Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGARA GARDENS HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on September 12, 2018. The landlord seeks the following remedies under sections 67 and 72 of the Act:

1. an order for compensation in the amount of $590.00 for, as described in the application, "cost to repair damages to the suite at move out"; and,

2. an order for compensation in the amount of $100.00 for the filing fee.

A dispute resolution hearing was convened on January 15, 2019 and the landlord's agent, two employees (witnesses) of the landlord, and the two tenants attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues were raised by the parties in respect of the service of the Notice of Dispute Resolution Proceeding and the landlord's evidence.

However, I excluded the tenants' late submission of evidence under Rule 3.15 of the *Rules of Procedure,* under the Act, which requires that a respondent's evidence be received by the applicant and the Residential Tenancy Branch no less than seven days before the hearing. The only exception to this rule is where the evidence is new and relevant; in this case, the documentary evidence was contemporaneous with the tenancy and as such it is inadmissible under Rule 3.17 or Rule 3.15.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order for compensation for the “cost to repair damages to the suite at move out”?

2. Is the landlord entitled to an order for compensation for the filing fee?

Background and Evidence

The landlord’s agent (hereinafter the “landlord”) testified that the tenancy commenced on August 1, 2016 and ended on August 31, 2018. Monthly rent was initially $1,400.00, later increasing to $1,450.00. The tenants paid a security deposit of $700.00, a key deposit of $100.00, and no pet damage deposit. The landlord confirmed that both the $700.00 and the $100.00 deposits have not been returned. A copy of the written tenancy agreement was submitted into evidence.

The landlord completed a Condition Inspection Report (the “Report”) at the beginning and at the end of the tenancy. The tenant E.M. and one or two employees of the landlord were present at both inspections and submitted into evidence was a copy of the Report. The Report noted several items for which the landlord seeks compensation in the amount of $590.00, which are comprised as follows (excluding the claim for compensation for the filing fee):

Painting of the rental unit	$200.00
Damage repairs to the rental unit	$390.00

The landlord testified that while they submitted an invoice for the painting that totalled $1,373.40, they only seek a small portion of the amount because the tenants clearly tried to patch up some painting (over some presumably coloured walls) and made an effort to restore the wall to its original colour. Submitted into evidence was a photograph of the blotchy wall with a slight difference in hue.

Regarding the claim for repairs, these consisted of the following materials and services in repairing and replacing the damage: replace range hood range damaged from smoke stains, replace 3 swollen cabinet doors in the kitchen, replace 2 swollen cabinet doors in the bathroom, replace 2 broken racks in the refrigerator. A copy of the landlord’s invoice for these repairs was submitted into evidence.

The swollen cabinets were, the landlord argued, caused by the tenants letting water run onto them. The oven range appeared to be damaged by either fire or smoke, and the inside was greasy, and it needed to be replaced. Finally, the cracked refrigerator shelves would, in the landlord's opinion, be caused by overloading the shelves.

The tenants testified that they visited the landlord's front office and were directed to Sherwin Williams where they could obtain the proper paint colour to cover up the walls. The landlord had an account with the paint store. However, the tenants' efforts were not entirely successful, as the paint colour was not an exact match.

Regarding the water damage and the swollen cabinets in the bathroom, they submit that this was due to regular wear and tear, and that the design of the counter was such that in the normal activity of washing hands, water would drip off the counter. They attempted to minimize water running off the counter by putting a cloth on top of the counter. Finally, they commented that the quality of the doors was "not that high." As for the swollen cabinets in the kitchen, they argued that this was due to the "regular use of pots and pans" and that they were not negligent in causing the damage. The tenants noted that the cabinets worked fine.

In respect of the refrigerator shelves, the tenants explained that they were composed of "very thin, cheap plastic." Finally, regarding the oven range hood, the "damage" was from regular cooking, and that it was not actually damaged such that the hood needed to be replaced. Rather, it was simply not as clean as it perhaps could have been; they "did [our] best to clean it." They further noted that the hood did not provide great ventilation. Finally, regarding the keys and the key deposit, the tenants testified that they returned the keys (a regular set of keys) and a fob to the landlord at the end of the tenancy.

In rebuttal, the landlord argued that if the tenants were concerned with swelling that they should have reported it. They submitted that the refrigerator shelving would only break if it was overloaded. Regarding the oven hood, the landlord's employee R.B. testified that it is quite a powerful hood, such that it will suck up a rag if held against the fan.

In response to some questions I had of the landlord regarding the age of certain items, the landlord testified that the refrigerator was not that old, from 2015. She was unsure of the age of the range hood, and the cabinet doors were replaced at some point prior to the tenants moving in.

In final submissions the tenants testified that they “don’t claim to be experts in cleaning” and, also, did not report such things as swelling because it was not believed to be an urgent matter requiring such reporting. They also commented that they did not put anything overly heavy in the refrigerator shelving. They did, however, note that they observed a hairline crack starting to appear in one of the shelves shortly after moving in.

Finally, they submitted that there was no negligence on their part and that the damage claimed was due to ordinary wear and tear. The tenant also testified that he spoke with an employee of the landlord who commented that they have had to cut cabinet doors quite often, which the tenants argue is indicative of an issue with the cabinet doors.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each and all the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the landlord claims that the tenants caused cabinet doors to swell from misuse of water, racks in the refrigerator to break, and the range hood to be damaged from smoke stains. The tenants dispute that they are liable for the alleged damaged.

Subsection 37(2) of the Act states 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. Further, subsection 32(4) of the Act states that “A tenant is not required to make repairs for reasonable wear and tear.”

In respect of the painting, while the tenants quite obviously made a serious attempt to cover up whatever paint colour had been there during their tenancy, the oral and documentary evidence establishes that the wall requiring painting was indeed “damaged” and that this was not due to reasonable wear and tear. The tenants’ efforts at repairing the wall to its original colour are to be commended, as is the landlord’s commendable decision to recover only a small portion of the painting costs. However, but for the tenants’ actions the landlord would not have had to paint the wall. The landlord has established the cost of the painting, and their reduction is reasonable.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving its claim for compensation for painting costs.

In respect of the cabinet doors, it is my experience both as an arbitrator who frequently hears these claims, as a homeowner of several years, and as a former tenant (having lived in various apartments over a period of 20 years), that cabinet doors in kitchens and bathrooms do not swell from water unless there is a serious issue with either the plumbing of the property, the physical construction and design of the cabinets, or, with the careless and negligent actions of a water-splashing tenant.

In this case, the landlord argued that the tenants’ actions (or inaction) resulted in the cabinet doors swelling. The tenants disputed this and argued that they took measures to sop up water in the bathroom and in the kitchen, and, that the swelling was simply a result of normal wear and tear from washing their pots, pans, hands, and faces. They also testified that they spoke to the landlord’s employee who had commented about the frequency with which the cabinet doors were being cut and replaced.

The landlord was unable to tell me how old the cabinets doors were in the kitchen and the bathroom, or when they were installed, but did say that they had been replaced in the past. This comment, taken together with what the landlord’s employee purportedly said to the tenants, gives rise to a strong likelihood that there does appear to be ongoing water-swelling-cabinet-door issues throughout the building.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, while the Condition Inspection Report reflects a change in condition of the kitchen and bathroom cabinet doors from the start of the tenancy to when the tenants vacated two years later, the tenants' testimony (which was not disputed by the landlord) regarding their conversation with the landlord's employee as to the frequency of cabinet door cutting casts doubt on the landlord's claim that the tenants caused the damage to cabinets. Taking into consideration the otherwise clean and undamaged condition of the rental unit (except for the range hood), the tenants' evidence and demeanor in giving evidence characterised to me tenants who took care of their first home together in a meticulous manner.

Given the above, and taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met their onus of proving their claim for compensation in respect of the cabinet doors.

Regarding the oven range hood, the Report indicates smoke damage, as also described by the landlord. However, the one photograph submitted into evidence does not reflect smoke damage to the extent that the range required replacing. If it did, the quality of the photograph does not lend itself to me making a finding that the smoke damage was so extensive that a replacement was necessary. Indeed, I magnified the photograph and adjusted my computer monitor's colour settings to assess the damage, but to no avail. I did not hear any evidence from the landlord as to why an extensive cleaning would not have solved the issue, or, more importantly, whether an extensive cleaning had been attempted before deciding to replace the hood. While I note that it was greasy, as described by the landlord, a greasy range can often be cleaned.

Given the above, I do not find that the landlord is entitled to the compensation sought for the replacement of the range hood. However, the range hood was by all accounts not cleaned satisfactory. And, on that basis, I award nominal damages to the landlord for the tenants' breach of section 37(2) of the Act for not leaving the range hood reasonably clean. A nominal award is granted where the applicant has proven a breach of the Act, the regulations, or the tenancy agreement by the respondent, but is unable to prove the specific costs. In this case, the cost of having the hood cleaned.

Finally, in respect of the claim for the broken refrigerator shelves, the refrigerator was manufactured circa 2015. Therefore, it was relatively new when the tenants moved into

the rental unit in 2016. I note that the Condition Inspection Report notes that following damage to the refrigerator at the start of the tenancy: “crisper shelf cracked & freezer molding cracked” and then “2 broken shelf holders” damaged at the end of the tenancy.

The landlord’s position is that the shelves would not have cracked unless they had been overloaded. The tenants disputed this and testified that they loaded the shelves with ordinary condiments and nothing too heavy that may have caused the cracking. That having been said, the tenants testified that they noticed a hairline crack, or fracture, in one of the shelves upon moving in. There is no annotation or comment in the Condition Inspection Report about this crack, and as such, I find that the tenants were under an obligation to report the crack, which likelihood would have worsened. (As it eventually did.) Indeed, that the crack was not noticed upon the move-in inspection but noticed by a tenant after moving in, there is in my mind a reasonable likelihood that the tenants inadvertently caused the crack, which only worsened over time. But for the damage to the refrigerator shelving caused (whether by negligence or no fault of the tenant’s) by the tenants, the landlord would not have had to replace the shelving. Finally, the landlord was able to establish a cost to the shelving replacement.

All of that said, the condition of the refrigerator at the start of the tenancy with its cracked crisper shelf and cracked freezer molding does, I find, support the tenants’ claim that the quality of the plastic—indeed the overall quality of refrigerator itself—is quite likely poor. The refrigerator was either manufactured or installed (the landlord did not specify which) in 2015, meaning that it was at least a year, but not more than two years old when the tenants moved in. For a supposedly almost-new refrigerator to experience a cracked crisper shelf, a cracked freezer molding, and two cracked shelves within three years suggests a poor-quality product that would break down more quickly than would a better appliance under reasonable wear and tear. While I heard no evidence that might suggest the tenants were particularly rough in their food handling behavior, the landlord did not dispute the tenants’ submissions that the damage to the refrigerator was anything but reasonable wear and tear.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for the damage to the refrigerator.

In summary, I award the landlord compensation for the painting in the amount of $200.00 and a nominal award for the greasy, smoke-stained range hood in the amount of $50.00. As the landlord was partly successful in its application I grant it compensation

in the amount of $64.00 (which is calculated at 64% of the filing fee, reflecting the 64% awarded to the landlord from the total amount sought in its application).

Therefore, the landlord is entitled to retain $314.00 of the tenants' security deposit in full satisfaction of the award.

The tenants are entitled to a refund in the amount of $486.00 ($700.00 security deposit plus $100.00 key deposit). A corresponding monetary order in this amount is issued along with this Decision to the tenants.

Conclusion

I hereby award compensation in the amount of $314.00 to the landlord, and further order that the landlord retain this amount from the tenants' security deposit.

I hereby grant the tenants a monetary order in the amount of $486.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 15, 2019

Residential Tenancy Branch