



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on July 15, 2014, to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all or part of the security deposit; 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 who both provided affirmed testimony.

At the outset of the hearing the Landlord requested an adjournment as he did not submit his documentary evidence to the Residential Tenancy Branch (RTB) until December 11, 2014, the day before this hearing. He argued that his application had been filed by his legal counsel in mid July 2014 and that sometime around the end of July 2014 he decided not to continue being represented by counsel due to cost reasons.

The Landlord stated that he did not know why his evidence had not been submitted by his legal counsel at the time he filed his application but noted that some of the invoices pertaining to his claim had not been received by that time. He submitted that his time is constrained as he works out of town and he is the primary caregiver for his mother, who resides with him. He stated that he did not read all of the application documents back in July when he first released his legal counsel.

The Tenant submitted that while she would like this matter to be put off until well into the future, her doctors have told her that her relationship with the Landlord is the cause of her anxiety, is bad for her nerves and she will not be released from the hospital until this matter is dealt with. Therefore, she would like to go ahead with the hearing as scheduled if that was possible.

Residential Tenancy Branch Rules of Procedure, Rule # 6.4 sets out the criteria for an adjournment as follows:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

When a party makes an application for dispute resolution they are provided information and fact sheets regarding time frames for service of evidence. After careful consideration of the forgoing, and the Rules of Procedure # 6.4, I find the Landlord's adjournment request arose solely out of his neglect to review the application and hearing documents back in July 2014, when he made the choice to represent himself in this matter. Furthermore, his legal counsel ought to have known that the evidence was required to be submitted with his application. Therefore, in consideration of the Tenant's request to proceed, I find it would prejudice the Tenant if this matter was delayed and I declined the adjournment request. I proceeded with the hearing as scheduled.

The Residential Tenancy Branch Rules of Procedure (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; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

The only exception is when an application is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56 or an application under the *Manufactured Home Park Tenancy Act* section 47 or 49 [my emphasis added].

The Rules of Procedure # 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

The Rules of Procedure # 3.14 stipulates that if an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

In this case the Landlord filed his application July 15, 2014, under the *Residential Tenancy Act* section 67 for monetary compensation, and did not submit his evidence to the RTB until December 11, 2014, the day before the scheduled teleconference hearing.

Based on the foregoing, and in the absence of evidence to prove there were exceptional circumstances that prevented the applicant Landlord from filing his evidence in accordance with the Rules of Procedure, I find the Landlord's evidence did not comply with the Rules of Procedure, and I declined to consider the Landlord's late documentary evidence. I did however consider the Landlord's oral testimony.

The Tenant affirmed that she personally delivered her evidence to the RTB on December 11, 2014, which consisted of a box of documents.

The Rules of Procedure # 3.15 provide that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added].

The Tenant's evidence was delivered to the RTB on December 11, 2014, the day before the scheduled teleconference hearing. Based on the RTB official record, the evidence consisted of a box of evidence with unsorted, unlabeled documents and photographs.

Based on the above, I find the Tenant's evidence not to be compiled or served in a manner that meets the requirements of the Rules of Procedure. Accordingly, I declined to consider the Tenant's late documentary evidence; however, I did consider the Tenant's oral testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. 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 proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on April 1, 2014. The Tenant was required to pay rent of either \$850.00 or \$875.00 on the first of each month. Sometime in March 2014 the Tenant paid \$400.00 as the security deposit. No move in or move out condition inspections were conducted and no conduction inspection reports were completed.

The Landlord testified that he served the Tenant a 1 Month Notice to end tenancy when it was posted to her door on May 22, 2014. He stated the effective date of the Notice was June 30, 2014, and the Tenant's possessions were removed by June 28, 2014.

The Landlord submitted that the Tenant had been admitted to a long term care facility in Mid May 2014. He stated that the Tenant's assistant and a mover removed her possessions; they did not return all the keys; did not clean the unit; and they left a freezer, large chair, and a chest of drawers behind. As a result he was seeking compensation as follows:

\$107.25	To rekey the rental unit locks
\$160.00	To dispose of the freezer, chair, and chest of drawers
\$138.00	For the cost of a T.V. cable portal. The unit had two portals inside which the Tenant removed with her possessions. One has since been returned to the cable company; however the Landlord has been charged for the second one.
\$67.40	For the cost of a bathtub railing that was removed from the rental unit with the Tenant's possessions
\$79.85	To steam clean the carpets that were left stained with soap
<u>\$50.00</u>	Cleaning costs
\$602.53	Total Claim

The Landlord requested that the \$602.53 be offset against the \$400.00 security deposit and that he be granted the balance of \$202.53 plus the \$50.00 filing fee.

The Tenant testified that she had been admitted into a care facility in mid May 2014 and that she did have an assistant and movers pack up her possessions and put them into storage sometime around the end of June 2014.

The Tenant agreed that she should have to pay the Landlord the \$50.00 for cleaning the rental unit and disputed the balance of the Landlord's claim as follows:

The Tenant had been issued two keys to the rental unit and her assistant put one key in the Landlord's mailbox and the Tenant remains in possession of the other key. The Tenant argued that the Landlord knew she was in the hospital care facility and that he could have asked her for the remaining key if he wanted it back; therefore, she should not have to pay to rekey the locks.

The Tenant confirmed that she left a freezer, chair, and chest of drawers behind and argued that she thought the Landlord would have sold those items on the internet instead of paying to through them out. She did not agree that she should have to pay to discard those items when they could have been sold. The Tenant questioned the validity of the invoice served by the Landlord as it indicated a television stand had been removed and she had never owned a television stand.

The Tenant did not dispute that the two television portals had mistakenly been packed up with her possessions. She argued that one was given back to the cable company. She argued that she had the cable company give the Landlord a credit and charge her on her invoice for the remaining portal, and argued that the Landlord has now been compensated for the missing portals.

The Tenant indicated that a bathtub railing had been installed in the rental unit. She indicated that if it had been removed and packed up with her possessions that she would be more than willing to return it to the Landlord when her possessions are removed from storage. She does not agree that she should have to pay for the railing and would simply like the opportunity to return it when she retrieves her possession.

The Tenant confirmed that she had not had the carpets steam cleaned at the end of the tenancy and argued that not all of the carpets required cleaning. She submitted that only small portion of carpet had liquid soap dripped on them, so she should not have to pay to clean all the carpets for another tenant.

In closing the Landlord questioned if the Tenant would ever be moved out of the care facility and therefore he should not have to wait indefinitely for the return of his possessions. He denied being refunded by the cable company for the portal and argued that he was not claiming all his losses, such as loss of revenue or costs incurred when he himself spend two days removing garbage from the rental unit.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The Tenant did not dispute the Landlord's claim of \$50.00 for cleaning the rental unit. Accordingly, I award the Landlord cleaning costs of **\$50.00**.

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; and give the landlord all the keys that are in the possession or control of the tenant.

The Residential Tenancy Branch Policy Guideline # 1 provides that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing of the carpets after a tenancy of one year. That being said, the policy also states that a tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness.

After careful consideration of the foregoing, disputed verbal testimony, and on a balance of probabilities I find as follows:

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages are an affirmation that there has been an infraction of a legal right and may be awarded where there has been insufficient evidence to prove the actual value of the loss.

In this case, the Landlord's evidence had not been submitted within the required timeframes to be considered for this hearing; therefore, I find there was insufficient evidence to prove the actual amounts claimed by the Landlord. I have considered the undisputed testimony that no cleaning was conducted at move out, as awarded above; that three pieces of furniture had been left to be discarded by the Landlord; that only one set of keys were returned; and a bathroom railing and television cable portals had been removed from the rental unit. Accordingly, I find that the Landlord is entitled to nominal damages for those remaining five items claimed, in the amount of **\$300.00**

The Landlord has primarily succeeded 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:

Cleaning	\$ 50.00
Nominal damages	300.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$400.00
LESS: Security Deposit \$400.00 + Interest 0.00	<u>-400.00</u>
Offset amount due to the Landlord	<u>\$ NIL</u>

Conclusion

The Landlord's application has been granted with a monetary award of \$400.00, ordered to be offset against the Tenant's \$400.00 security deposit.

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: December 12, 2014

Residential Tenancy Branch

