



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNIQUE ACCOMMODATIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDL-S MNRL-S

Introduction

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

- a monetary order for unpaid rent and compensation for 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.

AO represented the landlords in this hearing. TB appeared for the tenants. 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 landlords' application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the landlord's application and evidence.

Preliminary Issue – Tenants' Late Evidence

The tenants submitted documentary evidence for this hearing, which was received by the RTB on June 27, 2019, the date of the scheduled hearing. The landlords requested that this late evidence be excluded as the evidence as the evidentiary materials were not served within the timelines required by RTB Rules, nor was this evidence served in a manner required by the *Act*.

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"

The definition section of the Rules contains the following definition:

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 as part of their application was June 19, 2019.

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 landlords submitted that their evidentiary materials were served to the tenants on time, and as the landlords have not had an opportunity to review the late evidence submitted by the tenants, the admission of this evidence would be prejudicial to the applicants. I find that the landlords had submitted and served their evidentiary materials in accordance with *Act* and RTB Rules. The tenants, however, failed to submit their evidence within the required timelines required by the *Act*. On this basis I find that there is undue prejudice by admitting the tenants' late evidence. I find that the tenants had ample time to prepare for this hearing, and submit serve the applicants with their documentary materials. Accordingly, the tenants' late evidence was excluded.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

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

Background and Evidence

This tenancy began on November of 2013. During the tenancy, the tenancy agreement was renewed with TB as the tenant on a fixed-term basis, with the tenancy to end on October 31, 2019. The landlords testified that this tenancy ended on March 23, 2019, before the end of the fixed-term. Monthly rent was set at \$2,285.00, payable on the first

day of each month. The landlords collected a security deposit of \$1,100.00, and a pet damage deposit in the amount of \$1,142.00, which the landlords still hold.

The landlords are requesting monetary compensation as follows:

Pro-rated Rent for March 2019	\$1,695.32
Final Cleaning (tenants not disputing)	294.00
Window & Blind Cleaning	105.00
Painting & Wall Repairs	400.00
Lightbulbs (tenants not disputing)	64.00
Estimate for Blind repairs for 3 windows	157.50
Bifold Door Replacement	271.54
Estimate for Floor Repairs	840.00
Total Monetary Award Requested	\$3,827.36

The tenant TB testified in the hearing that she was not disputing the landlords' monetary claim for the final clean and lightbulbs, and agreed to a monetary order in the amount of \$358.00 for these two items. The tenants are disputing the remainder of the landlords' monetary claim.

The landlords testified that although they were able to mitigate their losses by re-renting the rental unit as of March 24, 2019. The landlords testified that the tenants did not pay any rent for March 2019, and are seeking the pro-rated rent for March 1, 2019 through to March 23, 2019.

The landlords testified that the tenants failed to leave the rental unit in reasonably clean and undamaged condition. The landlords testified that the damage to the walls were beyond regular wear and tear, and that the blinds required replacing. The landlords provided an estimate only, as the landlords do not have the funds yet to replace the damaged blinds. The email, dated April 5, 2017, reads: "Please take from the damage deposit. Thanks!"

The landlords are also seeking reimbursement of the cost of replacing the bi-fold doors, which were replaced in 2017. The landlords provided an email which states that the tenants had agreed to the cost of this replacement.

The landlords also submitted an estimate for floor repairs as the tenants damaged the flooring.

In support of the above claims, the landlords provided a move-in and move-out inspection report, as well as photos, invoices, and estimates.

The tenant TB admitted that March 2019 rent was not paid as she had found a new tenant for March 1, 2019, but the landlords wanted the new tenancy to begin on April 1, 2019. The tenant testified that she gave notice in January of 2019, and offered to move out earlier in order to reduce the landlords' exposure to losses.

The landlords responded that the tenant was on a fixed-term tenancy, and they could not sign a new tenancy agreement with any new tenants until they had received official written confirmation from the tenants that they were ending this fixed-term tenancy. The landlords testified that they had attempted to communicate with the tenant by way of email and phone call, and did not receive a response. The landlords testified that they did not receive the official confirmation until February 28, 2019, and it was undisputed that the tenant had ended the tenancy before the end of the fixed-term, and stayed until March 23, without paying any rent, and therefore owes the landlord rent for the period that she had lived there. The landlords testified that they were not seeking any loss of rental income or liquidated damages.

The tenant TB responded that the landlord had her current email, but still used her work email, and was therefore unable to reach her.

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 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

While the tenants did notify the landlord of the early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. Although the tenants' testimony is that they had found a new tenant for March 1, 2019, rather than April 1, 2019, I find that the landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. I must now consider whether the landlords are entitled to the pro-rated rent for March 2019.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

As this fixed-term tenancy was to end on October 31, 2019, I find that the tenants were obligated to pay the rent as per the tenancy agreement and the Act. I find the landlord provided undisputed evidence to support that the tenants have not paid any rent for March 2019 despite residing there until March 23, 2019, nor did they have an order from an Arbitrator allowing them to deduct all or a portion of the rent. Although I accept the tenants' testimony that they did assist the landlords in finding a new tenant, I find that the tenants were bound by the tenancy agreement, and did not have the right under the Act to deduct or withhold all or portion of the rent. Accordingly, I find that the landlords are entitled to the pro-rated rent for March 2019 in the amount of \$1,695.32.

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.

As the tenants do not dispute the landlords' claims for final cleaning and the lightbulbs, I allow the landlords a monetary order for these items.

I find that the landlords had provided sufficient evidence to support that the tenants had given permission to deduct from their security deposit the cost of replacing the bi-fold doors. Accordingly, I allow the landlords their monetary claim for the replacement.

I am satisfied that the landlords had provided sufficient evidence to support that the tenants failed to leave the rental unit in reasonably clean condition at the end of the tenancy, including the windows and blinds. Accordingly, I allow the landlords to recover the cost of window and blind cleaning.

The landlords submitted an invoice for wall repairs and painting in the amount of \$2,100.00. The invoice, dated March 26, 2019, is for 2 coats of paint, including the walls, ceiling, and baseboards, as well as repair of the nail holes, cracks, and chips before painting. The landlords testified that they had accounted for wear and tear, and are only seeking a portion of the losses in the amount of \$400.00. The landlords submitted photos as well as detailed descriptions in their move-in and move-out

inspection reports. I am satisfied that the landlords had suffered a monetary loss at the end of the tenancy in order to repair and repaint the walls. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the interior paint. As per this policy, the useful life of interior paint is four years. This tenancy began on November 1, 2013, and at the tenancy in March of 2019, I find that the interior paint had exceeded its useful life. Accordingly, I dismiss the landlords' monetary claim for wall repairs and painting.

The landlords provided an estimate for blind repairs. I am satisfied that there was damage to the blinds at the end of the tenancy. As per Policy Guideline 40, the useful life of blinds is 10 years. As the age of the blinds was not provided for this hearing, I will consider the fact that this tenancy began in November of 2013. Therefore at the end of the tenancy the blinds had approximately 4 years and 4 months of useful life left. The approximate prorated value of the remainder of the useful life of the blinds is \$68.25 ($\$157.50/120 \times 52$). Accordingly, I find the landlords are entitled to \$68.25 for the blind repairs.

The landlords provided an estimate for repairs to the hardwood flooring. I am satisfied that there was damage to the floors at the end of the tenancy. As per Policy Guideline 40, the useful life of hardwood flooring is 20 years. As the age of the flooring was not provided for this hearing, I will consider the fact that this tenancy began in November of 2013. Therefore at the end of the tenancy the hardwood flooring had approximately 14 years and 4 months of useful life left. The approximate prorated value of the remainder of the useful life of the hardwood is \$602.00 ($\$840.00/240 \times 172$). Accordingly, I find the landlords are entitled to \$602.00 for repairs to the hardwood flooring.

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. Accordingly, I allow the landlord to recover the filing fee for this application.

The landlords continue to hold the tenants' security deposit of \$1,100.00 and pet damage deposit in the amount of \$1,142.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security and pet damage deposit in satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$958.11 in the landlord's favour as set out in the table below. I allow the landlords to retain the tenants' deposits in satisfaction of their monetary claim.

Pro-rated Rent for March 2019	\$1,695.32
Final Cleaning	294.00
Window & Blind Cleaning	105.00
Painting & Wall Repairs	68.25
Lightbulbs	64.00
Bifold Door Replacement	271.54
Floor Repairs	602.00
Filing Fee	100.00
Less Security & Pet Damage Deposits	-2,242.00
Total Monetary Order	\$958.11

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(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.

The landlord's monetary claim for repairs to the blinds 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: July 26, 2019

Residential Tenancy Branch