



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ZETAN ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCL-S, MNDL-S, FFT

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "Act"), for compensation under the Act, for compensation for damages, for permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

The Landlord, the Landlord's spouse and his Agent (the "Landlord"), as well as one of the Tenants, attended the hearing and were each affirmed to be truthful in their testimony. Each party was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter- *Res Judicata*

During the hearing, it was brought to this Arbitrator's attention that these parties have had two previous Dispute Resolution hearing with the Residential Tenancy Branch. The parties testified that during one of those hearing a decision had already been rendered regarding the security deposit for this tenancy. Both the Landlord and the Tenant provided the previous file number for the two hearing to this arbitrator; those file numbers are recorded on the style of cause page of this decision.

Res judicata is the legal doctrine preventing, the rehearing of an issue that has been previously settled by a decision determined by an Officer with proper jurisdiction.

I have reviewed the previous decisions, and I find that a previous Arbitrator had already made a determination regarding the security deposit for this tenancy. I find that the principle of *res*

judicata bars me from considering if the Landlords request to retain the security deposit in this hearing.

However, I find that the previous Arbitrators made no determination regarding the Landlord's claim for the compensation due to losses and damage to the rental unit. Therefore, I will proceed in this hearing on the remainder of the Landlord's claims.

Preliminary Matter- Partial Withdraw of Claim

During the hearing, it became apparent there would be insufficient time to hear the evidence and submissions relating to the Landlord's full application. Accordingly, this arbitrator decided that an adjournment was appropriate.

The Landlord testified that he did not want to return at a later date and requested to withdraw the remaining items from his claim. The Landlord confirmed that he wished to withdraw his claims for the recovery of \$500.00 in cleaning, \$560.00 in blinds and track repair, and \$800.00 in Strata bylaw fines.

The Tenant had no objection to the Landlord's request.

I find that the Landlord had withdrawn his claims for the recovery of \$500.00 in cleaning, \$560.00 in blinds and track repair, and \$800.00 in Strata bylaw fines.

Preliminary Matter- Caution

During the hearing, both the Landlord and the Tenant were cautions several times regarding personal conduct, outbursts and the interruption of the other parties' testimony.

The parties to this dispute were advised twice of the expected appropriate conduct during these proceedings. When the parties continued to interrupt each other, the parties were cautioned that further disruption to the proceedings could result in their removal from the hearing.

Preliminary Matter - Evidence

After this hearing concluded, it was brought to this Arbitrator's attention that the Tenant had submitted evidence for consideration.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure states the following:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

As the Tenant's evidence was not available for consideration during the hearing, I find that it would be procedurally unfair of me allow this evidence to be considered in my decision. Therefore, I will not consider the evidence submitted by the Tenant on the day of this hearing.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to monetary compensation for losses under the *Act*?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2016, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the first year. Rent in the amount of \$2,488.00 was to be paid by the first day of each month and the Landlord had been given a \$1,200.00 security deposit at the outset of the tenancy.

The parties also agreed that the tenancy ended in accordance with a settlement agreement, on May 31, 2018. The Parties also agreed that the security deposit had been ordered returned to the Tenant in a previous decision issued by the Residential Tenancy Branch (RTB). During the hearing, both parties agreed that the Tenant had sub-let the rental unit to another person.

The Parties also agreed that the move-in and move-out inspections of the rental unit had been conducted; however, no written record of the inspections was created by the Landlord. The Tenant testified that he had requested a written inspection, but the Landlord had refused. The Landlord testified that he has had rented this rental unit at least ten times, in the past, and that he had never completed a written move-in/move-out inspection, and had never needed one, before now.

The Landlord testified that the Tenant returned the rental unit to him uncleaned and damaged and that due to this he was lost two months' worth of rental income as he was not able to re-rent the unit until the damages had been repaired. The Landlords is requesting the recovery of his loss of rental income for June 2018, in the amount of \$2,488.00.

The Tenant testified that he had returned the rental unit to the Landlord in a clean state and that he had not damaged the property and is not responsible for the Landlord's loss of rental income for June 2018. The Tenant testified that there was damage to the floors at the end of tenancy; however, that the damage to the floors was not due to the actions or the neglect of the Tenant or his sub-tenant.

Both parties also agreed that there had been a leaking faucet in the rental unit that had caused damage to the floors of the rental unit and the ceiling of the unit below, during the tenancy. The

Landlord testified that he was not able to determine if the leak in the faucet had been caused by the Tenant damaging the faucet.

The Landlord testified that he received a call from the building manager advising him that there was a water leak coming from his rental unit and that the property manager had gone into the rental unit in order to turn off the water. The Landlord testified that he attended the rental unit and discovered that the faucet in the kitchen had been leaking, causing damage to the floors of the rental unit and the ceiling of the unit downstairs. The Landlord testified that the Tenant ought to have known that the faucet was leaking and should have reported it to him sooner. The Landlord testified that due to the extent of the damage to the rental unit and the unit below, it was obvious the leak had been there for a while. The Landlord testified that the Tenant had moved in a sub-tenant, without his consent, and that person did not know what she was doing and failed to report the leak in a timely manner. The Landlord testified that the failure of the sub-tenant to report the leak resulted in excessive damage to the floor in the kitchen, the hallway and the living room of the rental unit. The Landlord is requesting the recovery of his costs to replace the damaged floor and faucet in the rental unit, in the amount of \$2,286.91 for the floor and \$366.98 for the faucet. When asked the Landlord testified that he could not be sure of an exact time but that he believed the faucet must have been leaking for over an hour before the property manager called to advise him of the leak.

The Tenant testified that the leaking faucet, was reported to the Landlord as soon as it was discovered and that the leak was not noticeable as it was leaking in behind the cupboard and into a space between the kitchen wall and the living room wall. The Tenant testified that there was no way for his sub-tenant to know there was a problem until the building manager knocked on the door, advised that he had received a complaint from the unit downstairs, about water coming through the ceiling.

The Tenant testified that neither he or his sub-tenant had damaged the faucet or the floors of the rental unit. The Tenant also testified that the damage to the floors was a result of the Landlord not completing adequate remediation after the leak was discovered, which caused to flooring in the rental unit to dry warped and buckle.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that this tenancy ended in accordance with the Act on May 31, 2018. I also accept the testimony of both parties that the Landlord did not conduct the written move-out inspection at the end of this tenancy. Section 35 of the Act states the following:

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

I find that the Landlord was in breach of section 35 of the *Act* by not completing the move-out inspection.

The move-in/move-out inspection is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy, and it is required that this document is completed in the presence of both parties. In the absence of that document, I must rely on verbal testimony regarding the condition of the rental unit at the beginning and the end of the tenancy.

I accept the agreed upon testimony of the parties, that the floors of the rental unit were damaged during this tenancy due to a water leak. I also accept that the Landlord suffered a loss of rental income and repair costs due to the damage.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if an award for compensation is due to the Landlord, I must first determine if there has been a failure to comply with the Act by the Tenant. Section 32 of the Act provides that both the landlord and the tenant have obligations to repair and maintain the rental unit and residential property.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Pursuant to section 32, I find that a Landlord has an obligation to repair and maintain the rental unit, except where the damage is the result of an action or neglect of a tenant. In most cases, the leaking faucet would be the responsibility of the Landlord to repair, as the leak is most often the result of age, wear and tear or improper installation unless proven otherwise. However, a tenant may be found to be negligent where a tenant was aware of the need for a repair and failed to take reasonable actions to minimize the damage that may result from the need repair.

I have carefully reviewed the documentary evidence submitted by the Landlord, and I find that there is no evidence before me to show that the Tenant or his sub-tenant had damaged the faucet or that they had known about the water leak and had failed to report it to the Landlord. Therefore, I find there is an absence of physical evidence to prove that the Tenant had damaged the rental unit through actions or neglect. Therefore, I dismiss the Landlord's claim for compensation in its entirety.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in his application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this hearing.

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: January 24, 2019

Residential Tenancy Branch