



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Preliminary Issues

The Landlord filed their application for dispute resolution June 26, 2014, seeking \$1,000.00 monetary compensation for damages. In the Landlord's October 24, 2014 evidence submission they have submitted receipts for repairs that exceeded the amount listed on their application for dispute resolution.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.5* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case the Landlord did not file an amended application and simply listed the additional claims in their evidence. Accordingly, I dismiss the amounts for damages above the original \$1,000.00 claimed, without leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on June 26, 2014, to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant and each person provided affirmed testimony.

The *Residential Tenancy Branch (RTB) Rules of Procedure # 2.5* stipulates that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch a detailed calculation of any monetary claim being made and copies of all other documentary and digital evidence to be relied on at the hearing.

The RTB Rules of Procedure # 3.13 provides that where possible, copies of all of the applicant's available evidence must be submitted to the Residential Tenancy Branch and served on the other party in a single complete package. An applicant submitting any subsequent evidence must be prepared to explain to the Arbitrator why the evidence was not included in their initial submission.

The Landlord testified that he served the Tenant his evidence by registered mail on October 20, 2014 and he provided the tracking number in his oral testimony. He argued that the evidence was sent to the original forwarding address provided by the Tenant, the same address his Application was sent too; therefore, the Tenant should have received it within the required timeframe. The Landlord submitted that service of his evidence was delayed as he was waiting for an invoice for the purchase of the new oven and because he works out at sea for three weeks every month.

The Tenant testified that he did not receive the Landlord's evidence and he was not notified that a package had been sent to his forwarding address.

The Canada Post tracking information confirms that Canada Post attempted delivery of the evidence package on October 22, 2014 and that a notice card was left that date to advise the Tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on October 28, 2014 stating that the registered mail was available for pick up.

As of November 5, 2014 Canada Post tracking information confirms that no one has attempted to pick up the registered mail. Based on this information, I find that the Tenant was provided with 3 opportunities to receive the registered mail and did not, which I find to be a deliberate effort on the part of the Tenant to avoid service; therefore, pursuant to Section 71 of the *Act* I find the tenant was sufficiently served with the Landlord's evidence, and I considered that evidence in my decision.

During the hearing each party was given the opportunity to provide their evidence orally and to respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord met the burden of proof to obtain a Monetary Order?

Background and Evidence

It was undisputed that the Tenant had occupied the property since December 2012. The parties executed two consecutive written tenancy agreements, the first for a one year fixed term and the second for a six month fixed term tenancy. The most recent tenancy agreement commenced on January 15, 2014 and was scheduled to end on June 15, 2014. The Tenant was required to pay rent of \$1,675.00 on the 15th of each month and in December 2012 the Tenant paid \$1,000.00 as the security deposit which was brought forward to the subsequent tenancy agreement.

On December 3, 2012 the parties conducted a move in walk through inspection and completed and signed the condition inspection report form. It was undisputed that that the tenancy ended on June 15, 2014, and that the parties conducted a walk through inspection at that time.

The Landlord testified that when he began to point out damages during the move out walk through the Tenant became very upset and left before he had time to complete the condition inspection report form. The Landlord stated that he completed the form in the Tenant's absence, took photographs, and left a copy with some of the Tenant's possessions that were piled up outside waiting to be moved.

The Landlord filed his application seeking \$1,000.00 for compensation of damages that were caused to the stairwell, the garage door, the fridge, the oven door, and for cleaning costs. The Landlord submitted receipts for the items that had been repaired and he was under the impression that he could amend his application to increase the claim amount by simply submitting the receipts in his evidence.

The Tenant testified that he had completed the move out walk through with the Landlord but that the Landlord did not have the condition report form with him at that time. He stated that he was disputing all of the items claimed by the Landlord because the Landlord did not take photographs during the move out inspection and there were other

tenants who had moved into the unit right after he left; therefore, they could have caused the damages.

The Tenant submitted that he provided the Landlord with his forwarding address on June 15, 2014 and argued that the Landlord's application was served to him more than 15 days after the tenancy ended.

The Landlord confirmed receipt of the Tenant's forwarding address and argued that it was received by text message a few days after the Tenant moved out. He also noted that his photographs were taken during the move out inspection and not afterwards, it was simply that the Tenant was upset and left.

The Landlord's documentary evidence included, among other things, photographs of the rental unit and the following receipts for repairs: Oven \$1,155.00, Cleaning \$168.00, Drywall repairs and painting \$755.49; and parts for the fridge of \$49.31.

In closing the Tenant provided a post office box number for his current service address, as noted on the front of this decision.

Analysis

Upon consideration of the evidence before me, I favor the version of events as discussed by the Landlord and corroborated by their documentary evidence which included receipts for repairs that exceeded the \$1,000.00 claimed.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

As per the foregoing I find the Landlord has met the burden of proof and I award them damages in the amount of **\$1,000.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Damages & repairs	\$1,000.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,050.00
LESS: Security Deposit \$1,000.00 + Interest 0.00	<u>-1,000.00</u>
Offset amount due to the Landlord	<u>\$ 50.00</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$50.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and 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: November 07, 2014

Residential Tenancy Branch

