new place. She notified the landlord right away that she was not well. She testified the landlord repeatedly assured her that the noise and construction would soon be over, and the tenant would have a quiet place again soon.

The parties agreed the landlord required the tenant to vacate the unit because of renovations for a 9-day period and that the tenant received compensation.

The parties agreed that in an arbitration decision referenced on the cover page, the tenant agreed to vacate the unit on August 31, 2018.

The tenant stated she is unable to find suitable alternative accommodations until June 2019 and seeks ten months’ compensation for the cost of “couch surfing” of \$650.00 a month since she vacated.

The parties conducted a condition inspection on moving in and moving out. The tenant disagreed with the landlord’s notes on the condition inspection on moving out and indicated this on the report. The tenant refused to sign the condition inspection report on moving out.

The landlord brought an application to retain the security deposit within 15 days of the end of the tenancy.

Both parties seek reimbursement of the filing fee.

Analysis

The parties submitted considerable evidence. The tenant was distraught and emotional during the hearing. I will only reference material, relevant and admissible evidence and testimony in my Decision.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred subject to efforts to mitigate. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

Residential Policy Guideline 16 – Compensation for Damage or Loss states as follows:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- Loss of access to any part of the residential property provided under a tenancy agreement

In this case, the onus is on each party to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I will deal with each party's claims in turn.

Landlord's claims

Flooring – replacement

The landlord acknowledged the tenant did not cause the leak that damaged the flooring. Considering the parties evidence, I find the landlord has failed to meet the burden of proof in establishing that the tenant has any responsibility for the damage to the flooring or that the tenant failed to notify the landlord in a timely manner.

I accordingly dismiss the landlord's claim in this regard without leave to reapply.

Utilities

As there was conflicting evidence by the parties, it is incumbent on the landlord to put forward some evidence that the tenant was responsible for an unreasonable, unexpected increase in the cost of utilities. Considering the evidence of the parties, I find the landlord has failed to meet the burden of proof that the tenant is responsible for this expense.

I accordingly dismiss the landlord's claim in this regard without leave to reapply.

Rent - May 13 and 14, 2017 (\$38.50 a day x 2 days)

The parties disagree on the tenant's responsibility to reimburse the landlord for two days rent at the beginning of the tenancy. In view of the acknowledgement by the landlord that she did not request reimbursement until after the tenancy ended, I find the landlord has not met the burden of proving this aspect of the claim.

I accordingly dismiss the landlord's claim in this regard without leave to reapply.

Lights – interior

The tenant has agreed to reimburse the landlord in the amount of \$15.00 under this aspect of the landlord's claim.

I accordingly award the landlord a monetary award in the amount of \$15.00.

Lights exterior

The landlord claims reimbursement for the cost of replacement of an exterior light bulb which the tenant said was missing when she vacated.

In view of the conflicting testimony of the parties, I find the landlord has failed to meet the burden of proof with respect to this aspect of her claim.

I accordingly dismiss the landlord's claim in this regard without leave to reapply.

Cleaning and filling nail holes in walls

Residential Tenancy Policy Guideline 1 – Landlord & Tenant – Responsibility for Residential Premises states as follows with respect to nail holes:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

The landlord submitted pictures of holes of varying sizes in walls. The tenant acknowledged she created some small holes to hang pictures. In view of the conflicting evidence of the parties, and the ongoing construction and renovations, I find the landlord has failed to meet the burden of proving the tenant is responsible for the costs of fixing and filling the holes.

The tenant has an obligation to leave the unit reasonably clean. In consideration of the evidence of the parties, I accept the tenant's evidence she left the unit reasonably clean. I find the landlord has failed to meet the burden of proving the tenant is responsible for cleaning costs.

I therefore dismiss this aspect of the landlord's claim without leave to reapply.

In summary, I grant an award to the landlord as follows:

ITEM	AMOUNT
Lights Interior – replacement of bulbs, as agreed by tenant	\$15.00
TOTAL	\$15.00

Tenant's claims

Reimbursement of 7 months' rent (\$1,155.00 x 7)

Based on the evidence of the parties, I find the tenant has met the burden of proof on a balance of probabilities with respect to this aspect of her claim. I find the tenant incurred significant compensable loss of access to her unit from mid-February to the end of August 2018, a period of 6.5 months. I find the landlord failed repeatedly to provide the tenant with adequate and proper notice of construction in the unit. I find the renovations and unscheduled attendance of workers during the day disturbed the tenant's right to access to the unit. I find the landlord failed to inform the tenant honestly and fully about the nature and extent of the renovations being undertaken. I find the tenant informed the landlord that she was unwell and sought assurances from the landlord that the construction would soon be over. I find the landlord falsely assured the tenant about the extent of the renovations in order for the tenant to stay in the unit so the landlord could continue to collect rent during renovations.

I accept the tenant's evidence she found the disturbance from unscheduled ongoing renovations upsetting and distressing. I accept the tenant's evidence she shut herself in her bedroom during the day in order to sleep, was denied privacy in her unit, and was deprived of access to the remainder of her unit for significant periods of time, primarily

during daytime when the landlord knew the tenant was sleeping and renovations were taking place.

I therefore find the tenant is entitled to damages for loss of access to her unit in the amount of half the rent for 6.5 months. Accordingly, I grant the tenant a monetary award in the amount of \$3,753.75.

Reimbursement of accommodation expenses

The tenant agreed to vacate the unit on August 31, 2018 as referenced earlier. I therefore find the tenant is not entitled to reimbursement of anticipated living expenses after vacating the unit.

I dismiss this aspect of the tenant's claim without leave to reapply.

Security Deposit

The is entitled to the return of the security deposit in the amount of \$575.00.

As the tenant has been primarily successful in her claim, I grant her reimbursement of the filing fee.

In summary, I grant the tenant a monetary award as follows:

ITEM	AMOUNT
Reimbursement filing fee	\$100.00
Damages – ½ rent (\$1,150.00) for 6.5 months	\$3,753.75
Reimbursement of security deposit	\$575.00
TOTAL	\$4,428.75

The tenant is granted a monetary order in the amount of **\$4,413.75** calculated as follows:

ITEM	AMOUNT
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Award to tenant	\$4,428.75
Award to landlord	(\$15.00)
TOTAL MONETARY ORDER PAYABLE BY LANDLORD	\$4,413.75

Conclusion

I GRANT THE TENANT a monetary order in the amount of **\$4,413.75** against the landlord. The landlord must be served with this order. If the landlord fails to pay this order, this order may be filed in the Small Claims Division of the British Columbia Supreme Court to be 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: February 9, 2019

Residential Tenancy Branch