



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

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

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution, amendment to the application and evidence. I find that the tenant was served with the landlord's materials in accordance with sections 88, 89 and 90 of the *Act*.

The landlord confirmed receipt of the tenant's evidence but said that it was not received until November 15, 2018 and they have not had an opportunity to review the materials. The tenant confirmed that she had not served the evidence until recently. Rule of Procedure 3.15 provides that a respondent's evidence must be received by the applicant no less than 7 days before the hearing. 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.

The tenant's late evidence consists primarily of unidentified photographs, some email correspondence and written submissions reiterating her testimony. While I make a note

of the landlord's objection I do not find the tenant's written evidence to be unreasonably prejudicial and allow it as part of the hearing record.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. Much of the testimony of both parties at the hearing pertained to previous dispute resolution proceedings, matters irrelevant to the present application and general complaints about the attitude and behavior of the other party. The principal aspects of the landlord's claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy originally began in July, 1994 and ended on August 31, 2016 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use. The monthly rent at the end of the tenancy was \$1,001.00 payable on the first of each month.

The rental unit is a one-bedroom apartment located on the lower level of a detached property. There is another one-bedroom rental apartment on the same level. The landlord resided on the main level of the rental property.

The landlord seeks a monetary award of \$3,987.50 for the following items:

Item	Amount
Loss of Rental Income (Sept-Oct, 2016)	\$2,002.00
Bathroom Sink	\$340.50
Stove/Oven	\$300.00
Carpet Clean/Refurbish	\$622.50
Repairs to bathroom Cabinets Tub/Fan	\$267.50
Clean Venetian blinds	\$140.00
Repair to Walls	\$70.00
Fridge Clean	\$87.50
Light Fixtures	\$52.50
Clean Cabinets Kitchen & Bath	\$105.00

TOTAL	\$3,987.50
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The landlord submits that the rental unit was in such a state of disrepair that it could not be occupied and required extensive cleaning and maintenance. The landlord testified that the work to the rental unit took until mid-October, 2016. The landlord seeks the equivalent of 2 month's rent for the period the suite was uninhabited.

The landlord submits that the condition of the rental unit was such that they incurred significant expenses to repair and refurbish the suite. The landlord submitted into evidence numerous photographs and hand written notes regarding the condition of the suite and the cost of the work performed.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Policy Guideline 40 provides a general guide for determining the useful life of building elements. The Guideline states that an arbitrator "may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement". In the present case, because of the length of this tenancy most of the building elements have exceeded the expected useful life. The parties have testified that the building elements were not replaced throughout the tenancy. Because of this, I find that the tenant is only responsible for the damage or loss to the rental unit in excess of the expected wear and tear.

I find that the landlord has not shown, on a balance of probabilities, that the repairs to the rental unit arose from the tenant's actions or negligence. I accept the landlord's testimony that the rental suite required cleaning and maintenance, I accept the landlord's evidence that some of the appliances and fixtures needed to be replaced. However, I find that after 2 decades of use, the fixtures and appliances in a rental unit are going to require replacement in any event. I find that the landlord has not shown that the work done in the rental unit was necessitated by the tenant's actions. The photographs submitted by the landlord into evidence show that the rental unit needed cleaning but I do not find that it is any more than would be expected in a suite after an

extended tenancy. I find it more likely that the condition of the rental suite is a result of the passage of time. Consequently, I dismiss this portion of the landlord's claim.

The landlord testified that they were unable to occupy the rental unit due to the need for repairs spanning a period of nearly 2 months. I find that there is insufficient evidence that the timeframe for repairs is due to the actions or negligence of the tenant. The rental unit, having been occupied for 22 years required cleaning and maintenance. I find that there is insufficient evidence to show that the scope of work done was anything more than would be normally expected after a lengthy tenancy. I find that there is insufficient evidence on a balance of probabilities that any loss is attributable to the tenant. I dismiss this portion of the landlord's claim.

Conclusion

The landlord's claim is dismissed in its entirety 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: November 19, 2018

Residential Tenancy Branch