



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: FFL MNDCL-S MNDL-S
Tenant: FFT MNDCT MNSD

Introduction

This hearing was convened in response to cross-applications by the parties. The landlord filed their application April 8, 2019 pursuant to the Residential Tenancy Act (the Act) for Orders as follows:

1. A monetary Order compensation for damage or loss – Section 67
2. An Order to retain the security deposit – Section 38
3. An Order to recover the filing fee for this application – Section 72

The tenant filed their application June 17, 2019 for Orders as follows:

4. An Order for return of security deposit – Section 38
5. A monetary Order compensation for damage or loss – Section 67
6. An Order to recover the filing fee for this application – Section 72

At the commencement of the hearing, the landlord DB, tenant EK and landlord's witness KF affirmed they would provide truthful testimony. When asked about the timeliness and complete exchange of evidence for the cross-applications, both parties stated they were prepared to proceed and have this matter resolved today.

Issues to be Decided

Are the parties entitled to the monetary amounts each has claimed?

Background and Evidence

The parties were given 120 minutes to be heard, to present evidence and to make submissions. The parties submitted extensive evidence (80 files comprising 83 megabytes) to support their claims and to respond to the other party's claims. All evidence and submissions by the parties were reviewed; they will not be reproduced here.

According to the tenancy agreement entered into evidence, this was a fixed term tenancy commencing April 1, 2018 and ending on March 31, 2019. The landlord collected a security deposit of \$800.00 which the landlord retains in trust. The payable monthly rent was in the amount of \$1,700.00 due on the first day of each month. Heat and electricity costs were not included in the monthly rent amount and were the tenant's responsibility.

Submissions by the parties demonstrate the tenancy started on April 1, 2015 and was a periodic tenancy. (Effective December 11, 2017, a tenancy is fixed term only in circumstances prescribed by section 13.1 of Regulation.)

The tenancy ended on March 31, 2019 after the tenant gave 30 days notice; the tenant vacated the unit on March 18, 2019 and remained in possession of the unit until March 31, 2019.

A move-out condition inspection lasting 3.5 hours took place on March 31, 2019 and a report was completed and signed by both parties. The landlord's submissions confirm she received the tenant's forwarding address in writing on or about March 31, 2019.

Landlord's claims

1. The landlord is seeking compensation for the cost of repairing the ventless dryer; she alleges the tenant's negligence caused the need for the repair.
 - a) Repair invoice: \$271.95
2. The landlord is seeking compensation for insurance costs.
 - a) Insurance policy deductible: \$500.00
 - b) Loss of savings from cheaper policy: \$120.00

On or about October 30, 2018, water escaped from the laundry appliance(s) causing

damage not only to the rental unit but to the unit below. The landlord alleges the water damage was a result of the tenant's negligence in failing to clean the ventless dryer's condenser.

The landlord had to file an insurance claim; she was about to switch insurance providers to save money and due to having to file a claim, she could no longer switch providers.

At the move-in inspection, the landlord showed the tenant the laundry appliances, a stacked washer and ventless dryer enclosed in closet with a bifold door. She pointed out the ventless dryer has a condenser and told the tenant it needed to be removed and rinsed in the sink once every three months. There is also a lint filter which needs to be cleaned between every load.

There is no mention of maintenance requirements for the ventless dryer in the move-in condition inspection report or the tenancy agreement.

The tenant received the manual for the dryer. Page 20 of the manual states "The condenser is a very important part of your dryer. This is where the moisture is removed from the air so there is no need for an outside exhaust. If the condenser is not properly maintained it will greatly increase energy consumption and drying time. The condenser unit should be cleaned 3 or 4 times a year, or anytime the CLEAN CONDENSER light blinks." There is also a caution notice:

- NEVER operate the dryer without the condenser in place.
- Do not operate the dryer with a dirty or clogged condenser. Doing so will increase energy consumption and drying times.
- Handle the condenser with care. Do not use sharp or hard objects to clean the condenser as this could damage the condenser
- Do not operate the dryer with a damaged condenser. Doing so could result in leaking which may result in property damage.

There is a decal on the inside of the cover to the condenser reminding the consumer of the requirement to clean the condenser. It is only visible if the cover to the condenser is open.

The tenant does not dispute the landlord showed her the washer and dryer and gave her the manuals on March 31, 2015. The tenant testified she did not retain any knowledge of an obligation to do any maintenance on the laundry appliances and aside from cleaning the lint filter, she did not ever undertake any maintenance of the dryer or any other appliance. She has no experience with a ventless dryer and did not

understand she was expected to do anything other than clean the lint filter. She did not notice any alerts on the dryer to clean the condenser. The tenant said she only became aware of a problem when water was detected in the unit below on or about October 30, 2018.

The landlord acknowledges she did not ever mention the operation of the dryer to the tenant after the move-in inspection and did not conduct any inspection after March 31, 2015 until discovery of the water damage.

The landlord claims the water damage on or about October 30, 2018 was the culmination of a slow leak which was caused by the tenant's failure to clean the condenser. The landlord's evidence of the Nov. 2, 2018 \$271.95 invoice to repair the dryer states in part "filter was clogged with lints, and drain area is blocked with lints. Needs to replace the drain pump."

The tenant claims the drain pump is part of the washer, not the dryer, and disputes the failure to clean the condenser was the sole cause of the water damage. After the water damage, the tenant carefully read the manuals for both appliances and discovered numerous maintenance requirements that were not ever done. She submitted evidence of a monthly requirement to clean the washer drain filter.

The landlord submitted photos of the warped door frame of the closet in which the unit is situated. The witness KF claimed that when she saw the laundry closet on November 2, 2018, it was obvious to her that water damage had occurred over time. The tenant noted that when the witness saw the closet, the restoration technicians had already taken it apart. The tenant denies any knowledge of the appliances malfunctioning and testified the laundry closet smelled of mildew from day one and due to the humidity of the washer/dryer, she always left the closet door open.

3. At the move out condition inspection, the tenant agreed the landlord could retain \$325.00 from her security deposit: \$50.00 (front wall entry coat of paint), \$150.00 (ceiling, living room repair), \$50.00 (cleaning), \$75.00 (toilet seat). The landlord provided receipts and photographs to substantiate her claims for additional costs:
 - a) Cleaning the rental unit after end of tenancy: \$179.55 amended to \$156.25 at hearing
 - b) Replacing light bulbs, toilet seat, bathroom shelf: \$436.91
 - c) Painting the unit and repairing the textured ceiling: \$2,021.25

On or about March 21, 2019, the landlord provided the tenant with a list of deficiencies to correct by the end of the tenancy. She created this list based on her observations during the tenant's move out on March 18, 2019. The tenant did not expect the landlord to inspect the unit on this date as she had not provided permission for the landlord to be in the rental unit. (As noted below, the tenant alleges the landlord's presence in the unit on moving day was a breach of her quiet enjoyment.)

The landlord testified she mitigated her loss by doing cleaning herself, e.g., the bathroom floor, and sought estimates to choose the lowest-cost solutions; a professional cleaning company and "handyman" service completed the other repairs and receipts and photographs were entered into evidence.

The tenant acknowledges she damaged the textured ceiling when trying to spot clean it. The tenant provided her own estimate showing the ceiling could be repaired with "spray can stipple" and painted for \$567.00. The landlord testified and provided an invoice to substantiate she paid a painter \$987.00 to paint and repair the ceiling but the spots were still visible, thus substantiating a need for additional work. The landlord provided evidence of numerous inquiries of how best to repair the ceiling for the least cost. In addition to the April 7, 2019 invoice for \$1,575.00 in labour and \$262.50 in material to "paint entrance wall & ceiling" to substantiate her claim of \$2,021.25, the landlord provided in evidence two estimates for repairing the ceiling and painting the walls. One is for \$1650.00 plus GST for ceiling repair (not including painting, an extra \$640.00 plus GST); the other is for \$2,425.50.

The tenant believes the landlord should have given her the opportunity to find less-expensive ways to address the deficiencies and provided her own estimates of the reasonable cost to repair the deficiencies. The tenant disputed she was responsible for replacing burnt out lightbulbs which didn't work during the tenancy. The landlord stated the tenant had the opportunity to bring the state of the rental unit up to the expected standard by March 31, 2019 and failed to do so.

4. The landlord seeks authorization to recover the filing fee of \$100.00 for this application for dispute resolution from the tenant.

Tenant's claims

At the hearing the tenant withdrew her claims of \$3,950.33 for moving expenses, \$74.00 for insurance policy cost and \$500.00 insurance policy deductible.

5. As noted above, the tenant agreed \$325.00 could be retained from the security deposit and is seeking the return of the remaining portion of her security deposit:

a) \$475.00

6. The tenant is seeking compensation for loss of use of parts of the rental unit and increased hydro costs during the restoration process following the water damage:

\$3,060.00 for loss of use of kitchen sink, closet and hallway, presence of noisy humidifier; this figure represents

- a) 40% rent reduction of \$680.00 for November 2018
- b) 40% rent reduction of \$680.00 for December 2018
- c) 50% rent reduction of \$850.00 for January 2019; dehumidifier removed but increase to 50% reduction due to lack of space available due to moving preparation (boxes)
- d) 50% reduction of \$850.00 for February 2019 for same reason as January.
- e) Increased hydro usage from dehumidifier: \$132.98
- f) Use of laundromat: \$11.00

To protect her possessions during restoration she emptied the closet beside the laundry closet and had to keep her things in boxes. Part of the flooring in the hallway was removed. The dehumidifier operated for 24 hours a day for three months and emptied into her kitchen sink causing her to not want to cook in the kitchen. The tenant claims the apartment was a hazardous construction zone that was uninhabitable. The landlord disputes this and testified that she was unaware of the impact the state of the rental unit was having on the tenant.

The tenant submitted December 2, 2017 – February 2, 2018 (\$91.86), October 4, 2018 – December 3, 2018 (\$110.95) and December 4 – Feb. 1, 2019 (\$ 111.77) hydro bills to document increased cost due to use of the dehumidifier; during the hearing, the tenant stated she could not be certain of the cost of the increase due to fluctuation of the rates at which hydro usage is billed.

The tenant was not confident the washer was working properly after the dryer was repaired because she believed the landlord and repair people ignored it. She chose to do laundry at a laundromat on November 18, 2018 to ensure there would not be further water damage.

7. The tenant is claiming a refund of her March 2019 rent and cost of the damage deposit at a new rental unit:
 - a) March 2019 rent: \$1,700.00
 - b) Damage deposit for new rental unit: \$800.00

The tenant testified she decided on December 31, 2018 she would terminate the tenancy and time her move-out to coincide with the restoration of the flooring so her moving expenses would be covered by her insurance policy. The landlord was aware of this plan.

The landlord would not accept anything less than 30 days notice to end the tenancy. The tenant claims the landlord did not establish or notify the tenant in a timely manner of the schedule for restoration thereby undermining her ability to find a new rental unit and give proper notice.

The tenant provided evidence of email communication with the landlord that shows as of January 30, 2019 the landlord still had no estimate of when restoration work would begin. On February 6, 2019 the landlord requested the tenant's insurance information which the tenant had already provided her on November 15, 2018. The tenant found a new rental unit about this time and tried to negotiate an end to the tenancy with less than 30 days notice but the landlord would not compromise.

8. Tenant is seeking compensation for the "Loss of Quiet Enjoyment/Pain and Suffering" she experienced after the water damage:
 - a) \$2,500.00

The tenant allowed her keys to be held by the concierge to enable access for repairs. The tenant submitted that the concierge misplaced the keys and the tenant was anxious until the keys had been located. People associated with the building and doing repairs entered her unit without providing any notice. The landlord did not refute this.

The tenant entered a December 28, 2018 email into evidence in which, among other things, she wrote to the landlord:

If someone had let me know in advance, I would have made sure to be home to let them in OR when Ricky called today I would have left work to come let them in if it was absolutely necessary, but I wasn't given any choice in the matter. They just entered against my wishes and without my permission. This is ABSOLUTELY NOT OK with me.

The landlord acknowledged this email in the rebuttal she submitted into evidence.

The tenant also entered into evidence a March 14, 2019 email exchange with the landlord about her move-out on March 18, 2019. The tenant agreed to have the landlord participate in the walk-through inspection of the hallways/elevator with the concierge before and after the move. The tenant explicitly noted she would direct the movers within the rental unit. The tenant testified she did not give permission for the landlord to enter the rental unit on her moving day.

The tenant testified the landlord sneaked into the rental unit on March 18, 2019 without her knowledge or permission. The tenant experienced this as a culmination of mistreatment by the landlord; she felt deceived, violated and otherwise suffered the effects of stress related to the landlord's failure to respect her privacy during a difficult period.

The landlord testified she thought the tenant was an emotionally mature business owner and was unaware of the impact the situation was having on the tenant.

9. The tenant seeks authorization to recover the filing fee of \$100.00 for this application for dispute resolution from the landlord.

Analysis

For either party to be successful in their monetary claims, there must be proof the opposing party failed to comply with the Act, Regulation or tenancy agreement and this non-compliance has resulted in damage or loss. Once this has been established, the party must then prove the amount of or value of the damage or loss and that he or she acted reasonably to minimize the value of the damage or loss. (Policy Guideline #16).

Landlord's claims (1 – 2)

Section 32 of the Act states:

- (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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 8(2)(a) of the Regulation states:

The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.

The landlord's demonstration of the a ventless dryer and handing the tenant the manual on March 31, 2015 did not establish a duty of care which was then breached by the tenant when she failed to clean the condenser.

Given the allegedly critical need to clean the condenser, the landlord had an obligation to check on the ventless dryer. For a period of three years and seven months (April 1, 2015 – October 30, 2018) the landlord did not mention the dryer or its condenser to the tenant.

I note the manual states energy consumption and drying time will increase if the condenser is not cleaned, thus the tenant would have suffered the effects and I believe she would have cleaned the condenser if she was aware of the obligation to do so.

Furthermore, if the quarterly maintenance requirements were critical not just to limit energy consumption, but also to prevent property damage, the landlord had a duty to record these requirements in the tenancy agreement.

I do not find the landlord's testimony and submissions demonstrate the tenant knew she was supposed to clean the condenser. I also do not find it credible the tenant knew the condenser was damaged and ignored a slow leak thereby causing the damage which occurred on or about October 30, 2018.

I find the tenant's use of the dryer over the length of the tenancy was reasonable wear and tear and dismiss the landlord's claims related to water damage without leave to reapply.

3. a) \$156.25 cleaning

Section 37(2)(a) of the Act states:

When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The tenant admitted there needed to be additional cleaning and agreed to \$75.00. I find the landlord minimized the value of her loss by undertaking some cleaning on her own. The cleaning was undertaken by a recognized professional company. I award the landlord compensation of \$156.25.

3. b) \$436.91 for miscellaneous repairs

With the exception of the need to replace burnt-out light bulbs, the tenant admitted these deficiencies existed at the time of the move-out condition inspection. On March 31, 2019, the landlord had no obligation to allow the tenant more time to fix the deficiencies. The landlord minimized the value of her loss by obtaining estimates and selecting the lowest estimate; she provided receipts to prove the value of the repairs that were completed. The tenant has not proven the landlord's claims are unreasonable or inflated.

I award the landlord compensation of \$436.91.

3. c) \$2,021.25 for painting and ceiling repair

The tenant agreed to \$50.00 being withheld from her security deposit to pay for painting the front entry. The tenant suggested \$567.00 was the appropriate compensation to repair the damaged ceiling.

The landlord's two estimates, and the April 7, 2019 invoice for \$2,021.25, indicate she has tried to minimize her loss and identify the most cost-effective means of repairing the ceiling. I find it credible the landlord paid \$987.00 to repair and paint the ceiling and the damage was still evident. I find the landlord suffered a loss of at least \$2,021.25 due to damage caused by the tenant.

I award the landlord compensation of \$2,021.25.

4. As the landlord was largely successful in her application, I award the \$100.00 filing fee.

Tenant's claims (5 – 9)

5. \$475 security deposit

In accordance with Section 38 of the Act, the landlord filed an application to retain the security deposit within 15 days from receiving the tenant's forwarding address. The tenant must compensate the landlord for damages exceeding \$800.00

The tenant's claim for return of \$475 from her security deposit is dismissed without leave to reapply.

6. a) – d) \$3,060.00 rent reduction

The tenant has not proven the landlord failed to comply with the tenancy agreement or with section 32(1) of the Act, which requires the landlord to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I dismiss the tenant's claims for a rent reduction without leave to reapply.

e) \$132.98 increased hydro cost

The humidifier was a necessary part of the repair of the water damage. The landlord did not fail to comply with the tenancy agreement or the Act by running the dehumidifier for three months. Furthermore, I reviewed the tenant's hydro bills and am unable to identify a difference in hydro costs due to the use of the humidifier.

I dismiss the tenant's claim for hydro costs without leave to reapply.

f) \$11.00 laundromat

The tenant did not substantiate the landlord breached the tenancy agreement by failing to provide a working laundry facility on November 18, 2018.

I dismiss the tenant's claim for use of a laundromat without leave to reapply.

7. a) \$1,700.00 March 2019 rent refund
b) \$800.00 security deposit at new unit

Section 45(1) of the Act requires the tenant to provide notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. While a tenant and landlord may mutually agree in writing to end a tenancy agreement at any time (ref: Section 12(5) of Regulation), the landlord was not required to accept from the tenant less notice than required by Section 45(1) of the Act.

The landlord's failure to provide the tenant with sufficient notice of the floor restoration to coincide with the tenant's securing of a new rental unit is not a breach of the Act or the tenancy agreement.

I dismiss the tenant's claim for compensation related to a new tenancy agreement without leave to reapply.

8. \$2,500.00 for pain and suffering/loss of quiet enjoyment

Section 28 of the Act states:

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.

The tenant has provided evidence to substantiate the landlord knew by at least December 28, 2018 the tenant was protective of her privacy and did not want anyone, including the landlord, the building manager and repair technicians, in the rental unit without the tenant's prior knowledge and permission. This is her right under Section 28.

The landlord does not deny entering the rental unit on March 18, 2019 without the tenant's knowledge or permission. The landlord provided no reason why her ad hoc inspection on March 18, 2019 was necessary.

Based on both the landlord's and tenant's testimony and submissions, I find that when the landlord entered the rental unit without the tenant's permission on March 18, 2019 the landlord should have known the tenant would experience it as another violation of her privacy, yet the landlord did it anyway. I find the landlord breached Section 28 (a)

and (c) of the Act.

In accordance with Policy Guideline #16, punitive damages are not allowed under the Act. To compensate the tenant, I award nominal damages of \$100.00.

9. As the tenant was partially successful in her application, I award her 25% of the filing fee (\$25.00).

Conclusion

I grant an award to the landlord according to the following itemization of the landlord's and tenant's successful claims:

Cleaning	\$156.25
Misc. repairs	\$436.91
Ceiling repair and paint	\$2,021.25
Filing fee	\$100.00
Minus tenant's security deposit	(\$800.00)
Minus tenant's nominal award	(\$100.00)
Minus tenant's filing fee	<u>(\$25.00)</u>
Total monetary award:	\$1,789.41

I order the landlord may retain the security deposit of \$800.00 in partial satisfaction of the award and I issue a monetary order pursuant to Section 67 of the Act for the balance of the award in the amount of \$1,789.41. If necessary, the order may be filed and enforced in the small claims division of the BC Supreme Court.

This decision is final and binding and 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: August 6, 2019

Residential Tenancy Branch