



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for damage to the rental unit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence or the application.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This tenancy ended on February 1, 2012. Thereafter the parties were in dispute resolution on the tenant's application seeking a return of her security deposit, which resulted in the tenant being granted a monetary order.

In the present application, the landlord is seeking a monetary order in the amount of \$20,617.46, which is comprised as follows:

Building repair	\$10,032.27
Cabinet replacement	\$5992.00
Flooring	\$1093.17
Kitchen plumbing	\$238.02
Kitchen repair	\$420.00
Ceiling repair	\$1792.00
Filing fee	\$50.00
Total	\$20,617.46

Landlord's evidence-

The landlord stated that his claim relates to a flood or water on the floor from the dishwasher in the rental unit. The landlord attributed misuse of the dishwasher by the tenant, due to the dishwasher functioning properly up to the time of the water overspill on August 27, 2011, and thereafter.

When notified by the tenant that a spill had occurred, the landlord attended the premises and called his insurance company, resulting in a restoration company being called.

When questioned specifically, the landlord said he could not prove the tenant used the dishwasher improperly.

When questioned, the landlord stated that he had not paid for the building repair and that he would be willing to delete the request for \$10,032.27.

As to the deductible, the landlord said that he was entitled to be reimbursed as he in effect paid this amount when it was deducted from his insurance payout.

As to the cabinet repair, the landlord said the tenant was not responsible for these items as he decided to replace them. When questioned, the landlord said the cabinets were at least 25 years old.

As to the flooring, the landlord said the laminate flooring had to be replaced due to the water on the floor.

As to the kitchen plumbing the landlord said that it was necessary to have a plumber reconnect the kitchen sink after the cabinets were replaced.

As to the kitchen repair, the landlord said that after the tenant moved out, he discovered damage to the cabinet. The landlord said he did not know when the damage occurred, and when questioned, reconfirmed that there was not a move out condition inspection report.

As to the ceiling repair, the landlord said this was “more a reflection of the stucco repair” caused by that company and not a direct repair from the water on the floor.

At the conclusion of my questioning, I asked the landlord if he had any proof or statement from any professional that the tenant was negligent in misusing the dishwasher, causing water on the floor and the landlord replied that he did not.

I note that the dishwasher was portable and the landlord did not know the age of the appliance.

The landlord’s relevant evidence included invoices and a proof of loss statement from the landlord’s insurance company.

Tenant’s response-

The tenant said the dishwasher belonged to the landlord, as it was provided for in her tenancy agreement, and that on the day of the water on the floor, she had used the appliance properly, as she had always done previously.

The tenant stated that when she saw the water on the floor, she immediately mopped up the water and contacted the landlord, who made the decision to call his insurance company, who in turn called a restoration company. The tenant said that the restoration company pulled up the kitchen floor, only to find linoleum, followed by asbestos underneath that.

The tenant said she did not see water under the cupboards at any time.

The tenant denied creating any damage, which included damage to the cabinet doors.

The tenant said she lived with the repairs and restoration for the balance of her tenancy.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In reviewing the evidence, I find the landlord submitted insufficient evidence to meet most of the elements of his burden of proof. For instance the landlord acknowledged that he had no proof that the actions or the negligence of the tenant caused him to suffer a loss or caused the damage, step two in his burden of proof.

Additionally, the landlord's own written evidence, the Proof of Loss by the insurance company specifically states that the "damage or loss did not occur through any willful act, neglect, procurement, means or connivance of the insured (landlord) or this declarant." As the tenant was not an insured, she would not have been listed in this statement, but the statement leads me to conclude that the insurance company found no actions or neglect causing the damage.

Additionally, I find that the landlord made his own choices leading to costs he incurred when it was his decision to have the outdated cabinets replaced.

As to the ceiling repair, I find no logic in the landlord attempting to hold the tenant responsible for damage caused by another company and I specifically find the landlord failed to meet his burden of proof in this regard.

Finally, I find that the tenant is not responsible for a malfunction in the dishwasher, as the landlord is responsible to ensure that all appliances provided for in the tenancy agreement are functioning properly.

Conclusion

Due to the above, I find the landlord has failed to submit sufficient evidence to support his application, and I therefore dismiss his application, without leave to reapply.

As I have dismissed the landlord's application, I also dismiss his request to recover the filing fee.

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: October 11, 2012.

Residential Tenancy Branch