Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MND, FF
Tenant: MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Tenant applied for the return of a security deposit and pet damage deposit plus compensation equal to the amount of those deposits due to the Landlords' failure to return them as required by the Act as well as to recover the filing fee for this proceeding.

In previous proceedings between these parties held on November 15, 2011, the Landlords' application for compensation for damages to the rental unit and to keep the security deposit and pet damage deposit and the Tenant's application for the return of double the security deposit and pet damage deposit was heard. The Dispute Resolution Officer granted the Landlords' application to withdraw a claim for the cost of repairs to a kitchen floor with leave to reapply and found he had made out a total monetary claim for $304.00. The Tenant's application for the return of double her security deposit and pet damage deposit was dismissed without leave to reapply. The Landlord was ordered to deduct $304.00 from the Tenant's security deposit however no order was made requiring the Landlord to return the balance of the Tenant's security deposit and pet damage deposit as required under RTB Policy Guideline #17 at p. 2.

The Tenant said the Landlords have refused to return the balance of the security deposit and pet damage deposit to her and as a result, she brought her application in this matter to compel them to do so. However, I find that this matter has already been dealt with on its merits and as a result, the Tenant is now barred by the common law principle, *res judicata*, from pursuing it again. As a result, the Tenant's application in this matter is dismissed without leave to reapply. The Tenant may file an application for Correction and Clarification (in the previous proceedings) to find out why the Landlords were not ordered to return the balance of her deposits and if it was merely an oversight, to request a Monetary Order for that amount. After serving the Landlords with a copy of that Order, it may be enforced in the Provincial (Small Claims) Court of British Columbia.

Similarly, in this matter, the Landlords reapplied not only for compensation for damages to a kitchen floor (as they were granted leave to do) but also for compensation for damages to flooring in another area of the rental unit. However, the common law principle of *res judicata* applies not only to bar matters that have already been decided on their merits but also to bar ***all*** matters that should reasonably have been raised

during the adjudication of a matter that has been determined on its merits. In this case, I find that the Landlords should and could reasonably have pursued their claim for damaged carpeting in another room as part of their application for damages to the rental unit which was heard on November 15, 2011. The Landlord, K.C., argued that he was unable to do so because he was under the mistaken belief that he had to wait until repairs were completed before he could proceed with his claim for damaged carpeting. However, a party does not have to wait for repairs to be made but rather may rely on estimates as evidence of the cost to repair alleged damages. In the absence of an order granting the Landlords leave to reapply for compensation for damaged carpeting as well as the kitchen flooring, I find that that matter is now *res judicata* and the Landlords' claim for it is accordingly dismissed without leave to reapply.

At the beginning of the hearing, the Landlord, K.C., argued that the Tenant served her evidence package late (on July 10, 2012) because the weekend days were not supposed to be included in the calculation of time and he sought to have it excluded. The Tenant argued that she served the evidence package five days prior to the hearing as required by the Rules. RTB Rule of Procedure 4.1 says that a Respondent must serve their hearing package on an Applicant "at least 5 days before the hearing as those days are defined in the Definitions section of the Rules." The Definition of "days" in the Rules says "in the calculation of time expressed as 'at least' a number of days, the first and last days must be excluded [and] if the date the evidence must be served falls on a weekend or holiday, and it must be served on a business, then it must be served on the previous business day. ***Only when evidence is served on the Residential Tenancy Branch are weekends and holidays not included in the calculation of days."***

Consequently, in order for the Tenant to comply with the rules for service of evidence on a business, the Tenant would have had to ensure that the Landlords received the documents no later than July 13, 2012 which meant that she would have had to deliver her evidence package no later than July 6, 2012. As a result, I find that the Tenant's evidence package was delivered late and pursuant to s. 11.5(b) it is excluded.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for damages to a kitchen floor?

Background and Evidence

This tenancy started in August of 2010. The Parties completed a condition inspection report at the beginning of the tenancy and at the end of the tenancy. The Tenant alleges that the Landlord, K.C., made alterations to the move out condition inspection report after her co-tenant signed it on August 1, 2011.

The Parties agree that there was no visible damage to the ceramic tile flooring in the kitchen at the beginning of the tenancy. The Tenant admitted that shortly after the tenancy started, she discovered a chip in one of the tiles but could not account for how the damage occurred as she could not recall anything having been dropped on the floor. The Tenant claimed that at the end of the tenancy there was only one damaged tile however, the Landlords claim that at the end of the tenancy there were 6 damaged tiles in the kitchen with the result that the whole floor has to be replaced at a cost of $494.55.

The Landlords relied on the evidence of a witness, K.K., who provided a quote for replacing the kitchen flooring. K.K. initially claimed that the first time he viewed the kitchen floor was on March 1, 2012 when he installed some carpeting in the rental unit. On cross-examination, K.K., changed his evidence and claimed instead that he first viewed the kitchen flooring in September 2011 (closer to the date of his estimate) and at that time saw 6 damaged tiles. The Landlords also provided 4 photographs showing three different areas of damage. The Tenant argued that 2 of the photographs showed an area of damage in the bathroom that was noted on the move in condition inspection report. The Tenant said the other two photographs showed tiles in the kitchen however she argued that only one kitchen tile was damaged at the end of the tenancy. The Tenant said only one chipped tile was noted on the move out condition inspection report but that the Landlord, K.C., added further remarks after it was signed to indicate that there were more damaged areas.

The Tenant claimed that the Landlord did not make any repairs to the flooring following her tenancy and that there have been three short-term tenancies from August 2011 to May 2012. The Tenant said she discovered this by contacting the new tenants and asking them about repairs and on at least one occasion, by gaining entry to the rental unit in May 2012 (with the tenants' consent) and viewing it for herself. Consequently, the Tenant argued that any further damages to the flooring likely occurred after the tenancy ended. The Landlord, K.C., admitted that repairs had not yet been made but denied that there were 3 tenancies after the Tenant vacated at the end of July 2011. The Tenant also argued that the Landlords' photographs showed only 2 damaged kitchen tiles and not 6 as alleged. The Tenant also argued that the Landlords' witness did not view the rental unit and create an invoice in September 2011 as he claimed otherwise the Landlords would have relied on that quote during the previous proceedings (in November 2011) but instead relied another quote for twice as much.

The Tenant's witness, D.W., gave evidence that he has been an insurance adjuster for 30 years (with certification in restoration) and a contractor for 15 years during which time he has repaired and installed ceramic tile flooring. D.W. claimed that damage can occur to ceramic tiles as a result of flaws in the materials themselves that may not be obvious at the time of installation but that later appear as cracks or chips. D.W. also claimed that damage can occur to ceramic tiles when secured to a concrete or aggregate base. In particular, D.W. claimed that if the concrete base cracks from stress, the stress will telegraph into the overlying tile and crack it as well. D.W. said this is apparent when similar cracks appear in different areas of a floor. D.W. further claimed that damage can occur to ceramic tiles as a result of improper installation. In

particular, D.W. said if adhesive is not spread evenly on a tile, a void will occur beneath the tile and over time as the surrounding grout holding it in place shrinks, the tile becomes more susceptible to breaking from pressure placed on top of it.

D.W. admitted that he did not inspect the kitchen floor in the rental unit but claimed that he did view photographs of the floor in the rental unit which were provided by the Tenant and noted that it was a concrete base. D.W. said it was also his opinion that the damage to one of the tiles in the kitchen (a chip with a crack) was consistent with it having a pre-existing flaw that would only have become evident after it was installed.

Analysis

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion." As the Landlords have the burden of proof in this matter, the Landlords must show (on a balance of probabilities) that the Tenant is responsible for damages to a ceramic tile floor and that the damage was caused by her act or neglect as opposed to reasonable wear and tear.

During the course of the hearing, the Landlord, K.C., repeatedly expressed his concern that the Dispute Resolution Officer would not proceed with his claim for damages to a carpet because that issue was *res judicata*. Consequently, K.C. requested an adjournment of this hearing so that he could obtain a direction from another Dispute Resolution Officer permitting him to do so. However, I explained to K.C., that he was under a mistaken belief as my decision was not subject to Review or Judicial Review until such time as a written Decision was rendered and that this would not occur until the hearing was concluded. However, K.C., was steadfast in his demand that the matter be adjourned and to that end he engaged in a series of irrelevant questions to the Tenant in order to prolong the hearing so it would have to be adjourned and argued with the Dispute Resolution Officer when asked to move along with relevant questions. After a prolonged period of non-productive questioning, I advised K.C., that I was terminating his cross-examination and proceeded with the balance of the hearing.

The Parties agree that there was no obvious damage to the kitchen flooring at the beginning of the tenancy. The Landlords claim that there were 6 damaged tiles at the end of the tenancy that required the whole floor to be replaced. The Tenant denied this and claimed that only one tile was damaged at the end of the tenancy and that this damage was not the result of an act or neglect on the part of her or her co-Tenant. I find that there is insufficient evidence to conclude that there were 6 damaged tiles in the kitchen at the end of the tenancy. The move out condition inspection report says "big chip in tile" and then above it is written, "tiles cracking around." I find these two statements contradictory. In particular, I find that if there were more than one damaged

tile as the Landlords claim, it would have been reasonable to simply state, 6 cracked or chipped tiles. Instead K.C. indicated that there was only one tile with a chip and then as an apparent after-thought, that other tiles around it were also cracking. However, this is not evident in the photographs provided by the Landlords which show only 1 chipped tile and 1 cracked tile in the kitchen area that are not adjacent to each other.

Furthermore, I did not find the evidence of the Landlords' witness, K.K., to be reliable. In particular, in his direct evidence, K.K. was asked when was the first time he had viewed the kitchen in the rental unit. K.K. then asked for *clarification* about the question before answering, "March of 2012 when installing carpeting." However, on cross-examination, when asked why his invoice for the tile replacement was dated September, 2011, K.K. changed his evidence and claimed that he did not understand the question put to him on direct examination and claimed instead that he produced this invoice as a result of viewing the rental property in August of 2011. However, the Landlord, K.C., claimed that he did not rely on this invoice at the previous hearing in November 2011 because he did not yet have it. In the circumstances, I conclude that K.K. created this invoice at a much later date than September 2011 and likely did not view the rental unit until March 2012 as he initially claimed. Consequently, I conclude that there was likely only one damaged ceramic tile in the kitchen at the end of the tenancy and that any further damages occurred afterward.

The Tenant also argued that the tile was likely damaged due to a defect in the tile, improper installation or reasonable wear and tear (given the nature of the aggregate base) and relied on the evidence of her witness, D.W., to that effect. The Landlords denied this but offered no evidence in support of their position that the damage was instead caused by an act or neglect of the Tenant. Given the contradictory evidence of the Parties on this issue and in the absence of any additional evidence from the Landlords, I find that there is insufficient evidence to conclude that the Tenant was responsible for damage to the ceramic floor tiles in the kitchen and their claim for compensation to repair it is dismissed without leave to reapply.

Conclusion

The Landlords' application is dismissed without leave to reapply. The Tenant'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: July 17, 2012.

Residential Tenancy Branch