



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL

Introduction

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

- a monetary order for money owed or compensation monetary loss or money owed 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.

All 3 tenants attended the hearing, as well as the landlord. The tenant OA did not call into the hearing until 2:09 p.m. although the hearing started at 1:30 p.m. 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 application and evidence, which was served to the tenants by Registered Mail on February 22, 2019. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application and evidence on February 27, 2019, 5 days after mailing. The tenants did not serve their evidentiary materials on the landlord, and as the materials were not served in accordance with section 88 of the *Act*, the tenants' evidentiary materials are excluded for the purposes of this hearing.

Preliminary Issue—Amendment to Landlod's Application

Although the landlord's original monetary claim was for \$789.44, the landlord submitted a new monetary worksheet with the increased amount of \$938.90 on March 5, 2019.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

As an amendment was not filed and received in accordance with RTB Rule 4.6, and the respondent has the right to review and respond to the amendment and supporting evidence, the landlord's amended monetary worksheet and claim will not be considered. The hearing proceeded with the original claim of \$789.44 plus \$100.00 for recovery of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

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 fixed term tenancy began on September 1, 2017 when the tenants OA and LA moved in. MJ moved in later or around October 2017. The landlord resides on the lower floor, while the 3 tenants resided upstairs. The tenants OA and LA paid \$500.00 each for monthly rent, while the tenant MJ paid \$450.00. The total rent was \$1,450.00, payable on the first of every month. MJ maintains that she had a separate tenancy agreement with the landlord.

The landlord collected security deposits in the amount of \$250.00 from each tenant, which he still holds.

The landlord had previously filed an application for monetary compensation against OA only for damage to the linoleum flooring, and a hearing was held on November 5, 2018, which the tenant did not attend. The landlord was awarded his monetary claim, and was allowed to keep OA's security deposit in satisfaction of that claim.

The landlord is seeking monetary compensation as follows:

Item	Amount
Carpet Cleaning	\$260.40
Replacement of Bedroom Door	308.50
General Cleaning (walls, baseboards, windows, stove)	150.00
Repair and Repaint Doors & Jams	90.00
Vacuum and Sweep Kitchen & Bedrooms	30.00
Total Monetary Order Requested	\$838.90

Although the landlord items above equal a monetary claim for \$838.90, not including the claim for the filing fee. As stated above, the landlord did not file an amendment in accordance with Rule 4.6. Accordingly, the maximum claim that will be considered for this application is \$789.44 plus recovery of the filing fee.

The landlord submitted invoices for the carpet cleaning as well as the replacement of the bedroom door. The landlord testified that the tenants failed to leave the home in undamaged and clean condition. The landlord testified that the home was 25 years old, but renovated in 2014 with the exception of the linoleum floors. The home was painted and the drywall and doors were from 2014. The landlord submitted photos in support of his claim, as well as the invoice for the cleaning on August 16, 2017 before this tenancy began. The landlord did not provide a copy of a move-in or move-out inspection report for this tenancy.

The tenants dispute the landlord's entire monetary claim as they feel the home was not clean or undamaged when they had moved in.

MJ disputes the landlord's claims, stating that the rooms were so dirty that the landlord had provided her a vacuum to clean the home.

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 or 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. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlord.

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 condition except for reasonable wear and tear. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*. Although the landlord did submit some evidence to support the condition of the rental unit when the tenants moved out, as well as the receipt for the cleaning at the beginning of the tenancy, the tenants dispute the claim stating that the landlord’s testimony and evidence did not provide an accurate representation of what happened during this tenancy.

As stated above, the onus falls on the landlord to prove that the tenants failed to leave the home in clean and undamaged condition, and that the landlord suffered the losses claimed due to this failure. In the absence of any move-in and move-out inspection reports, I have no way of ascertaining what damages occurred during this tenancy, and what the pre-existing conditions were. I find that the landlord failed to provide sufficient evidence to demonstrate that the losses claimed were due to the tenant’s failure to comply with 37(2)(a) of the *Act*. On this basis, I dismiss the landlord’s entire claim for damages and losses without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful in his application, the landlord’s application to recover the filing fee is dismissed without leave to reapply.

I note that it was undisputed that MJ's rent was set at \$450.00, and she was required to pay \$250.00 for the security deposit. Section 19 of the Act states the following:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

I note this for the landlord's future consideration when collecting a security deposit from a tenant.

Conclusion

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

As the landlord still holds both MJ's and LA's security deposits, I order that the landlord return their security deposits in full.

The tenants MJ and LA are provided with a Monetary Order in the amount of \$250.00 each for the return of their security deposits, and the landlord(s) must be served with **this Order** as soon as possible.

Should the landlord(s) 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: April 4, 2019

Residential Tenancy Branch