



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MND MNSD

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the Application and evidence.

Preliminary Issue – Tenant's Late Evidence

The tenants submitted evidence as part of this application, but this evidence was not served to the landlord, though the apartment manager, until February 5, 2018, the day before the scheduled hearing. The Residential Tenancy Branch received the evidence on February 2, 2018. The landlord testified and they did not have an opportunity to review this evidence before the hearing.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the

applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

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 3.15 and the definition of days, the last day for the tenants to file and serve evidence to the applicant was January 29, 2018.

This evidence was not served within the timelines prescribed by rule 3.15 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.

In this case, the landlord testified that they had not received the tenants' evidence, and they testified that admitting this late evidence would be prejudicial to them as the landlord did not have the opportunity to review this evidence before the hearing. I find that the tenants did not provide sufficient proof of service to establish that this evidence was served upon the landlord within the timelines prescribed by rule 3.15 of the Rules. On this basis I find that there is undue prejudice to the landlord by admitting the tenants' evidence as the evidence was not served to the landlord within a reasonable timeline that would allow the landlord enough time to review and respond to the evidence. Thus I exercise my discretion to exclude the tenants' evidence for this application.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain a portion or all of the security deposit in satisfaction of their monetary claim?

Is the landlord entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 3, 2010, with monthly rent set at \$720.00. The landlord collected, and still holds, a \$337.50 security deposit. The tenancy was to end on July 31, 2017, but both parties confirmed in the hearing that the tenants' belongings were not removed until August 1, 2017. Both parties confirmed that the tenants provided a forwarding address on August 1, 2017, and the move-out inspection was completed on August 1, 2017 as well.

The landlord provided the following list of damages for their monetary claim:

Item	Amount
Furniture Removal	\$200.00
Damaged Heater Motor	160.00
Missing Lightbulbs	30.00
Cleaning	100.00
Broken Bathroom Light Fixture	50.00
Damaged Balcony Door	30.00
Damage to Walls, Carpet, Countertop	175.00
Total Monetary Order Requested	\$745.00

The landlord provided in evidence copies of receipts, invoices, and pictures in support of their monetary claim above.

The landlord submitted an estimate for furniture removal in the amount of \$200.00 as the tenants had left their furniture behind, which included a headboard that would not fit in the elevator. The landlord submitted a receipt in the amount of \$262.50 for the actual cost of the removal. The tenants dispute having left any furniture behind.

The landlord also submitted a monetary claim in the amount of \$160.00 for the heater motor which the landlord testified was damaged when the tenant removed the motor. The landlord testified that the motor could not be repaired. The tenants dispute having touched the motor, and testified that the heater was not working.

The landlord submitted a claim of \$30.00 for the missing lightbulbs. The landlord testified that the suite was completely dark. The tenants dispute the claim, stating that

all lightbulbs were there at the time of the move-out inspection. The landlord testified that these lightbulbs were removed after the inspection was completed.

The landlord testified that the tenants failed to clean the stove, and cupboard. The tenants testified that both parties argued about the cleanliness, and they testified that they were not shown by the apartment manager what required cleaning. They testified that the \$100.00 was not fair considering that they were not shown what required cleaning.

The landlord submitted a \$50.00 claim for the broken bathroom fixture. The landlord admitted that the fixture was original, and was old.

The landlord testified that the balcony door was damaged, and the mesh screen was removed. The landlord estimated that it would cost \$30.00 to repair. The tenants testified that the mesh did rip, but was due to regular wear and tear.

The landlord submitted a \$175.00 claim for damage to the carpet, walls, and countertop due to a fixture that was attached to the wall. The landlord testified that the tenants had installed this fixture in the closet. The tenants dispute this claim, stating that the fixture was already there when they had moved in. The landlords submitted photos of the damage in their evidence.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates 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.

I find that the landlord provided sufficient evidence to show that the tenants had left their belongings behind, which included photos and an invoice that exceeded the amount claimed by the landlord. I am satisfied that the landlord had supported their claim of the damage to the storage area by furnishings that were attached to the wall. Accordingly I

find that the landlord is entitled to \$200.00 for the removal of the tenants' belongings, as well as the damage to the storage area in the amount of \$175.00.

Although the tenants did not dispute that the heater motor was damaged, I find that the landlord failed to provide sufficient evidence that the tenants had caused the damage. Furthermore, the landlord was unable to confirm the age of the motor, which is necessary to determine how many years of useful life the item had. Section 40 of the *Residential Tenancy Policy Guideline* is normally used to assess and calculate the remaining useful life of an item. Similarly the landlord submitted a \$50.00 claim for a damaged bathroom light fixture and \$30.00 for the balcony door. The landlord admitted these damaged items were "old", and did not provide sufficient evidence to support that the tenants had damaged these items during this tenancy. In the absence of these items, I dismiss the landlord's monetary claim for damage to the heater motor, the broken light fixture, and balcony door.

The landlord submitted a \$30.00 claim for missing lightbulbs, which the tenants testified were there at the time of the move-out inspection. As there is no way to determine that the tenants had removed the lightbulbs, I dismiss this portion of the landlord's monetary claim.

The tenants did not dispute that they had failed to leave the suite in reasonably clean condition, stating that the landlord failed to show the tenants what cleaning was not completed. The landlord submitted photos in support of their \$100.00 claim. I am satisfied that the tenants failed to properly clean the suite upon move-out, and accordingly I find the landlord entitled to \$100.00 for cleaning.

As the landlord was partially successful in their claim, I find that they are entitled to half of the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a monetary Order in the amount of \$187.50 in the landlord's favour under the following terms which allows a monetary award for damage caused by the tenants and allows the landlord to retain half the security deposit. The landlord is also authorized to recover \$50.00 for the filing fee.

Item	Amount
Furniture Removal	\$200.00
Cleaning	100.00
Damage to Walls, Carpet, Countertop	175.00
Recovery of Half of the Filing Fee	50.00
Less Security Deposit	-337.50
Total Monetary Order Requested	\$187.50

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: March 15, 2018

Residential Tenancy Branch