Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDL-S**

Introduction

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

- a monetary order for unpaid rent and for damage to the unit, site, or property pursuant to section 67; and
- authorization to recover her filing fee for this application 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 the tenant was served the notice of dispute resolution package via Canada Post registered mail on December 13, 2018. The landlord testified she served further documents on the tenant by Canada Post registered mail on January 7, 2018. The tenant confirmed receipt of the notice of dispute resolution package and further documents via registered mail and is found to have been duly served with all documents in accordance with the Act.

The tenant testified that the landlord was served with her evidence package via Canada Post registered mail on January 9, 2018. The landlord confirmed receipt of this package and is found to have been served with the package in accordance with the Act.

I find that the parties have been served with the evidence packages in accordance with section 88 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to recover her filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the parties' evidence and my findings are set out below.

The parties entered into a tenancy agreement for the rental of an upstairs suite in a detached home (the "**Upper Unit**"). The term of the tenancy was to be from December 1, 2017 to December 1, 2018. The tenant was to pay monthly rent in the amount of $1,250. The tenant paid a $625 damage deposit to the landlord at the outset of the tenancy, which the landlord still retains.

The detached home had a downstairs suite, which was occupied by the landlord (the "**Lower Unit**").

On August 31, 2018, the landlord issued a two month notice to end tenancy, with an effective date of December 1, 2018. The tenant moved out of the Upper Unit on November 29, 2018.

The tenant submitted into evidence a copy of the move-in inspection report dated December 1, 2018, signed by both parties (the "**Move-In Report**"). The tenant testified that the Move-In Report was actually made on December 4, 2018, and that the landlord did not take part in the inspection or the making of the Move-In Report. Rather, the tenant testified that she did not move into the Upper Unit until December 2, 2018, and that she completed the inspection and Move-In Report by herself, and forwarded a copy to the landlord for her signature.

The landlord testified that the inspection and Move-In Report was made on December 1, 2018, and that she participated in it. She testified that she relies on the date listed on the Move-In Report and that fact that she signed it for this belief, but that does not have an independent recollection of participating in the inspection or completing the Move-In Report.

A move-out inspection report was completed November 29, 2018. Both parties agree that each party was present at when the inspection was done and this report made. The tenant provided her forwarding address to the landlord on the move-out report on this same date.

The landlord commenced this claim on December 11, 2018, seeking compensation in the amount of $704 for damage to the Lower Unit caused by water leaking from the bathroom of the Upper Unit allegedly caused by the tenant (the "**Leak**") and for cleaning of the Upper Unit and the driveway after the tenant moved out.

The landlord testified that, on the morning of March 19, 2018, she heard water dripping from the Upper Unit to the bathroom of the Lower Unit. She entered the Lower Unit bathroom, touched the drywall, and discovered that it was like "mush". The landlord testified that she immediately ran upstairs, knocked on the Upper Unit door, and asked that the tenant's relative (the tenant was not home) to stop running water in the bathroom of the Upper Unit. The relative complied.

The landlord testified that she returned to the Lower Unit bathroom, and immediately tore out the drywall and started running a fan in an attempt to remove moisture from the bathroom. She testified that she knew she had a duty to mitigate the damage, and that the year prior she had water leakage issues in the residential property. She knew that the wet drywall had to be removed immediately to stop the spread of moisture.

The landlord testified that the following day (March 20, 2018) a plumber attended the Upper Unit to make repairs and investigate the cause of the Leak. She testified that the plumber advised her that the cause of the Leak was that the overflow drain of the Upper Unit bathtub had been "pushed up" inside the wall, and that the tub had been overfilled. This caused the overflow drain to fail, and the Leak to occur. The landlord testified that the plumber felt that the overflow drain might have been pushed up by someone pressing on the portion of it that protrudes out of the wall into the bathtub with their toes.

The landlord produced a copy of a receipt for work done by the plumber, which described the work done as "leak from tub into basement. Replace [illegible] and overflow. Replace outside hose bib."

The landlord did not call the plumber as a witness, or provide a written report setting out the plumber's opinion as to the cause of the Leak, or how the overflow drain might have become "pushed up".

The tenant did not deny that the Leak occurred or that the drywall was removed in the Lower Unit bathroom. Rather, the tenant testified that she had spoken with two plumbers, who advised her that it was unlikely that the overflow drain could have been pushed up in the manner alleged by the landlord.

The tenant did not call a plumber as a witness, and did not submit any report or other documentary evidence supporting her testimony.

The tenant argued that it would be impossible for someone to “push up” the overflow drain in the manner alleged by the landlord without resorting to using a hammer, or (if they kicked it) without severely damaging their feet. She denied that she or any other occupants of the Upper Unit did that. She further argued that since the landlord had experienced water leakage issues a year ago that the Leak was caused by the same factors that caused those issues, and not by any negligence on her or the other occupants of the Upper Unit.

The landlord alleges that, upon the tenant’s departure, the Upper Unit was left in such a state that required additional cleaning and she sought compensation for her losses associated with this additional cleaning. She testified that there was dust and dirt on the floors, baseboards, and fireplace, and that the tenant did not clean behind the stove or in the refrigerator. She testified that the tenant’s car caused an oil stain on the driveway which she, as of yet, has been unable to remove (despite making efforts at cleaning).

The landlord testified it took a friend she hired four hours to clean the Upper Unit.

The landlord uploaded a number of photos which show (among other things):

1) a large stain behind the stove on the side of the cabinet;
2) debris on the floor under the stove;
3) a small amount of dirt in the corner of the floor;
4) dust on top of the fireplace;
5) lint on the fireplace grill; and
6) a large oil stain on the driveway.

The tenant denies that Upper Unit was in a state of uncleanliness that warranted additional cleaning. She did admit that she did not clean the floors of the kitchen and bathroom prior to move out, as the movers packed her mop before she could clean the floor of those rooms. She denies that the refrigerator was not cleaned, or that the interior of the fireplace was not cleaned (although admitted the lint remained on the grill of the fireplace).

The tenant also admitted that her car did leak oil on the driveway, as the result of her car “exploding” (I suspect this is hyperbole), but stated that the oil stain would fade over time. She also argued that the landlord’s car has also created an oil stain on the

driveway (albeit a smaller one), so the landlord is not entitled to claim against her for the stain the tenant caused.

Amount of claim

The landlord sought to recover the following costs allegedly associated with the tenancy, in the amount of $704, as follows:

1) $400 for drywall supplies for repair of the Lower Unit bathroom;
2) $154 for paying a plumbing to repair the Upper Unit bathtub; and
3) $150 for cleaning the Upper Unit.

The landlord provided a receipt from a plumber in the amount of $153.56.

The landlord testified she paid $400 to a friend to remediate the bathroom. She submitted into evidence a worksheet with an hourly breakdown of time spent by her friend doing this work.

She testified that the she paid her friend $100 to clean the Upper Unit after the tenant moved out, and spent $50 on cleaning supplies to try to remove the oil stain from the driveway. She did not submit any documentary evidence in support of these amounts.

The tenant disputed that the landlord hired any friends to conduct the remediation. She stated that the landlord was capable of completing the work herself.

The tenant also referred an email from the landlord to the tenant dated March 23, 2018 (four days after the Leak) wherein the landlord stated that to date she had spent $250 as a result of the Leak. The tenant argued that $554 (cost of plumber plus payment to friend) is inaccurate, and is contradicted by this email.

Analysis

Move-In Report

The parties' versions of events regarding the creation of the Move-In Report are in direct conflict. I have concerns with each of their accounts.

The landlord testified that the Move-In Report was made on December 1, 2017, and that the inspection was conducted by both her and the tenant. I am troubled, however, by the fact that the landlord does not have an independent recollection of completing the

Move-In Report, or conducting the inspection. Instead she relies on the contents of the Move-In Report itself. This is factor in favour of preferring the tenant's version of events.

The tenant testified that she conducted the inspection and completed the Move-In Report by herself on December 4, 2018 (and then provided the landlord with a copy for her signature at a later date), and that it was impossible to have conducted the inspection on December 1, 2017, as she did not move into the Upper Unit until December 2, 2018. However, the tenant offered no explanation as to why, if this were the case, she backdated the Move-In Report to show that it was made on December 1, 2017.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v Chorny* (1952), 2 DLR 354 (BCCA), which states at pages 357-358:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I find that the tenant's testimony is not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances. Where the testimony of the landlord and the tenant differ, I accept the testimony of the landlord over that of the tenant. I think it more likely that the inspection occurred on December 1, 2017, as stated on the Move-In Report, and that the landlord was present (given the presence of her signature), than that the tenant backdated the Move-In Report, and conducted the inspection on her own.

Accordingly, I find that the landlord is in compliance with section 24 of the Act. Additionally, I find that she applied to retain the damage deposit within 15 days of receiving the tenant's forwarding address in writing (forwarding address received November 29, 2018, and this application as commenced December 11, 2018).

Therefore, I find that there is no basis to make an order that the landlord pay the tenant double the security deposit, per section 38 of the Act (as sought by the tenant in her written submission, although not raised during the hearing).

Causation of the Leak

Per Rule of Procedure 6.6, the landlord bears the onus of proving that the tenant is more likely than not responsible for causing the conditions that led to the Leak.

I find the landlord has failed to meet this burden. The landlord has failed to provide me with sufficient evidence that would support her argument that the tenant was responsible for the Leak. The landlord provided only second-hand evidence from multiple plumbers, but only for the vaguest propositions. The parties provided conflicting testimony with the landlord testifying that her plumber stated he felt that the overflow drain could have been pushed up by someone in the bathtub pressing on it with their toes, while the tenant testified that two plumbers she spoke with said that this event would be impossible.

I do not know if this is the landlord's plumber expert opinion as to the cause, or if he is merely speculating. I do not know if he inspected to the overflow drain to determine if it was properly installed. Likewise, I do not know if the tenant's plumbers have inspected the overflow drain (I suspect not). I do not know if the tenant's plumbers would agree that the cause of the Leak was that the overflow drain was pushed up. I do not even know what an overflow drain looks like or how it works (neither party directed me to any photos of the part in question).

In short, I have many questions and few answers.

As stated above, the landlord bears the burden of proof to show that her version of events is true, on a balance of probabilities. It would have benefited the landlord to remedy this lack of information regarding the overflow drain and the cause of the Leak. With more information I may have been able to make a determination as to the cause of the Leak.

I do not have sufficient information about the cause of the Leak to be able to determine its cause. Accordingly, I find that landlord failed to discharge her onus to show that the tenant was responsible for causing the Leak.

I therefore decline to make an order that the landlord is entitled to retain any portion of the security deposit relating to the remediation work done to the Lower Unit bathroom, or for the plumber's visit.

Amount of Damages

As I have found that the landlord has failed to prove that the tenant's actions caused the Leak, I decline to consider the landlord's application for compensation related to the Lower Unit bathroom or the plumber.

I do not find the claims of the tenant that the landlord performed the cleaning duties herself to be persuasive. The tenant provided no evidence to the contrary; rather she stated that the landlord was capable of doing the work and that she has seen the landlord do other physical work. This may be the case. However, just because a party is capable of doing the work themselves does not obligate them to do so.

The landlord need only ensure that the rate charged for the cleaning work done is a reasonable one I find that the rate of $25/hour ($100 divided by 4 hours) for cleaning service to be reasonable.

Section 37 of the Act reads:

> **Leaving the rental unit at the end of a tenancy**
> (2) When a tenant vacates a rental unit, the tenant must
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

The standard of cleanliness is therefore that of reasonableness.
RTB Policy Guideline 1 reads (in part):

> MAJOR APPLIANCES
>
> 1. At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.
>
> 2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the

> landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

I find that the landlord has failed to provide sufficient evidence to demonstrate that the stove is on rollers. I find the tenant was not responsible for cleaning behind or under the stove.

On the tenant's own testimony, I find that the tenant failed to clean the kitchen and bathroom floors. She testified that she was unable to due to the movers packing away her mop. This suggests that the floors did require cleaning. I find that the kitchen and bathroom floors were not "reasonably clean".

I find that the landlord has failed to provide evidence in support of her claim that the fridge was left significantly dirty. No photos in support of the landlord's testimony were submitted into evidence. Accordingly, I prefer the tenant's testimony on this point, and I find that the refrigerator did not require cleaning.

On balance, I find that some cleaning of the Upper Unit was necessarily conducted by the landlord to bring it to the standard of "reasonably clean". However, for the reasons stated above, I do not agree that the full amount the landlord paid to her friend to clean the Upper Unit was necessary to meet this standard.

I find that 50% of the cleaning done was necessary to meet the standard of reasonable cleanliness. Accordingly, I find that the landlord is entitled to $50 for cleaning of the interior of the Upper Unit.

Based on the tenant's own testimony, I find that the tenant is responsible for causing the oil stain on the driveway. I also find that the stain is beyond ordinary wear and tear, as:

1) The tenant stated that the stain was the result of her car "exploding". Any damage caused by an explosion (whether literal or merely hyperbolic) is beyond that of ordinary damage; and
2) The tenant stated that the stain under the landlord's car was smaller. Presumably, the landlord's car did not "explode". I find it reasonable to infer that this smaller stain is the result of the ordinary wear and tear.

I find $50 in cleaning supplies to remove the stain to be a reasonable amount. Accordingly, I find that the landlord is entitled to $50 for the cost of such cleaning supplies.

Conclusion

I order that the landlord may retain $100 of the security deposit.

I order that the landlord return to the tenant the balance of the security deposit ($525).

As the tenant was substantially successful in this hearing, I decline to order that the landlord may recover her $100 filing fee from the tenant.

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 23, 2019

Residential Tenancy Branch