



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MND MNDC

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, site, or property, money owed or compensation for 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 tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

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 recover 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 in 2014, with monthly rent set at \$725.00. The tenant moved out on April 1, 2016. The security deposit was dealt with at a previous hearing before an Arbitrator, and was ordered to be returned to the tenant. Both parties confirmed that no move-in or move-out inspections were completed for this tenancy.

The landlords submitted the following list of items for their monetary claim:

Item	Amount
Loss of Income for time taken to file dispute (32 hours)	\$606.00
Cost of Interpreter for this hearing	750.00
Bug Spray (no receipt-lost)	50.00
New lock (no receipt-lost)	30.00
Carpet cleaning	57.75
Oven Cleaning and replacement of light bulbs	15.85
Oven Heating Element	39.20
Basement cleaning	100.00
Sink Sealant (no receipt-lost)	10.00
Kitchen faucet	56.00
Drywall repair	500.00
Loss of Rent – 6 months	4,350.00
Registered Mail Cost x 2	21.34
RTB Fees	350.00
Garden Soil (no receipt- lost)	50.00
Total Monetary Order Requested	\$6,986.14

The landlord testified that after the tenant had moved out, the suite was occupied in May of 2016 by some out of town visitors. These visitors had smelled something, and upon investigation discovered a piece of drywall had been cut in the cupboard, and inside was rotting fish. The landlord called RV was a witness who confirmed that they were visiting and discovered the fish in the drywall. The landlord testified that they believe the tenant had placed the fish there, although nobody had witnessed who had actually done this. The tenant disputes this claim, stating that they had nothing to do with the fish in the drywall.

Due to the smell, the landlord is applying for six months' of lost rental income. The landlord testified in the hearing that they had not attempted to re-rent the suite as the landlord's parents were residing there. The landlord advertised the suite for rent on September 1, 2016, and was able to re-rent the suite for \$850.00 per month as of September 15, 2016.

The landlord testified that the tenant had left considerable damage when the tenant moved out, and failed to properly clean the suite. The landlord also testified that the tenant had failed to return the key, and as a result had to change the lock. The tenant disputes the landlord's entire monetary claim, stating that the key was left in the mailbox, and the tenant left the suite in clean, undamaged condition.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The landlord applied for compensation from the tenant for the time spent in dealing with this matter, including lost of income, cost of registered mailing, cost of hiring an interpreter and "RTB

fees". Section 72 of the *Act* only allows me to allow the landlord to recover the filing fee, and not the other associated costs of filing a dispute resolution application. Accordingly, I am not granting the landlord's application for compensation associated with the costs of dealing with this dispute.

I also note that the landlord had failed to comply with sections 23 and 35 of the *Act* which requires the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The tenant disputes having caused any of the damage to the suite. Without any move-in or move-out inspection reports, I find that there is no way to determine which damages occurred during this tenancy, and what the pre-existing condition of the home was. Although I acknowledge that the landlord did discover the fish in the drywall, I find that the landlord did not provide sufficient evidence to support that the tenant is responsible. The landlord's witness provided sworn testimony that they had discovered the fish in the drywall, but neither the landlord nor the witness had actually witnessed who had placed the fish there, and when. In the absence of documentation or witness testimony to support whether the damage was caused by the tenant, I am dismissing the landlord's application for monetary compensation for the damage to the suite.

The landlord applied for monetary compensation equivalent to six month's rent stating that they had difficulty finding a tenant due to the smell. As mentioned above, in the absence of any move-in and move-out inspection reports, and in the absence of supporting evidence to support that the tenant had placed the fish in the drywall, I have no way of ascertaining what damages occurred during this tenancy, or whether the tenant was responsible for any losses as a result of this damage. I must also consider whether the landlord has sufficiently mitigated their damages. The landlord testified in the hearing that no efforts were made to obtain a new tenant until September 1, 2016 despite the fact the tenant moved out on April 1, 2016. The landlord testified that the suite was occupied by other visitors after the tenant had moved out. I find that the landlord failed to provide sufficient evidence that the tenant failed to comply with section Section 37(2)(a) of the *Act*, which 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 also find that the landlord did not provide sufficient evidence to support that they had suffered any financial loss due to the tenant, or that the landlord had made any effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for the period of April through to September, 2016. Accordingly, the landlord's application for loss of rental income is dismissed without leave to reapply.

Section 25(1) of the *Act* addresses the issue of new locks.

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

The landlord applied for the cost of a new lock, as they did receive not all the keys from the tenant. The tenant disputes not having returned all the keys for the rental suite. As stated in section 25(1) of the *Act*, the responsibility of providing a new lock at the start of the new tenancy falls on the landlord, and therefore the cost of rekeying is the obligation of the landlord, and not the previous tenant. On this basis, I dismiss the landlord's application for compensation for the rekeying of the lock.

The recovery of the filing fee is normally awarded to the successful party after a hearing. As the landlord was not successful in their application, the landlord's application to recover the filing fee is dismissed.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

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 23, 2018

Residential Tenancy Branch