



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASHCROFT MANOR & TEAHOUSE LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit, and an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The landlord attended the hearing. The tenant DG appeared.

As the tenant RJ did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served in person on December 29, 2016. I find that the tenant RJ has been duly served in accordance with the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on July 1, 2013. Rent in the amount of \$700.00 was payable on the first of each month. The tenants paid a security deposit of \$350.00. The tenancy ended on October 30, 2016.

The landlord claims as follows:

a.	Damages & cleaning	\$1,010.52
b.	Pictures, registered mail and fuel	\$ 32.00
c.	Filing fee	\$ 100.00
	Total claimed	\$1,142.52

Damages & cleaning

The landlord testified that the tenants caused damage to the lower range element as it was broken and had to be replaced. The landlord stated that they put the oven on self-clean and when they went back the house was full of smoke. The landlord stated that they had to take of the top of the stove, and inside they found cat food and mouse dropping, it appeared a mouse was storing cat food. The landlord seeks to recover the cost of \$52.35 for the element and \$61.87 for the insulation.

The landlord testified that they had to repaint the bathroom, as the walls were splatter with something. The landlord seeks to recover the cost of supplies in the amount of \$45.30.

The landlord testified that they was a smell in the tenant room and closet. The landlord stated they were unsure of what the smell was; however, they had to rent an ozonator. The landlord seeks to recover the rental cost in the amount of \$56.00.

The landlord testified that the wireless smoke detector was missing and was replaced. The landlord seeks to recover the amount of \$30.00.

The landlord testified that they had to complete 49 hours of repairs and cleaning. The landlord stated that they had to move a lot of garbage. The landlord stated that the tenant RJ informed them that the items left behind were no longer needed by them; this included a large amount of books, bathroom items, and two closets full of clothing. The landlord stated that they had to remove the items and take them to the goodwill. The landlord stated that that the appliances were left dirty, windows needed to be cleaned. The landlord stated that they have filed an itemized list for cleaning. The landlord stated that they had to make repairs, by patching, sanding, and painting holes in walls and other rooms. The landlord seeks to recover the amount of \$750.00.

The tenant testified that the bottom element was broke; however, it was from normal wear and tear. The tenant stated that they had a mouse infestation that year, and the

landlord was aware of the problem. The tenant stated that if a mouse going into the stove insulation that is not their responsibility, it an act of god.

The tenant testified that they did not damage to the walls. The tenant stated that the bathroom has no venting system and the humidity would get high. The tenant stated this is normal wear and tear.

The tenant testified that did not cause any odour. The tenant stated if there was any odour in their closet or bedroom, it was from a rat living in the attic.

The tenant testified that when the tenancy started there were problems with the smoke detector and they were told to bring it to the landlord's agent. The tenant stated that they did that; however they did not get the detector back.

The tenant testified that there was no damage to the rental unit and all their items and bedroom were left clean. The tenant stated that the co-tenant RJ, who is a senior citizen, vacated 3 days after them so they may have left items behind in the rental unit. The tenant does not agree to damage or cleaning.

Pictures, registered mail

The landlord testified that they seek to recover, the cost for registered mail, pictures and fuel. The landlord seeks to recover the amount of \$32.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Damages & cleaning

The evidence of the landlord was the tenant caused damage to the stove; however, the evidence does not support that. Although I accept the lower range element was not working, repairs are the responsibility of the landlord. The landlord provided no evidence of neglect. Further, a rodent leaving cat food in the insulation of the stove is not caused by the neglect of the tenant. It is the landlord's responsibility for pest control. I find the landlord has not proven a violation of the Act, by the tenant. Therefore, I dismiss the landlord's claim for the cost of the lower range element and the oven insulation.

The evidence of the landlord was that they had to repaint the bathroom. The tenant denied they caused damage. I find the landlord has not met the burden of proof, no move-in condition inspection was provided. Therefore, I dismiss the landlord's claim for supplies.

The evidence of the landlord was that there was a smell in the tenant's bedroom and closet; however, the landlord did not provide any reasonable explanation as to the cause of the smell. The tenant denied they caused the smell and indicated it was from a rodent problem. I find the landlord has not met the burden of proof. Therefore, I dismiss the landlord's claim for the cost of the ozonator.

The evidence of the landlord was the smoke detector was missing. The evidence of the tenant was that it was given to the landlord's agent for repair and was not returned. As both versions are probable, I find without further evidence the landlord has not met the burden of proof. Therefore, I dismiss the landlord's claim for the cost of the smoke detector.

The evidence of the landlord was that the rental unit was left dirty, repairs were required, and they are claiming for 49 hours of labour. As, I have found the landlord has failed to prove the tenants caused damage to the rental unit the landlord is not entitled to recover the labour for damages.

However, I am satisfied that the tenant RJ, was in the rental unit for an additional three days and did not clean the rental unit or removal all their belongings. The tenant DG was not there and indicated at the hearing that it was likely the RJ left some belongings behind. I find the tenants breached the Act when they failed to remove their belongings and leave the rental unit clean. Therefore, I find it appropriate to award the landlord 30 hours of labour for cleaning at the rate of \$15.00 for a total of **\$450.00**.

Pictures, registered mail

In this case, the landlord is claiming the cost of pictures, and registered mail. However, neither party is entitled to recover cost associated with preparing for the hearing. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$550.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$350.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$200.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: June 28, 2017

Residential Tenancy Branch