



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for damage, and for the return of their filing fee. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord and the Tenant testified that they received each others 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.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

Both parties testified that the tenancy began on July 16, 2016, as a one-year fixed term tenancy. Rent in the amount of \$1,200.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenants paid a \$900.00 security deposit.

Both Landlord and the Tenant agreed that the tenancy ended on September 30, 2017, in accordance with the Act, and that no written move-in-or move-out inspection had been completed for this tenancy. The Landlord testified that she had conducted a

walkthrough of the rental unit at both the beginning and the end of the tenancy but that she had not created a written report. The Landlord also testified that she had not noted any damage to the rental unit during that end of tenancy walkthrough.

The Landlord testified that a few days after the Tenant had moved out a leak in the kitchen water faucet had been discovered by her son. The Landlord testified that when they started to repair the leak, they discovered that the leak had caused extensive damage to the counter, the walls, the floors and the cupboards in the rental unit and that the leak must have been going for a long time to cause the excessive damage that was found. The Landlord testified that the damage resulted in the need for the kitchen to be gutted, in order to remove the mould and water damage.

The Landlord testified that the cause of the leaking faucet was unclear, but that the failure of the Tenant to report the leak to her had resulted in extensive water damage that could have been avoided had the Tenant reported the leak to the Landlord in a timely manner.

The Landlord is claiming for \$8,238.89 for the repair of the water damage in the kitchen; consisting of \$3,588.89 in parts and supplies and \$4,650.00 in labour costs. The Landlord submitted one picture of the rental unit taken six months before the Tenant moved in, 25 pictures of the rental unit taken during the repairs, 7 pictures of the completed repairs, and 38 receipts and invoices for the repair work into documentary evidence.

The Tenant testified that she had no idea that there was a leak in the kitchen faucet during her tenancy and that had she known about it she would have reported it to the Landlord right away. The Tenant also testified that she had looked at the pictures the Landlord had submitted into evidence and believes that the pictures show that the water damage was not visible until the Landlord started repairing the kitchen and that there was no way she could have seen what was happening behind the wall and under the floor.

Both parties agreed that a mid-tenancy inspection had been conducted by an agent for the Landlord, in January 2017, and that no deficiency or damage to the rental unit had been discovered during that inspection.

Analysis

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

I accept the agreed upon testimony of these parties, and I find that the parties to this dispute entered into a tenancy agreement that started July 16, 2016, and ending on September 30, 2017, in accordance with the *Act*. I also accept the agreed upon testimony of these parties that the written move-in and move-out inspection report was not completed for this tenancy, as required by the *Act*.

Pursuant to section 23 and 35 of the *Act*, it is the responsibility of the Landlord to ensure that the inspections for a tenancy are completed as required. I find that the Landlord was in breach of sections 23 and 35 of the *Act* by not completing the written inspection reports as required.

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 this tenancy.

I have reviewed that Landlord's claim and evidence, and I find that the central point of the Landlord's claim is that although the cause of the leaking kitchen water faucet is unknown, the resulting water damage to the rental unit is a result of the Tenant's failure to report the water leak to the Landlord. The Landlord is claiming for \$8,238.89 in compensation, to recover her costs for having the water damage to the floors, walls and cupboards repaired.

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 compensation is due, I must first determine if the Tenant breached the *Act* during the tenancy. Section 32 of the *Act* set out the requirement of a tenant during the tenancy, stating the following:

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.

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

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises provides further guidance on a tenant's responsibility, stating the following:

“The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)², or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act.”

I find that the *Act* and the guideline place a duty a tenant to report any required repairs to a rental unit, to their landlord, and that a tenant may be found to have caused further damage, by neglect, for failing to report a needed repair. I also find that the failure to report a required repair could lead to a tenant being held responsible for cost associated with repairs that became required, as a result of the original repair not being completed. However, I find that this liability, on a tenant, only comes in to play, if it can be shown that the tenant was aware that a repair was required, and that they failed to report a repair even though they knew was needed; the liability does not exist if the tenant was unaware of the need for a repair to the rental unit.

In this case, the parties offered conflicting verbal testimony regarding whether or not the Tenant knew or ought to have known there was a water leak in the rental unit during this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the photographic evidence submitted by the Landlord, and although I agree the photographs show that there was extensive water damage to the rental unit. I find the photographic evidence provided does not show that the water damage was visible or in any way detectable by the Tenant during the tenancy.

I also find that the verbal testimony of the Landlord supports this, as she testified during these proceedings that she had not discovered the leak in the faucet or any visible signs of water damage to the rental unit during her walkthrough at the end of this tenancy.

Overall, I find that it the Landlords has not submitted any evidence to show that the Tenant knew about the leak and failed to report it to the Landlord or sufficient evidence

to satisfy me that the Tenant ought to have known that there was a water leak in the rental unit.

Consequently, I find that the Landlord has not provided sufficient evidence to prove her claim. Therefore, I dismiss the Landlord's claim to recover the repair costs in the amount of \$8,238.89 from the Tenant, in its entirety.

Additionally, 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 her application, I find that the Landlord is not entitled to the return of her filing fee.

Conclusion

I dismiss the Landlord's claim 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: May 16, 2019

Residential Tenancy Branch