



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 06, 2018 (the "Application"). The Landlord applied for compensation for damage to the unit and sought to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

The Property Manager appeared at the hearing for the Landlord. The Tenant appeared at the hearing with the Witness who exited the room until required. I explained the hearing process to the parties who did not have questions when asked. The parties and Witness provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not. I addressed service of the hearing package and Landlord's evidence and the Tenant confirmed she received these.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$531.72 for replacement of a cracked toilet tank in the rental unit.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started March 01, 2017. The Tenant paid a \$800.00 security deposit.

The parties agreed on the following.

The tenancy ended November 30, 2018. The Tenant provided her forwarding address on the move-out Condition Inspection Report (CIR) on November 30, 2018.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

A move-in inspection was done by the parties on February 23, 2017. The unit was empty at the time. A move-in CIR was completed and signed by the parties.

The Property Manager testified that a copy of the move-in CIR was emailed to the Tenant within 24 hours of the inspection. The Tenant was not sure about this but said she probably did receive a copy.

The parties agreed on the following.

A move-out inspection was done by the parties on November 30, 2018. The unit was empty at the time. A move-out CIR was completed and signed by the parties. The Tenant received a copy of the move-out CIR by registered mail December 10, 2018.

The Property Manager testified as follows in relation to the toilet tank.

The Tenant reported that the toilet tank was leaking. The Landlord requested a photo and received the one submitted as evidence. The damage is not normal wear and tear. The Landlord's plumber attended and said it was likely something heavy fell into the toilet tank. The plumber replaced the toilet tank. The invoice for this has been submitted.

The Tenant had said she noticed a small crack in the toilet tank but did not report it because it was not leaking. The damage would not have been caused by a hairline crack. The toilet was new in November of 2017 and so just over a year old.

The toilet was fixed April 23, 2018, during the tenancy.

The Tenant testified as follows.

She did not look around the toilet to check everything on move-in. There was a line in the toilet, but she did not think it was a major issue. She did not cause the damage and should not be responsible for it.

This happened in May. The Landlord did an inspection in August and did not mention anything about the toilet tank. It was not until she gave her notice to end the tenancy that the Landlord told her she was being charged for the toilet tank. At the time, she had called the Landlord who had said they would take care of fixing the toilet tank. If she knew what it was going to cost, she would have had a plumber come fix it.

I asked the Property Manager why the Landlord did not tell the Tenant she was responsible for the cost of fixing the toilet tank until the end of the tenancy. The Property Manager testified that the Landlord sent the Tenant an email May 17, 2018 about this. The Property Manager said this had been submitted as evidence; however, it has not been submitted as evidence.

The Tenant denied that she received an email about this May 17, 2018.

The Tenant further testified as follows.

She was not given an opportunity to fix the toilet tank herself. She was not told she would be responsible for fixing it.

The Tenant called the Witness who testified as follows.

The toilet was leaking from a mark in the bottom. He attended the rental unit to look at the toilet. He told the Tenant he could fix it for less than \$100.00 because the entire toilet would have been \$150.00 and only the tank needed to be fixed. It is unclear why it cost the Landlord the amount it did to fix the toilet. They called the Landlord contact number and were told the Landlord would take care of replacing the toilet without cost to the Tenant.

The Property Manager did not have questions for the Witness.

The Property Manager further testified as follows.

She was the one who answered the call about the toilet. It was not the Tenant but a male who called. She did not tell the male that the Landlord would fix it at the owner's expense. They did not discuss who would be responsible for the cost. The Tenant did not offer to repair the toilet. The Tenant was not given an opportunity to repair it on her own.

The Tenant testified that it was the Witness who called about the toilet and that she heard because it was on speaker phone.

I asked the Property Manager if there was some evidence before me that this fix required some specialty. She said it did not require a specialty and that it was a simple replacement of the toilet tank.

Both parties agreed that the move-in CIR is blank if there was no issue and has notations about damage if there was an issue. The Tenant advised that the toilet was in the main bathroom.

The move-in CIR does not show any damage to the bathrooms on move-in.

The invoice for the toilet tank replacement is for \$326.40 for parts and \$180.00 for labour plus GST. The only explanation of the service provided is "replaced the broken toilet tank". There is no indication of how long this took or what the hourly rate of the plumber is.

The only email correspondence between the parties submitted is from November 5, 2018 and November 6, 2018.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord, as applicant, has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning “it is more likely than not that the facts occurred as claimed”.

Section 7 of the *Residential Tenancy Act* (the “*Act*”) states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant’s] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* states:

(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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties, I find the Tenant did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Based on the testimony of the parties, I find the Landlord did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of November 30, 2018, the date the tenancy ended and the date the Landlord received the Tenant’s forwarding address. The Landlord filed the Application December 6, 2018, within the deadline for doing so.

I accept that the Tenant caused the damage to the toilet tank given the move-in CIR does not show there was any pre-existing damage to the toilet tank. I acknowledge that the Tenant testified that she did not carefully inspect the toilet upon move-in; however, the expectation is that landlords and tenants will do so. The Tenant has not provided any evidence that the toilet tank was cracked upon move-in. Based on the photo, I find the crack is large and not damage one would expect to just occur without a cause. I am satisfied the Tenant damaged the toilet tank.

Based on the photo, I find the damage to the toilet tank is beyond reasonable wear and tear as I cannot see how this damage would occur from normal use of a toilet.

I accept that the toilet tank had to be replaced as it was leaking due to the crack. I accept that the Landlord paid a plumber \$531.72 to fix the toilet tank.

I am not satisfied the Landlord minimized their loss in relation to fixing the toilet tank.

The Tenant should have been given an opportunity to fix the toilet tank herself. Further, the Tenant should have been told prior to the Landlord having a plumber fix the toilet what the estimated cost to the Tenant would be if she did not fix it.

The Tenant has disputed the cost. The Witness testified that he could have fixed the toilet tank for less than \$100.00 and that the entire toilet would have cost \$150.00. I am not satisfied based on the evidence provided that \$326.40 for parts is a reasonable

amount. Nor am I satisfied that \$180.00 for labour is reasonable. The Property Manager testified that this was a simple fix that required no specialty. The invoice does not show how long this fix took or what the plumber charged as an hourly rate. I am not satisfied that the Landlord could not have fixed the toilet for less.

In the circumstances, I award the Landlord \$265.00 being half the amount requested as I am satisfied the Tenant is responsible for the damage but cannot conclude based on the evidence provided that \$531.72 is a reasonable amount.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$365.00. The Landlord can keep \$365.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return the remaining \$435.00 to the Tenant. The Tenant is issued a Monetary Order in this amount.

Conclusion

The Landlord is entitled to \$365.00. The Landlord can keep \$365.00 of the security deposit. The Landlord must return the remaining \$435.00 to the Tenant. The Tenant is issued a Monetary Order in this amount. If the Landlord does not return \$435.00 to the Tenant, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: March 29, 2019

Residential Tenancy Branch