



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for damage to the unit or losses pursuant to section 67 and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both tenants and the landlord attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

Preliminary Issue: Service of Documents

The landlord testified that he served the tenants with his Application for Dispute Resolution, Notice of Hearing and all of his documentary materials by placing it in their mailbox. His documentary materials submitted for this hearing included 72 photographs of the rental unit. Tenant JM testified that she and her co-tenant (Tenant OM) received the Application, Notice of Hearing and documentary materials including invoices but did not receive a copy of the landlord's photographs. The landlord then testified that he had sent two packages to the tenants by registered mail. He testified that each package contained different materials and he was not certain what materials were in each package. Tenant JM referred to the landlord's monetary order worksheet and the check-sheet that listed copies of documents submitted to support the landlord's claim. She noted that the items checked off were; tenancy agreement; invoices; letters from third parties but not photographs.

In considering whether to allow the landlord's photographs to be allowed as evidence in this proceeding, I note the relevant *Residential Tenancy Act* provisions, the Rules of Procedure and the Residential Tenancy Policy Guidelines. The Dispute Resolution Rules of Procedure, Rule No. 3.5 states that proof of service is required at the dispute resolution hearing. "At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the Arbitrator that each respondent was served with the hearing package and all evidence, as required by the *Act*."

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process. Service of documents is restricted by timelines and methods of service to underscore its importance. Service of documents in the proper time, by the proper method and in a format

that is accessible by the respondents is essential to ensure that the respondents are able to know and meet the case against them. Policy Guideline No. 12 provides further guidance with respect to service issues, indicating that failure to serve evidence properly may result in the hearing proceeding without that evidence being considered or the hearing being adjourned. The Rules of Procedure only allow an arbitrator to consider an adjournment to prove service in unusual and exceptional circumstances.

In this case, I find the landlord/applicant was unable to provide adequate proof of service with respect to his photographic evidence. His testimony with respect to service was in direct contradiction to the testimony of both tenants. The landlord did not seek an adjournment of this hearing and the matter proceeded. Based on the landlord's inability to prove sufficient service of the photographs, I decline to consider the photographs as evidence in this matter.

Issues to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on May 31, 2013 and was scheduled for a one year fixed term with a rental amount of \$1600.00 payable on the first of each month. The tenants vacated the rental unit at the end of the one year term on May 31, 2014. The landlord testified that he continues to hold the \$800.00 security deposit paid by the tenants on May 19, 2013. The landlord testified that the tenants agreed to allow him to retain the security deposit at the end of their tenancy. The tenants both testified that they did not agree to allow the landlord to keep the security deposit. The landlord acknowledged there was no written agreement with respect to the security deposit.

The landlord testified that the tenants did not give proper notice at the end of their tenancy and that, because he was not properly notified that they were vacating the rental unit, he was unable to re-rent until July 1, 2014. He sought \$1600.00 in rental loss as a result of the tenants' actions. The landlord did not testify to his efforts to re-rent the property. Tenant JM testified that she assisted in successfully locating a new tenant. She testified that this tenant began residing in the rental unit on June 1, 2014.

The landlord sought a monetary order to recover his expenses in repairing this unit after the tenants moved out. He testified that no condition inspection report was prepared when the previous tenants moved out. He testified that there were no move-in or move-out condition inspection reports prepared with Tenant JM and Tenant OM. He testified that he identified substantial damage, beyond normal wear and tear, when he saw the rental unit empty.

The landlord testified that the rental unit was newly remodeled and renovated when the tenants moved in. He testified that, when they vacated the rental unit, he found several marks and damage to the walls and molding as well as a broken refrigerator part and burnt out light bulbs.

The landlord sought reimbursement in the form of a monetary order as follows;

Item	Amount
Glass for refrigerator - replacement	\$29.25
Baseboard heater - replacement	46.91
Filler (holes in walls)	14.60
Light bulbs – replacement (6)	14.42
Cleaning supplies	15.00
Labour – repairs by landlord (12 hrs @ \$70.00 per hour)	840.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Sought by Landlord	\$1010.18

Tenant JM testified that she broke a glass part of the refrigerator while cleaning the rental unit to vacate. She testified that she notified the landlord of this damage immediately. With respect to other damage, Tenant JM and Tenant OM testified that they thoroughly cleaned the residence prior to vacating the unit. They testified that they did not notice any damage to the walls or moldings. They denied causing any damage to the walls, moldings or baseboard heater.

Tenant OM testified that there may have been an electrical problem within the rental unit as light bulbs had to be changed very often and burnt out quickly. The landlord acknowledged the possibility of an electrical issue.

Tenant JM referred to the \$1002.18 invoice from the construction company. She submitted that consideration should be given to the fact that the invoice is in the landlord's own name, that he testified that he completed any repairs himself and that he valued his time at \$70.00 per hour.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As the landlord failed to properly serve the photographs of the rental unit to the tenants in this matter, his proof with respect to the existence of the damage to the rental unit is limited. The landlord submitted invoices for his repairs including; a credit card receipt with no particulars

attached; an invoice for paint in the amount of \$13.04; an invoice for tempered glass for \$29.25; a renovation store receipt for \$14.42 for light bulbs and an invoice from a construction company for \$1002.18.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. In this case, the landlord and tenants did not cooperate in joint condition inspection reports. The landlord did not prepare reports or provide reports to the tenants in accordance with section 23 of the *Act*.

Tenant JM acknowledged breaking a glass part of the refrigerator. Given that admission by the tenant and the invoice providing evidence that the landlord paid \$29.25 to repair this item, I find the landlord entitled to recover \$29.25 from the tenants.

With respect to other renovations or damage, Tenant JM and Tenant OM testified that they thoroughly cleaned the residence prior to vacating the unit. They testified that they did not notice any damage to the walls, moldings or the baseboard heater. I accept the testimony of both tenants with respect to cleaning of the residence. Tenant JM was candid in her testimony, identifying damage that she had caused and explaining the circumstances. I do not find that the landlord has successfully shown, on a balance of probabilities that the tenants caused damage to the walls, moldings or baseboard heater. I find the landlord is not entitled to recover his costs claimed in repair of these items.

The landlord agreed with Tenant OM's assessment that there may have been an electrical problem within the rental unit causing the light bulbs to burn out quickly. I do not find that the landlord is entitled to recover his cost of \$14.42 to replace light bulbs.

Tenant JM testified that the landlord's invoice from his own construction company seemed excessive, particularly his labour cost of \$70.00 per hour. Tenant JM and OM testified that there was no damage as a result of their tenancy beyond normal wear and tear. I generally accept the testimony of the tenants as an accurate reflection on the condition of the rental unit after their tenancy ended. The landlord has provided no condition inspection reports or other substantive evidence to dispute the tenants' testimony in this regard.

With respect to the landlord's claim for paint at \$13.04, I find the landlord is not entitled to be reimbursed for this cost. If he had painted immediately before the tenants moved in to the rental unit, that painting would have taken place in May 2013 or sooner. Pursuant to Policy Guideline No. 40 (useful life guidelines), interior walls require painting approximately every 4 years. The tenancy duration was 1 year. The landlord did not claim he was required to paint the entirety of the unit but to patch some holes and marks. I find that these holes and marks, as described by the landlord are a result of normal wear and tear over the course of a one year tenancy and that they were minor in nature. I find the landlord is not entitled to recover \$13.04 for paint.

The bulk of the landlord's claim is contained within his own construction company invoice. He estimates his time at \$70.00 per hour and lists his time at 12 hours for a total of \$840.00. I note that the construction company invoice is dated July 3, 2014. The landlord testified that a new tenant moved in to the unit on July 1, 2014, while Tenant JM testified that the new tenant moved in June 1, 2014. I accept the evidence of both tenants that they thoroughly cleaned the rental unit and that they did not identify major damage within the rental unit. I also note again that the landlord did not complete condition inspection reports to support his claim regarding damage resulting from this tenancy. I find that the landlord has not proven on balance of probabilities that the tenants are responsible for any of the cleaning or repairs he claims.

The landlord also listed a cost of \$15.00 for cleaning supplies and related items. As I have accepted the testimony of the tenants and found the landlord has not met the burden of proof with respect to the need for cleaning or repairs, I do not find he is entitled to \$15.00 for cleaning supplies.

The landlord also sought \$1600.00 in rental loss with respect to this tenancy. Again, I accept the testimony of the tenants with respect to cleaning and find that the landlord has not proven, on a balance of probabilities that he was unable to re-rent the premises as a result of any damage caused by the tenants. I further accept the evidence of Tenant JM that she assisted in finding a tenant who moved in immediately. I therefore find that the landlord is not entitled to recover the \$1600.00 rental loss he sought.

As the landlord was not successful in the majority of his application, I find he is not entitled to recover his filing fee for this application.

Pursuant to the offsetting provisions of the *Act*, I allow the landlord to retain a portion of the tenants' security deposit to satisfy his monetary award and order the landlord to return the remaining portion of the security deposit forthwith. No interest is payable on the security deposit. I issue a monetary Order in the tenants' favour in the event that the landlord does not comply with this order.

Item	Amount
Glass for refrigerator – replacement	\$29.25
Less Security Deposit	-800.00
Amount remaining in security deposit	(\$770.75)

Conclusion

I order the landlord to retain \$29.25 from the tenants' security deposit to satisfy his monetary award. The balance of the security deposit will be reduced from \$800.00 to \$770.75.

I order that that the balance of the security deposit, \$770.75 be returned to the tenants as required under section 38 of the *Act*. The tenants are provided with a monetary Order to this effect in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 7, 2015

Residential Tenancy Branch

