



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that she served the tenant with the notice of dispute resolution package by registered mail but could not recall on what date. The tenant confirmed receipt of the dispute resolution package via registered mail sometime in February, but did not know on what date. I find that the tenant was served with this package in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began sometime between 2014 and 2015 and ended on September 30, 2017. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to the landlord. At the end of the tenancy the landlord returned \$400.00 of the \$500.00 security deposit to the tenant. A move in condition inspection and inspection report were not completed. A move out condition inspection and inspection report were not completed.

The landlord testified that the tenant cracked the shower insert in the bathroom but that the landlord did not notice this when the tenant moved out, and that is why she returned most of the tenant's damage deposit. The landlord testified that the tenants who moved in after the tenant move out brought the shower damage to her attention. The landlord testified that the shower insert was approximately 15 years old. The landlord testified that it cost her \$2,509.50 to repair the tenant's shower and provided a receipt of that amount into evidence. The landlord testified that she is seeking a Monetary Order from the tenant in the amount of \$2,509.50.

The landlord entered into evidence a photograph of a shower liner that had no cracks on it which she labeled "before", and a picture of a shower liner with cracks in it labelled "after". It is clear from the photographs that the pictures are of two different showers. The landlord testified that she had no evidence of what the tenant's bathroom looked like before the tenant moved in and so she provided a photograph of a different shower insert and labeled it "before" to show what it was supposed to look like.

The tenant testified that the bathroom was in deplorable condition when she moved in and that the cracks in the shower insert were there when she moved in. The tenant testified that when she first moved in the caulking in the shower was moldy and that she stripped the moldy caulking from the shower insert and re-caulked it herself. The tenant entered into evidence photographs she testified were taken shortly after she moved in, showing the moldy caulking and the shower after she re-caulked it. The photographs show the cracks the landlord alleges the tenant made.

Analysis

The testimony of the parties in regard to the condition of the shower when the tenant moved in is contradictory. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The landlord did not enter any documents into evidence proving the condition of the shower when the tenant moved in. I find that the landlord has not met the burden of proof required to prove that the tenant damaged the shower. Because the landlord has not met the burden of proof, I dismiss the landlord's application without leave to reapply.

Conclusion

I dismiss the landlord's application 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: September 13, 2018

Residential Tenancy Branch