



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SIERRA HOLDINGS LTD
and [tenant name suppressed to protect privacy]

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 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.

KG appeared as agent for the landlord in this hearing. 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 application for dispute resolution, which was served to the tenant by way of registered mail on November 24, 2019. In accordance with sections 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application for dispute resolution on November 29, 2019, 5 days after mailing.

The landlord confirmed receipt of the tenant's evidentiary materials. In accordance with section 88 of the *act*, I find the landlord duly served with the tenant's evidentiary materials.

Preliminary Issue: Landlord's Evidence

The tenant confirmed receipt of the landlord's original evidence package, but testified that although she received the second package sent on March 27, 2020, she did not review the contents of the package as it was not served to her within the required RTB timelines.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 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 3.14 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was March 25, 2020.

This evidence was not served within the timelines prescribed by rule 3.14 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. In this case the tenant had the opportunity to review the evidence, but decided not to.

The tenant declined the option to adjourn the hearing in order for her to have the opportunity to review the documentary materials, which includes a copy of the updated monetary order worksheet. The tenant confirmed that she wished to proceed with the hearing as scheduled, and was not opposed to the admittance of the landlord's evidentiary materials. Accordingly, the landlord's entire evidence package was considered for this hearing. The items on the landlord's monetary worksheet were confirmed with both parties in the hearing, and both parties were provided ample time to provide submissions, and respond to each other in the hearing.

Preliminary Issue—Amendment to landlord's Application

The tenant testified that she had never received the landlord's amendment to their application for dispute resolution, which includes an updated monetary order worksheet.

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.

I find that although the landlord failed to file an amendment as required by RTB Rule 4.6, the landlord's amended claim reflects a reduced claim from the original amount of \$5,868.00 to \$1,642.57. The only increase was the claim for painting from \$900.00 to \$1,000.00. Accordingly, the landlord's amended claim will be considered, with the exception of the amended painting claim, as I do not find the consideration of the amended claim to be prejudicial to the respondent. The maximum value of the claim for painting that will be considered is \$900.00 as set out in the original application.

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 tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, 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 April 1, 2015, and ended on October 31, 2019. The tenant testified that she had moved out before this date, on October 18, 2019. The rent was set at \$910.00 at the end of the tenancy. The landlord collected a security deposit in the amount of \$400.00, which the landlord still holds.

The landlord is seeking the following monetary orders:

Item	Amount
Painting	\$1,000.00
Carpet Cleaning	110.00
Cleaning	110.00
Cleaning	330.00

Reimbursement for Registered Mail	13.82
Cost of witness attendance at previous arbitration hearing	78.75
Total Monetary Order Requested	\$1,642.57

The landlord provided invoices and receipts in support of the above claims, as well as the move-in and move-out inspection reports. The tenant admits that she failed to attend the move-out inspection due to medical reasons, but submits that the landlord failed to accommodate her request for alternative dates. She also submits that the landlord failed to provide a copy of the move-out inspection report.

Counsel, on behalf of the tenant, had initiated discussion about a possible resolution to this matter, but no resolution between the parties was reached before the hearing date. The landlord's monetary claims were confirmed in the hearing, with the tenant's responses summarized below.

The landlord testified that the tenant had agreed to re-paint the walls to the original paint colours upon move-out. The landlord provided a copy of the letter in their evidentiary materials. The tenant does not dispute that she did not re-paint the walls, but is disputing the claim as the tenancy has exceeded the useful life of painting which is 4 years.

The landlord is also seeking reimbursement of the cost of carpet cleaning in the amount of \$110.00. The tenant is disputing the claim, citing wear and tear. The tenant testified that the previous agent for the landlord had agreed that the carpet was not in satisfactory condition, and should be replaced. The landlord testified that they did not know the age of the carpet, but that the carpet was in satisfactory condition at the beginning of the tenancy, or would have been replaced. The landlord also responded that the amount claimed is reasonable, and comparable to the quotation submitted in the tenant's own evidentiary materials which starts at \$99.00.

The landlord is also claiming for suite cleaning in the amount of \$110.00, and an additional \$330.00 for the cleaning of the materials left behind by the tenant to treat the pest infestation in the rental unit. The landlord testified that the tenant left a powder behind, which required the cleaners to wear masks and use a special HEPA vacuum to clean the rental unit. The landlord testified that this cleaning was necessary to ensure the safety of the next tenant residing in the rental unit. The tenant admits that she had left the materials behind, which were used to treat a silverfish infestation in the rental unit.

The landlord is also seeking reimbursement for cost of a witness who attended the previous arbitration hearing, and the cost of registered mail for documents sent to the tenant.

Analysis

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.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior paint is four years. The rental unit was repainted before the tenant moved, and the tenant moved out over four years later. I find that the interior paint has exceeded its useful life, and therefore I dismiss this portion of the landlord's monetary claim without leave to reapply.

Despite the tenant's testimony that the carpet suffered from wear and tear, and that the previous agent had approved the replacement of the carpet, I find the tenant has failed to provide sufficient evidence to support this acknowledgement. I find that the landlord had provided sufficient evidence to support that they suffered a loss of \$110.00 due to the tenant's failure to leave the carpet in reasonably clean condition. I also find that the amount of this claim to be reasonable, and comparable to the tenant's own quotation provided for this hearing. On this basis, I allow the landlord's monetary claim of \$110.00 for carpet cleaning.

I find it undisputed by the tenant that she had left a substance behind that was used for pest control, and as a result the landlord suffered a monetary loss of \$330.00 in order to clean this substance. Accordingly, I allow the landlord's monetary claim for \$330.00.

The landlord is also seeking \$110.00 for the cost of cleaning the rental unit. I find that the landlord had provided sufficient evidence to support that the tenant failed to leave the rental unit in reasonably clean condition. On this basis, I allow this portion of the landlord's monetary claim.

The landlord is seeking reimbursement of the cost of registered mailing for this application. The *Act* does not allow for the reimbursement for the costs associated with filing an application, or preparing for a hearing, other than recovery of the filing fee. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

The landlord is also seeking reimbursement of the cost of calling a witness a previous hearing. As per RTB rule 7.19, "Parties are responsible for having their witnesses available for the dispute resolution hearing." RTB Rule 5.5 speaks to witness compensation which states that "when an arbitrator issues a summons at the request of a party, the party who has requested the summons must provide the witness with compensation for the reasonable cost of giving that evidence. When an arbitrator issues a summons on their own initiative, compensation is not required." I am not satisfied that the witness's attendance at the hearing was a result of a summons requested by the tenant in this hearing. The landlord is responsible for the costs associated with the attendance of their witness, and accordingly this portion of the landlord's application is dismissed without leave to reapply.

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

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 partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

Conclusion

I issue a \$200.00 Monetary Order in favour of the landlord as set out in the table below

Item	Amount
Carpet Cleaning	110.00
Cleaning	110.00
Cleaning	330.00
Half of Filing Fee	50.00
Less Security Deposit Held by Landlord	-400.00
Total Monetary Order	\$200.00

The tenant must be served with this Order as soon as possible. Should the tenant 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 remainder of the landlord's 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 14, 2020

Residential Tenancy Branch