



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1432 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord JH attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord JH confirmed that he had authority to act on behalf of both landlords.

The landlord testified that the landlords served the tenant with the dispute resolution package on 19 November 2015 by registered mail. The landlords provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Late Evidence

The landlord testified that the landlords served the remaining evidence to the tenant by registered mail on 16 February 2015. The landlords provided me with a Canada Post tracking number that shows that the tenant signed for the mailing on 18 February 2015. On the basis of this evidence, I am satisfied that the tenant was served with the evidence pursuant to section 88 of the Act.

This evidence included:

1. a copy of the condition move out inspection report;
2. copies of the landlord's boarding passes; and
3. copies of seven receipts for cleaning supplies and painting supplies.

This evidence was received by the tenant on 12 February 2015.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be received by the respondent not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, qualified by the words "not less than", the last day for the landlord to file and serve additional evidence in support of their application was 12 February 2015.

This evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

I admit the condition move-out inspection report into evidence as the tenant's agent (who is the tenant's daughter) participated in the move-out inspection on the tenant's behalf. Accordingly, the tenant ought to have had knowledge of the contents of this document. Thus, the tenant is not prejudiced by the admission of this document.

I admit as evidence the copies of the boarding passes and receipts as the documents were not difficult or time consuming to review and the tenant would have had sufficient time to review the documents that she received on 18 February 2015 for a hearing held on 25 February 2015. Accordingly, the tenant is not unduly prejudiced by the admission of these documents.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for loss arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy was subject to successive, fixed-term tenancies. The last fixed-term tenancy agreement was entered into on 21 April 2014. The tenancy was to begin 1 May 2014 and end 30 April 2015. Monthly rent of \$900.00 was due on the first. The landlord testifies that he continues to hold the tenant's security deposit of \$475.00, which was paid in April 2013. The security deposit exceeds one-half month's rent as the initial rent was \$950.00, was later reduced to \$925.00 and then finally reduced to \$900.00.

The rental unit has a one-page addendum. The addendum has two terms. Term one sets out that the rental unit is a no smoking unit.

I was provided with a copy of the move-in/out inspection report. The move-in inspection report is mostly unremarkable. The move-in inspection report notes that there was some staining on the carpet.

The move-out inspection report was completed by the landlord's agent and the tenant's agent on 31 October 2014. The move-out inspection report notes that the rental unit was dirty throughout. The move-out inspection report notes that there was a picture frame in the dining room attached to the wall. The report indicates that the air-conditioner filter required cleaning. The report notes that there was smoke damage in the main bathroom, dining room, and bedroom. The landlord testified that part X of the move-out report actually should have been included in part Z of the report. I accept the landlord's evidence on this issue as the note in part X indicates a date of 28 October 2014, which is near the end of the tenancy. The notes to the move-out report indicate that there is smoke damage throughout the rental unit.

The landlords had a new tenant arranged to begin occupancy on 1 November 2014. The landlord testified that when the new tenant saw the condition of the rental unit she cried. The landlord testified that he had to fly from his home to the rental unit in order to prepare the rental unit for the tenant. The landlord testified that this was the most cost effective and fast way to prepare the rental unit for the new tenant.

The landlord testified that while he was in the city in which the rental unit is situated, he borrowed his friend's truck to gather supplies for the repairs. The landlord testified that he paid for gas for his friend's truck and that the gas cost \$50.00.

The landlord testified that to the best of his knowledge the prior occupants of the rental unit had the carpets professionally cleaned. The landlord testified that the tenant smoked in the rental unit and that the carpets had absorbed the cigarette smoke and as a result the carpets had an offensive odor.

The landlord testified that the walls smelled like cigarette smoke and that when he washed the walls he could see that the walls were yellow. The landlord testified that the cleaners regular cleaning solutions were not able to remove the heavy cigarette odor and staining. The landlord testified that he had to use a special cleaner to remove the cigarette staining and smell from the walls. Similarly, the landlord testified that the ceiling to the rental unit was yellow with cigarette smoke staining. The landlord testified that the ceiling was porous and absorbed a great deal of smoke.

the landlord testified that there were multiple holes in the walls that required filling. The landlord testified that the tenant left a picture attached to the walls that was screwed into the studs. The landlord testified that there were marks on the walls of the rental unit. The landlord testified that the tenant asked if she could paint some walls in the rental unit. The landlord testified that the landlords verbally agreed that the tenant could paint the walls, but on the condition that the tenant repaint the walls when she vacated the rental unit. The landlord testified that the tenant did not paint the walls. The landlord testified that he did not repaint these walls, but did paint the walls in the bedroom (including in the closet) and the ceilings. The landlord testified that he also had to repaint the walls that had many holes in them. The landlord testified that the rental unit was last painted in 2012. The landlord testified that the ceiling had not been painted since the rental unit was built in 2006.

The landlord testified that the blades of the fan in the bedroom were covered in a coat of dust and "gunk".

The landlord testified that there were still items in the fridge and on the counter when the tenant vacated. The tenant also left a coffee table and a rug in the rental unit. The landlord testified that the tenant had sold some items to the new tenant, but that these items were not part of that sale and were not wanted by the new tenant.

The landlord testified that the air conditioner was stained yellow from cigarette smoke.

The landlord testified that he spent four days working on the rental unit for approximately 45 hours total.

The landlords claim for the following reimbursements:

Item	Amount
Flight x 2	\$198.00
Gas Station (4 Nov 2014)	50.00
Home Repair Store (2 Nov 2014)	98.63
Department Store (3 Nov 2014)	8.75
Home Repair Store (3 Nov 2014)	95.71
Hardware Store (2 Nov 2014)	79.51
Department Store (undated)	26.11
Grocery Store (2 Nov 2014)	7.05
Carpet Cleaning (29 Oct 2014)	160.65
Professional Cleaning	210.20
Total Expenses Claimed	\$934.61

The landlord testified that the following amounts in the receipts relate to cleaning expenses:

Item	Amount
Home Repair Store (2 Nov 2014)	11.47
Department Store (3 Nov 2014)	8.75
Hardware Store (2 Nov 2014)	79.51
Department Store (undated)	9.64
Grocery Store (2 Nov 2014)	7.05
Carpet Cleaning (29 Oct 2014)	160.65
Professional Cleaning	210.20
Total Cleaning Costs	487.27

The landlords provided me with receipts and / or contemporaneous documentation as evidence to support their claims. The landlords have elected to cap their claim for damages at \$475.00, which is the amount of the tenant's security deposit which the landlords still hold.

Analysis

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. I find that the tenant did not leave the rental unit reasonable clean and undamaged. In particular, the tenant left the rental unit dirty and left the rental unit damaged from cigarette smoke. These breaches of the Act and tenancy agreement required the landlords to incur expenses in relation cleaning.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Because of the tenant's breach, the landlords incurred costs in relation to the cleaning of the rental unit. I find that the landlords have proven their entitlement to the following amounts:

Item	Amount
Home Repair Store (2 Nov 2014)	11.47
Department Store (3 Nov 2014)	8.75
Hardware Store (2 Nov 2014)	79.51
Department Store (undated)	9.64
Grocery Store (2 Nov 2014)	7.05
Carpet Cleaning (29 Oct 2014)	160.65
Professional Cleaning	210.20
Total Costs Proven	487.27

As the landlords have proven their entitlement to more than the amount that they have claimed, I need not consider the remainder of the landlords' claim.

The landlords kept costs low by doing most of the work themselves. The costs submitted are not excessive. I find that the landlords adequately mitigated their losses.

The landlords are entitled to recover \$475.00 from the tenant. The landlords applied to keep the tenant's security deposit. I allow the landlords to retain the security deposit in satisfaction of the monetary award. No interest is payable over this period.

As the landlords have been successful in their claim, they are entitled to recover their filing fee from the tenant. I issue a monetary order in the amount of \$50.00 in favour of the landlords.

Conclusion

The landlords are entitled to retain the full amount of the tenant's security deposit, that is, \$475.00.

The landlords are provided with a monetary order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 03, 2015

Residential Tenancy Branch

