Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $5,720.00 for damage or compensation under the Act for the landlord – holding the security deposit for this claim, and to recover the cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenant. As the Tenant did not attend the hearing, I considered service of the Application and Notice of the Dispute Resolution Hearing, as set out in the next section.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the process. During the hearing the Landlord was given the opportunity to provide her evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord provided her email address at the outset of the hearing and confirmed her understanding that the Decision would be emailed to the Landlord and mailed to the Tenant, and that any orders would be sent to the appropriate Party.

Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and the Notice of Hearing. The Landlord said that the Tenant refused to give the Landlord her forwarding address; however, the Landlord said: "It's a small town. I was able to find out her address [PO Box number]. I sent the notice of hearing package there, but it was refused - not just address not found – but

refused." The Landlord said she did not have an email address for the Tenant; she said she sent information to the Tenant via text messages during the tenancy.

I find the Landlord served the Tenant with the Application and Notice of Hearing in compliance with section 88 of the Act, by sending it via registered mail on May 17, 2019. The Landlord provided a tracking number, and upon checking the Canada Post tracking guide, I discovered that the Tenant refused to accept the package on May 23, 2019. According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord stated that the fixed term tenancy began on October 9, 2018 and ran until the Tenant moved out on April 30, 2019. She said the monthly rent was $1,400.00, due on the first day of each month. The Landlord said that the Tenant paid a security deposit of $700.00 and no pet damage deposit. The Landlord said that she did not conduct a condition inspection prior to or at the end of the tenancy, so there was no condition inspection report ("CIR") prepared for this rental unit.

Garage Door

The Landlord said that within a week of occupying the rental unit, Tenant had damaged the garage door by trying to pry it open, rather than opening it as the Landlord said she had demonstrated. The Landlord said that the box panel and the hardware that causes it to roll up and down were broken by the Tenant's actions.

The Landlord submitted a repair receipt and said that they did not repair the bottom panel, but had the hardware repaired, so that the Tenant could roll it up and down. The detailed receipt that the Landlord submitted states that this repair cost: $378.18.

The Landlord submitted a letter dated May 16, 2019, from E.S. ("Letter"), who the Landlord described as a neighbour. She said that E.S. had been in the rental unit prior to the tenancy and commented on the condition of the garage door and the hardwood floors pre and post tenancy.

E.S. said that the Landlord had allowed him to store some personal belongings in the garage in the fall prior to the tenancy. He said that the garage door was "fully functioning" and that he had no difficulty opening or closing the door. E.S. said that the Tenant had "used a crow bar or some similar tool to pry the door open, which resulted in the buckling of the metal door and the snapping of the wire use for raising the door."

Hardwood Floor

The Landlord said that she asked the Tenant to take care of the hardwood floor and that the Landlord provided the Tenant with pads for the bottom of any furniture used on this flooring. Despite this, the Landlord said that the "floors were severely damaged when [the Tenant] left."

In the Letter, E.S. said that he had seen the floor in the fall of 2018 and that it was in "impeccable condition". He said he saw it again in May 2019, and that the floor:

> …had been significantly degraded with deep gouges and multiple scratches. This damage was consistent with the use of chairs with metal feet that were dragged over the floor, hence the scratches, and shifted about while bearing the weight of a person, hence the gouges

The Landlord submitted a repair estimate she drafted, which states:

> This is a solid maple floor.
>
> The floor area is open and has no natural seams or break in the floor area, so although damage is mainly centered to an area approximately 10' by 6' it would be impossible to finish just the damaged area and not create a patch. This is the opinion of professional floorer who has looked at the floors. To date I have shown the floors to one floorer and received a verbal 'per foot' refinishing cost from a second floorer. By nature of the [local area], professional floorers are not readily available and would be charging me travelling time, as the house is located 15 km from [nearby town].

The estimate goes on to set out the cost of preparing the room, refinishing 400 square feet of the floor, living expenses for approximately one week while the work is done, “miscellaneous” other costs, and taxes for a total of $4,088.00. The estimate was prepared by the Landlord, based on her conversations with floorers.

The Landlord said that she did not have the hardwood floor repaired before selling the residential property. She said she did not have any documentary evidence that the damaged floor affected the amount for which she was able to sell the property. The Landlord said that she listed the property in the beginning of July and that she had to determine a price based on conversations with the realtor. She said: “Damage in the middle of the floor has to reflect the cost.”

Propane Tank

In the hearing, the Landlord said that the Tenant started with a tank full of propane, but that she did not refill the tank or pay for the amount she used. The Landlord said that the Tenant told her to take this cost out of the security deposit. The Landlord submitted an invoice from a marine operations company setting out the cost of filling the tank with propane, the residential carbon tax charged, and the delivery charge, which comes to a total of $220.80, including tax.

The Landlord did not say what the propane was used for in the rental unit, but the tenancy agreement sets out what is included in the rent: water, garbage collection, refrigerator, sewage disposal, dishwasher, stove and oven, free laundry and parking for two vehicles. Items not covered in rent include: electricity, heat, and natural gas. The Landlord did not direct me to and I did not find any reference to the Parties’ specific expectations surrounding use of the propane at the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Pursuant to sections 23 and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that any damage occurred as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act.

Further, a landlord is required by section 24(2)(c) to complete a CIR and give the tenant a copy in accordance with the regulations.

The Letter provided by the Landlord's neighbour offers some evidence of the condition of the rental unit prior to the tenancy. However, it does not have the Tenant's agreement to the condition of the rental unit at the start of the tenancy, although, the Tenant had the opportunity to attend the hearing to dispute the Landlord's evidence. Accordingly, I find it administratively fair to give some weight to the Letter.

Further, prior to her testifying, I advised the Landlord how I would be analyzing the evidence presented to me. I advised that the party who applies for compensation against another party has the burden of proving their claim. Policy Guideline 16 sets out a four part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

[the "Test"]

Garage Door

Again, without a CIR, the Landlord has not provided the type of evidence needed to establish a claim in damages under the Act. However, the evidence in the Letter supports the Landlord's undisputed claim that the Tenant caused the damage to the garage door. Further, the repair receipt provides evidence that the Landlord incurred a cost for this damage, as well as the value of that damage in the amount of $378.18. Further, the Landlord chose to limit the cost of this repair job by only having the necessary work done to the garage door, so that the Tenant would be able to use it again. The Landlord did not also have more cosmetic damage in keeping with step four of the Test.

I find on a balance of probabilities that the Landlord has satisfied all four steps of the Test. Therefore, I award the Landlord with recovery of the **$378.18** cost of the garage door repair.

Hardwood Floor

The Landlord did not have the floor repaired and she did not provide any documentary evidence setting out that it cost her anything in a lower sale price of the residential property. The Landlord did not provide a CIR; however, the Letter indicates that there was damage done to the property during the tenancy. The undisputed evidence is that the Tenant caused the damage during the tenancy, by ignoring the Landlord's warning about using pads on the furniture fee to protect the floor. I find on a balance of probabilities that the Landlord has established the first two steps of the Test.

However, the Landlord did not have the floor repaired, and she did not provide any evidence to support her suggestion that the floor damage affected the selling price of the residential property. As a result, I am not satisfied that the Landlord provided sufficient evidence to support the value of this loss that she incurred. I, therefore, dismiss this claim without leave to reapply.

Propane Tank

The Landlord's evidence is that she incurred the cost of replacing the propane that the Tenant used in the course of the tenancy. The Landlord established the value of the loss she incurred in this regard. Given the relatively remote location of the residential property, I find it more likely than not that the Landlord would be limited in the number of places at which she could obtain propane to refill her tank. Accordingly, I find on a balance of probabilities that the Landlord has satisfied all four steps of the Test for this claim. I, therefore, award the Landlord with recovery of the **$220.80** cost of refilling the propane tank.

Set-Off

I have awarded the Landlord a total of $598.98 in compensation for the cost of repairing the garage door and refilling the propane tank. I dismissed the Landlord's claim for compensation for the hardwood floor damage without leave to reapply.

Given that she is partially successful in her Application, I also award the Landlord recovery of the $100.00 Application filing fee for a total award of **$698.98**. I authorize the Landlord to deduct this amount from the Tenant's $700.00 security deposit in full satisfaction of the award.

Conclusion

I find that the Landlord has established a total monetary claim of **$698.98** comprised of $378.18 to repair the garage door, $220.80 to refill the propane tank, plus recovery of $100.00 Application filing fee. The Landlord did not provide sufficient evidence to satisfy her claim for damage to the hardwood floor, so that claim was dismissed without leave to reapply.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of $700.00 in full satisfaction of the Landlord's monetary claim against the Tenant.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 28, 2019

Residential Tenancy Branch