



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S MNDL-S**

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

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the landlord served the tenant pursuant to 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*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed that the tenancy began on September 1, 2017 and ended when the tenant vacated on February 27, 2019. Rent was \$1,050.00 a month payable at the first of the month. The landlord submitted a copy of the tenancy agreement as evidence which contained a clause in the attached Addendum (section 1) that the tenant was not allowed to smoke tobacco products but "burning of other smoking materials is acceptable". The Addendum also stated that two cats were permitted.

The parties agreed the tenant provided a security deposit of \$525.00 and a pet deposit of \$525.00 (together being \$1,050.00 and referred to as the "deposit") at the beginning of the tenancy. The landlord holds the deposit. The tenant has not provided the landlord with permission to retain the deposit.

The landlord filed an Application for Dispute Resolution on March 9, 2019.

The parties agreed that they did not conduct a condition inspection on moving in or moving out. The landlord testified the unit was in good condition when the tenant moved in; paint and flooring were eight years old at the end of the tenancy.

The landlord testified that he arranged for interested new occupants for the unit to view the unit on February 22 and February 23, 2019 for a two-hour period each day.

On February 22, 2019, the landlord attended at the unit with two prospective occupants, JC and BM. The landlord testified that he noticed a "terrible smell" right away. He

identified the smell as being a combination of animal urine and cigarette smoke. He said the unit was clearly “uninhabitable” because of the “foul smell”. The landlord also observed the unit needed cleaning. He immediately notified the tenant of his observations; the tenant informed the landlord she was no longer living in the apartment.

The prospective occupant JC signed a notarized statement dated March 7, 2019, a copy of which the landlord submitted as evidence, stating in part as follows:

- I was one of a few people attending an open house on Fri, February 22, at 6 PM at [address of unit].
 - The purpose of this open house was to view a 1 bedroom suite being offered for rent by [landlord].
 - Upon entering the suite I was immediately aware of an unpleasant odor.
 - I commented to the other people there that I thought the existing tenant had been smoking tobacco or had garbage rotting somewhere and the other people that were there agreed with me.
 - I agreed with [landlord] to rent thte suite as of March 1st for \$1200 providing the odor was dealt with.
 - On Saturday March 2 @ 2:30 pm I again viewed the suite and found the odor was still very much present.
 - Due to the unpleasant odor I refused to rent the suite.
- [as written]

The prospective occupant BM signed a notarized statement dated March 7, 2019, a copy of which the landlord submitted as evidence, stating in part that he also had attended at the unit on February 22, 2019 to view it, stating “I thought it smelled really bad”. BM stated that he agreed to rent the unit after viewing it again on March 8, 2019 and discovering that the smell was gone. He rented the unit effective March 9, 2019 for \$1,225.00 a month.

From the discovery of the odor on February 22, 2019 until March 8, 2019, the landlord testified he, along with co-workers, worked many hours to clean and repair the unit. The landlord stated he started the project by removing the carpet in the bedroom which “stank”, washing the underlay, and replacing the flooring with linoleum that he purchased online for \$100.00 cash, without a receipt.

When the odor persisted, the landlord sought advice from a restoration company. He learned that when a floor is saturated with urine, to remove the odor, any material that touched the floor would have to be removed, washed (probably several times with different chemicals), treated with ozone, and replaced; the walls and ceilings covered with a film of cigarette smoke would similarly have to be washed, treated and repainted.

The landlord testified that he has built several homes himself. He has professional quality tools, a truck and the construction know-how; accordingly, he undertook to carry out the repairs himself believing that this would achieve good results at reduced cost of hiring a contractor.

The landlord submitted many photographs of the condition of the unit at the end of the tenancy, the work in progress, and his own tools/equipment used in the repairs. During the work, the landlord found many cigarette butts, photographs of which were submitted as evidence.

The landlord also submitted a substantial, detailed and well-organized evidence package listing dates, times, and names of workers, as well as all receipts for all out of pocket expenses (except for the initial replacement of flooring in the bedroom in the amount of \$100.00 which he purchased online).

In summary, the landlord testified the following work was done to remove the odor and to bring the unit to a state in which it could be rented again:

- Cleaning of the entire unit, including washing stained walls and cleaning behind appliances;
- Removing the carpet in the bedroom, removal and washing the underlay, and replacing the flooring with linoleum;
- Removing the linoleum in the remainder of the unit, discarding all flooring, and replacing with new linoleum flooring;
- Removing all kitchen cabinets and attached toe kicks, washing, treating, replacing;
- Removal and replacing of sound proofing mats under flooring;
- Removing all baseboards, washing, treating, replacing;
- Assembling all removed items in one area and treating with ozone after renting an ozone machine to remove residual odor;
- Discarding garbage left by the tenant; and
- Disposal of the removed materials.

The landlord clarified his monetary claims at the hearing as follows:

ITEM	AMOUNT
Cleaning – 42 hours @ \$20.00 an hour	\$840.00
Labour (as per summary of work above, 87 hours @ \$25.00 an hour, or \$2,680.00 with hourly rate varied by time and a half, or double time)	\$2,175.00
Flooring - replacement	\$877.38
Ozone machine – rental	\$84.00
Overhead (use of landlord's vehicle, equipment, supplies, etc)	\$731.49
Loss of rent – first week of March 2019	\$270.90
Total Monetary Award Requested by Landlord =	\$4,978.77

The landlord also requested reimbursement of photocopying costs and registered mail expenses related to the arbitration for which he submitted receipts.

The landlord claimed reimbursement of the \$100.00 filing fee and authorization to apply the deposit to the monetary award.

Tenant's Testimony

The tenant's testimony with respect to each of the landlord's claimed expenses will be addressed separately.

Cleaning

The tenant testified she left the unit reasonably clean and denied any responsibility for the landlord's claimed cleaning expenses. She acknowledged that "some cleaning" behind the appliances had to be done after she left but denied that any other cleaning in the unit was necessary.

The tenant acknowledged there was a smell in the unit at the end of the tenancy and that it did not smell like that when she moved in.

The tenant stated that during the tenancy she had two cats and two rats. For a short period, she had a dog. She testified the cats used a litter box and she only allowed the rats to roam freely on her sofa which she took with her when she left.

The tenant stated that she and the landlord exchanged texts prior to her departure from the unit regarding the smell and what she was going to do about it. She denied that she, or her pets, were responsible for the odor. In her written statement, the tenant stated in part as follows:

It wasn't till the last day of being there cleaning after all my stuff was gone that I smelled something. It seemed to be coming from the drains. ... I went back the days before I left my [suite] and cleaned the drains walls and floors. Never had I smelled anything till the last day of being there cleaning, again it smelled like something in the drains.

[as written]

The tenant acknowledged she smoked marijuana in the unit as permitted under the lease. She denied that she smoked cigarettes in the unit and had no explanation for the cigarette butts found by the landlord during cleaning.

In summary, the tenant's explanation for the odor was that it came from "mildew in the drains". The tenant provided no evidence in support of her assertion.

The tenant denied responsibility for any of the landlord's claimed expenses.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. The hearing was 80 minutes, involved considerable contradictory testimony, and significant documentary evidence. I will only refer to certain aspects of the submissions and evidence in my findings.

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 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. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

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 the landlord is entitled a claim for a monetary award.

I have considered all the evidence submitted by the landlord, including the receipts for all expenses (except for the \$100.00 expense for flooring), the photographs showing the unit needed cleaning, the work done by the landlord.

I have considered that the tenant denied responsibility for the odor and need for cleaning. I do not accept the tenant's account. I prefer the version of events to which the landlord testified as supported by witness statements, photographs, receipts and substantial documentary evidence. I found the landlord credible, informed and prepared.

Cleaning

I have considered all the evidence submitted by the landlord, including the daily time records and the photographs showing the unit needed cleaning.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning when the tenant vacated, the tenant is responsible for the lack of cleanliness, the landlord and co-workers spent 42 hours cleaning, and that the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested at \$20.00 an hour for a total of \$840.00 for this aspect of the claim.

Flooring

In determining damages related to repair and replacement costs for building elements, my assessments are determined in accordance with *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements*. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Based on the Guideline, the useful life of carpet (and for linoleum, a similar product) is ten years.

The Guideline states that “landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item”. The landlord testified the flooring was eight years old at the end of the tenancy. Accordingly, the flooring had an estimated remaining life balance of two years.

I find the landlord is entitled to compensation for the replacement of the flooring, having met all the above tests for entitlement to damages. Therefore, I award the landlord 2/10 (20%) of the amount claimed for the replacement of flooring of \$877.38, for an award under this heading of \$175.48.

Labour

I have considered all the evidence submitted by the landlord, including the daily time records and the photographs showing the work done to the unit.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed repairs to remove the odor when the tenant vacated, the tenant is responsible for the odor, the landlord and co-workers spent 87 hours carrying out repairs, and that the landlord took all reasonable steps to mitigate expenses, especially by doing the work himself and with his own tools and supplies. I find the landlord is entitled to a monetary award at \$25.00 an hour for 87 hours for a total of \$2,175.00 for this aspect of the claim.

I find this is a reasonable award for the repairs as described and to which the landlord testified; I do not accept the landlord's claim for a greater amount based upon time and a half or double time.

Ozone Machine – Rental

In the circumstances, I accept the landlord's claim for rental of the ozone machine and award the landlord \$84.00 for reimbursement in this regard. Again, I find the landlord met all the tests for entitlement to compensation under this heading.

Kitchen and Wall Remediation

Considering the evidence and testimony, I find the landlord is entitled to reimbursement of the claimed expenses of \$395.19 and grant the landlord a monetary award in this amount.

Overhead

The landlord claimed reimbursement of 15% overhead for use of his tools and vehicle. The landlord's justification was that such a charge was normal by construction companies.

However, the landlord is not a construction company and has submitted no evidence in support of this claim. Nevertheless, I find the landlord has incurred expenses in this regard as evidenced by photographs showing his equipment being used and by his testimony.

Accordingly, I award the landlord a nominal amount of \$500.00 under this heading as being an estimate of fair compensation for his expenses in this regard..

Outstanding rent

I find that the landlord was unable to rent the unit because of the repairs necessary as described in greater detail above. I find the landlord lost revenue of \$270.90, as claimed for the loss of rent for part of March 2019. I accordingly grant the landlord a monetary award in this amount.

Landlord's Claims for Photocopying and Registered Mail

I deny these expenses as administrative costs which are not normally recoverable in applications of this nature.

Summary

In summary, I grant the landlord a monetary order of **\$4,045.38** as follows:

ITEM	AMOUNT
Cleaning – 42 hours @ \$20.00 an hour	\$840.00
Labour	\$2,175.00
Flooring	\$175.48
Ozone machine – rental	\$84.00
Overhead (use of landlord's vehicle, equipment, supplies, etc)	\$500.00
Loss of rent – first week of March 2019	\$270.90
Total Monetary Award	\$4,045.38

Filing fee and Deposit

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

I grant the landlord authorization to deduct the deposit from the monetary award.

Conclusion

I grant the landlord a monetary order of **\$3,095.38** calculated as follows:

ITEM	AMOUNT
Monetary Award (set out above)	\$4,045.38
Filing fee	\$100.00
(Less deposit)	(\$1,050.00)
Total Monetary Award	\$3,095.38

Conclusion

The landlord is entitled to a monetary order in the amount of **\$3,095.38**. 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: June 11, 2019

Residential Tenancy Branch