



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, OLC, LRE (tenant); FFL MNDCL-S MNDL-S MNRL-S (landlord)**

Introduction

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

- An order requiring the landlord to comply the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70; and
- An order requiring the landlord to reimburse the tenant for the filing fee.

This hearing also dealt with a cross-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*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. Each party acknowledged receipt of the other party's Notice of Hearing and evidentiary materials except for the digital photographs of the landlord to which reference follows. No other issues of service were raised. I find each party served the other in accordance with the *Act*.

At the beginning of the hearing, the tenant stated she had vacated the premises. She withdrew her claims. Accordingly, I dismiss the tenant's claims without leave to reapply.

Preliminary Issue

The tenant objected to the consideration of the landlord's photographs, about 50-60 of which were submitted as evidence. The tenant acknowledged she *had* received the landlord's digital photographs on a USB sent to her by registered mail in compliance with the timelines under the *Act*.

Rule 3.10.5 requires that the format of digital evidence must be accessible to all parties. The Rule states in part:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence....

If a party.... Is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The tenant stated that the landlord had not confirmed with her that she had playback equipment or was otherwise able to gain access to the evidence as required by Rule 3.10.5.

The landlord stated she overlooked the confirmation with the tenant as required by Rule 3.10.5; she explained that this was her first time preparing a dispute for the RTB. She testified she did not deliberately overlook confirmation with the tenant. The landlord testified she was aware the tenant was experienced with computers, owned a computer and was in all respects a sophisticated technology user.

The tenant testified she had not viewed the landlord's photographs because of concern of corruption and viruses. I find the landlord failed to comply with Rule 3.10.5 and all of the landlord's digital evidence, the photographs, which were sent to the tenant on the USB will not be considered.

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*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed they entered into a month-to-month tenancy agreement beginning October 20, 2018. The landlord testified the unit is a bottom level apartment in a 1970's home in which the landlord lived upstairs.

The parties agreed the tenant provided notice to the landlord that she would vacate the unit at the end of March 2019; the tenant vacated before that, on March 2, 2019.

Rent was \$1,250.00 and the tenant acknowledged she did not pay rent for the month of March 2019. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$625.00 and a pet deposit of \$625.00 which the landlord holds (together being \$1,250.00 and referred to as 'the deposits'). The tenant has not provided written authorization to the landlord to retain any of the deposits.

The landlord submitted a copy of the tenancy agreement to which is attached an 11-page Addendum. The Addendum provided that the tenant may have an overnight guest for a limited period. The tenant may have an additional tenant in the unit if that person is approved by the landlord after appropriate application; if there is a second permanent occupant, the rent would increase by \$200.00 a month.

At the beginning of the tenancy, the parties signed a condition inspection report which the landlord submitted as evidence. The report indicates that in all material respects the unit was in good condition.

The landlord posted on the tenant's door a Ten-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") on March 2, 2019, thereby effecting service three days later under section 90, that is, on March 5, 2019; the landlord claimed unpaid rent for the

month of March 2019 in the amount of \$1,450.00. The landlord testified that the tenant did not pay the rent or apply to dispute the Notice within five days.

The landlord testified she attempted to arrange a condition inspection of the unit as soon as she learned the tenant planned to vacate early. She testified she offered the tenant two opportunities to inspect the unit; then the landlord issued a Notice of Final Opportunity to Schedule a Condition Inspection which she posted on the tenant's door on March 6, 2019.

The landlord attended the time scheduled for the inspection, March 9, 2019 at 2 PM. The tenant did not attend. The landlord accordingly completed the inspection and submitted the Condition Inspection Report on moving in and moving out as evidence.

The landlord applied for dispute resolution on March 15, 2019 requesting an order for outstanding rent, reimbursement for the cost of cleaning the unit after the tenant vacated, and the cost of replacing the flooring.

The tenant acknowledged owing the landlord the following and agreed to a monetary award in these amounts:

ITEM	AMOUNT
Outstanding rent March 2019	\$1,250.00
Outstanding utility bill	\$95.92
Outstanding utility bill	\$76.44
Total claim acknowledged by tenant	\$1,422.36

The landlord claimed the following, all claims being disputed by the tenant:

ITEM	AMOUNT
Occupancy for a second person in unit for last two weeks February 2019	\$98.86
Occupancy for a second person in unit for the month of March 2019	\$200.00
Carpet cleaning – estimate provided	\$115.50 \$123.20
Reimbursement for landlord's time cleaning	\$350.00

Replacing of laminate flooring – estimate provided	\$3,028.40
Total Disputed Claim	\$3,800.46

Each of the landlord's claims is dealt with in turn.

Occupancy for a Second Person

As set out earlier, the agreement contained a provision for extra payment if a person stayed for over fourteen days or became a second 'permanent occupant'. The landlord testified that the tenant's brother stayed with the tenant in the unit for more than 14 days; therefore, the tenant had to pay a proportionate increase in rent for the two weeks in February 2019 in the amount of \$98.86.

The tenant testified that her brother was a guest of hers and did not stay 14 nights in February 2019. She stated she is entitled to guests and denied that the landlord is entitled to any additional compensation.

Further, the landlord acknowledged that the tenant vacated the unit early in March 2019. However, the landlord testified that as the tenant's brother had now become a second 'permanent occupant' according to the terms of the lease, rent was owing for March 2019 in an amount \$200.00 greater than acknowledged by the tenant.

The tenant responded that she vacated the unit on March 2, 2019. She denied her brother was any more than a brief guest from time to time. She rejected the landlord's claim that she was required to pay rent more than \$1,250.00 for the month of March 2019.

Request for cleaning costs

The landlord provided evidence of payment ~~an estimate~~ of the costs of carpet cleaning in the amount of ~~\$123.20~~ \$115.50. ~~The landlord acknowledged she had not actually incurred this expense and it was an estimate only.~~ The landlord testified to stains on the carpet and the need for cleaning and referred to the reference to the dirty carpet in the condition inspection report.

The landlord also claimed \$350.00 for reimbursement of her time for cleaning the unit after the tenant vacated. The landlord testified the unit smelled like "poo" and needed cleaning and disinfecting throughout. She explained she spent about 24 hours cleaning

the unit; at \$25.00 an hour, the landlord estimated the value of her time as \$600.00. However, the landlord stated that she would be satisfied to receive \$350.00 as she had received an estimate of \$392.00 for cleaning, a copy of the estimate being submitted as evidence.

The condition inspection report, completed by the landlord in the absence of the tenant, indicated several areas of the unit which required cleaning.

The tenant denied that the unit needed cleaning when she left. She stated it was “reasonably clean”. She denied there were stains in the carpet. She claimed that the landlord is not entitled to any compensation for cleaning.

Flooring

The landlord testified that the unit contained laminate flooring that was installed in 2015. The landlord testified there were three scuff marks on the flooring at the beginning of the tenancy; otherwise it was in ‘perfect’ condition. The landlord testified that when the tenant vacated, there were over 60 scuff marks between 3” and 3’ long; the report on moving out indicated multiple scuff marks on the flooring.

The landlord submitted an estimate for the replacement cost of the flooring in the amount of \$3,028.40. The landlord acknowledged the unit had subsequently been rented to another tenant and the flooring had not actually been replaced. Nevertheless, the landlord claimed compensation in the replacement amount.

The tenant denied there were the number of scuff marks on the flooring claimed by the landlord at the end of the tenancy. The tenant stated that most of the flooring was covered by a carpet and she took reasonable care not to mark the floor. The tenant denied the landlord is entitled to any reimbursement for this claim.

Analysis

I will not consider any of the photographs submitted by the landlord pursuant to my finding above. The parties submitted considerable other evidence. I will not address all the evidence submitted or the testimony given. I will only refer to relevant, necessary portions.

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 person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The other party violated the Act, regulations or tenancy agreement;
2. The violation caused the applicant to incur damages or loss;
3. The quantum of the loss;
4. The applicant did whatever was reasonable to minimize their damage or loss

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.

In this case, the onus is on the landlord to prove they are entitled a claim for a monetary award.

I will consider each of the landlord's claims in turn.

Claims for additional rent

I find that the landlord has not provided evidence meeting the burden of proof on a balance of probabilities that the tenant had a guest for more than 14 days or that there was a second permanent occupant in the unit triggering the additional payment requirement in the Addendum. The landlord claimed to have seen the guest, but I find this is insufficient evidence to establish a claim for compensation for additional rent over and above the monthly rent as set out in the agreement. I believe the tenant who stated her brother had visited periodically only.

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

Claims for cleaning

The landlord provided clear, compelling testimony that the unit needed cleaning after the tenant left. The landlord relied on the condition inspection report on moving out and the estimate from two cleaning companies, although the landlord did not actually submit receipts. The conduct of the parties at the hearing, and the considerable acrimonious evidence filed by each party, have led me to the conclusion that relations between them were bitter and hostile; I find it likely the tenant left the unit in the condition described by the landlord. I find the landlord a credible witness. I find the landlord has met the burden of proof on a balance of probabilities that the tenant left the unit requiring cleaning, that the landlord carried out the cleaning she testified she did, and that \$350.00 is a reasonable compensation for the landlord's time in cleaning; accordingly, I grant the landlord a monetary award in the amount of \$350.00 as compensation for all cleaning claims and **\$115.50 for carpet cleaning.**

Flooring

The landlord's testimony, supported by the condition inspection report, is that the tenant was responsible for dozens of scuff marks to the laminate flooring. However, I note that the flooring is still usable, and the unit has been subsequently been rented with the same flooring in place. I find the tenant damaged the flooring and is responsible for the scuff marks on the floor.

However, I find the landlord has not established on a balance of probabilities that the flooring needed to be replaced. Nevertheless, I find the value of the flooring was diminished by the tenant's damage and I award the landlord \$100.00 for compensation in this regard.

Filing fee

As the landlord has been successful in her application, I award her \$100.00 for reimbursement of the filing fee.

Deposits

Further to section 72, I authorize the landlord to apply the deposits to the monetary award.

Summary of Award

I grant the landlord a monetary order of **\$722.36** calculated as follows:

ITEM	AMOUNT
Landlord's claims acknowledged by tenant (above)	\$1,422.36
Reimbursement of cleaning expenses	\$350.00
<u>Reimbursement carpet cleaning</u>	<u>\$115.50</u>
Damage to laminate flooring	\$100.00
Reimbursement of filing fee	\$100.00
(Less deposits)	(\$1,250.00)

Total Monetary Award (<u>Corrected</u>)	<u>\$837.86</u>
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Conclusion

The landlord is entitled to a monetary order in the amount of ~~\$722.36~~ **\$837.86**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) 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: April 12, 2019

Residential Tenancy Branch

THIS DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(a) OF THE RESIDENTIAL TENANCY ACT ON May 1, 2019 AT THE PLACE INDICATED IN BOLD AND UNDERLINING/STRIKETHROUGH ON PAGES IN DECISION AND AS INDICATED IN THE AMOUNT OF MONETARY ORDER.