Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL MNDL-S FFL

Introduction

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

- a monetary order for damage or compensation pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's counsel R.H. attended and spoke on behalf of the landlord.

As both parties were present, I asked the parties to confirm service of documents. The landlord's counsel testified that the landlord served the tenant with the Notice of Dispute Resolution Proceeding by Canada Post registered mail on February 5, 2019, which was confirmed received by the tenant.

The landlord's counsel testified that the landlord's evidence was couriered to the tenant on April 30, 2019, which was confirmed received by the tenant.

The tenant testified that her evidence was provided to the landlord in two packages on May 3, 2019 and May 9, 2019, and included digital evidence. The landlord's counsel confirmed receipt of the tenant's evidence and that there were no issues with the digital evidence.

Based on the testimony of both parties, I find that the documents for this hearing were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damages or loss?
Is the landlord entitled to recover the cost of the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A copy of the written tenancy agreement was submitted into documentary evidence. Both parties confirmed the following information pertaining to their written tenancy agreement:

- This fixed-term tenancy began on August 15, 2016 with a scheduled end date of August 15, 2017.
- Monthly rent of $3,195.00 was payable on the fifteenth day of the month.
- The tenant paid a security deposit of $1,597.00 at the beginning of the tenancy, which the landlord has returned to the tenant.
- The tenancy ended by way of mutual agreement on February 15, 2017.

Both parties confirmed that there was no written condition inspection report of the rental unit provided to the tenant at move in or move out, and therefore there was no written condition inspection report submitted into evidence for this hearing.

On January 29, 2019, the landlord filed an Application for Dispute Resolution seeking compensation as a result of moisture damage to the floors and walls, and marks on the marble and granite countertops. In support of the landlord's claim, the landlord filed into evidence an engineering report, photographic evidence, and estimates for the repair work.

The tenant disputed these claims on the basis that any damages claimed by the landlord were pre-existing and referenced the fact that the landlord failed to provide a written report documenting the condition of the rental unit at the beginning of the tenancy. The tenant also noted that the landlord's photographic evidence was not time-stamped. When questioned, the landlord's counsel was unable to provide the specific

date when the photographs were taken, but testified that she had been informed that the pictures were taken shortly after the end of the tenancy.

The tenant submitted her own video evidence of the condition of the rental unit at the end of the tenancy and several letters of character reference and letters from friends and family who had visited the rental unit to attest to her good maintenance of the condition of the rental unit during her tenancy.

The landlord's counsel was unaware of the age of the rental unit or whether there had been prior tenancies in the rental unit. The landlord's counsel did not when the flooring had been installed. The landlord's counsel had been informed by the landlord that the rental unit had been painted prior to this tenancy in August 2016 however no documentary evidence was submitted in support of this testimony.

The tenant estimated the age of the rental unit condominium building to date back to the early 2000s. The tenant testified that the landlord had made references to her about at least one prior tenancy.

Analysis

Section 67 of the *Act* provides that an arbitrator may determine the amount of the damage or loss and order compensation to the claimant, if an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement.

The burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the tenancy agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Section C of Residential Tenancy Policy Guideline #16. Compensation for Damage or Loss examines the issues of compensation in detail, and explains as follows:

> *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. 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.*

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

37(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 landlord's claims regarding the damages to the floors, walls and countertops were disputed by the tenant who claimed that the damages claimed by the landlord were pre-existing prior to the start of the tenancy.

As the onus for proving a claim for damages is on the party seeking compensation, the landlord must prove their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

Section 21 of the Residential Tenancy Regulation sets out the evidentiary significance of the condition inspection report, as follows:

Evidentiary weight of a condition inspection report
21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the

> rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, the landlord did not complete a condition inspection report at the beginning of the tenancy, nor did the landlord submit into evidence any photographic evidence of the condition of the rental unit at the beginning of the tenancy.

For these reasons, on a balance of probabilities, I find that the landlord has failed to establish the condition of the rental unit at the beginning of the tenancy in order to overcome the tenant's version of events that any of the damages claimed by the landlord were pre-existing to the tenancy.

Further to this, I do not find that the landlord submitted sufficient evidence to establish that the tenant's use of the rental unit, over the course of a tenancy lasting only six months, was beyond reasonable use, which resulted in the moisture damage.

The tenant testified that she used the bathroom exhaust fan when showering and referenced the landlord's engineering report which "found that the bathroom exhaust fan timer was already programmed to run automatically at set times during the day."

The landlord submitted photographic evidence and an engineering report pertaining to claims that the damage to the floors and walls were caused due to excessive moisture in the rental unit. One photograph depicted a clothes drying rack with clothes on it.

The engineering report noted the following:

> *The hardwood floor in the master bedroom is slightly deformed due to prolonged exposure to water. The Owners showed BEL images of the tenant drying wet clothes on a rack in front of the window heaters. The damage BEL saw is consistent with condensation dripping from the window sill and wetting from drip drying clothes onto a hardwood floor.*
> *…*
>
> *Seeing that the damage to the hardwood floor is minimal, no work is recommended at the time of inspection.*

The tenant testified that the clothes had already been through the spin cycle and were not dripping wet when placed on the rack, and therefore had not caused the damage to the flooring claimed by the landlord. I find that the engineering report, although stating

that the damage was consistent with drip drying clothes in addition to condensation from the window, stated that the damage to the hardwood floor was “minimal” and did not require any work. As such, I find that the landlord’s engineering report contradicted the landlord’s supposition that the flooring was damaged to the extent it required replacement.

I further note that the engineering report indicated that there could be other issues besides humidity in the rental unit, that could have caused the staining on the ceiling, as follows:

> *Photograph #2*
> *Location: Living Room Ceiling, SW Corner.*
>
> *BEL observed staining on the exterior Southeast corner of the living room ceiling. In BEL’s opinion this staining is a result of humidity in the room condensing in the cold exterior corner of the concrete ceiling slab.*
>
> *BEL recommends the Owners clean and re-paint this area. This area should be monitored periodically. If the staining were to re-appear with the unit being kept within HPO’s comfort envelope of 35-65% RH and 18-22 Degrees Celsius, this could be indicative of another issue.*

In summary, I find there was no evidence to suggest that the tenant was using the rental unit for purposes of a grow-op, housing an excessive number of occupants, or otherwise using the rental in any way other than for normal use that would cause excessive moisture. Although there was some evidence of an issue with condensation of moisture around the windows of the rental unit, I do not find that the landlord was able to make the connection that somehow the tenant’s use of the rental unit was beyond reasonable use and as such caused the condensation or any excess moisture in the rental unit, as opposed to the cause being related to another issue, such as a building issue.

In summary, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence that the damages claimed by the landlord stemmed directly from the tenant’s actions, beyond reasonable wear and tear, in contravention of the *Act*. Therefore, the landlord has failed to meet the burden of proving their claim for damages. As such, the landlord’s claim fails and is dismissed.

As the landlord was not successful in their claim, the landlord must bear the costs of their filing fee.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The landlord must bear the costs of the filing fee.

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: June 5, 2019

Residential Tenancy Branch