



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYVIEW STRATA & RENTAL SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDL-S

Introduction

This hearing dealt with the landlord's application for compensation for damage to the rental unit and the cost to install new locks; and, authorization to make deductions from the tenant's security deposit. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing documents and evidence upon each other. The tenant confirmed receipt of the landlord's proceeding package but stated she did not receive any receipts or estimates to support the amounts claimed. The landlord's agent stated the receipts and estimates were sent to the tenant with the proceeding package. In exploring options to deal with this discrepancy, and considering there were only two parts to the landlord's claim, the tenant stated she was willing to proceed and would be comfortable if the receipt/estimate was described to her orally during the hearing. This was done and I have made this decision taking into account the receipt/estimates provided to me. Receipt of the tenant's written submission was confirmed by the landlord and the tenant's written response was also considered in making this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the cost to repair the bathtub and install new deadbolts from the tenant?
2. Disposition of the security deposit.

Background and Evidence

The parties executed the first tenancy agreement for a tenancy that started on October 15, 2016. A second tenancy agreement was executed for a tenancy that started on November 1, 2017 and continued until the tenancy ended on August 31, 2019. The tenancy ended so that the owner(s) of the property may occupy the rental unit.

The landlord collected a \$900.00 security deposit and a \$900.00 pet damage deposit. The landlord refunded the \$900.00 pet damage deposit to the tenant but is still holding the \$900.00 security deposit pending the outcome of this proceeding.

A move-in inspection report was prepared together on October 12, 2016. A move-out inspection was performed together on August 31, 2019 and the landlord prepared a move-out inspection report; however, the tenant would not sign it. The tenant did not authorize any deductions from the security deposit and the landlord filed this Application for Dispute Resolution seeking authorization to make deductions with 15 days of the tenancy ending.

Below I have summarized the parties' respective positions concerning the landlord's claims against the tenant.

1. Bathtub damage

The parties provided consistent testimony that at the start of the tenancy the bathtub in the main bathroom appeared to be an ordinary looking white bathtub in good condition. During the tenancy the tenant placed a bathtub mat in the bottom of the bathtub. In removing the bathtub mat in August 2019, the white surface in the bottom of the tub peeled up, revealing a light brown or beige coloured tub surface below. After the tenancy ended, a bathtub repair contractor stripped the white glaze from the tub and reglazed the tub at a cost of \$598.50 including tax.

The landlord seeks to recover the cost to strip and reglaze the bathtub from the tenant. The landlord was of the position that the tenant's placement of a bathtub mat in the bottom of the bathtub and failure to lift the bathmat and dry the area underneath was negligent. The constant moisture under the bathmat resulted in the glaze peeling up when the bathmat was pulled up. The landlord testified that she did not know if the bathtub had been reglazed before the tenancy started; however, I note that in the landlord's details of dispute she wrote: "The tenant used a bathmat long term on a

reglazed tub and when the bathmat was pulled up the glazing on the tub came up with the mat, tearing it completely off the tub.”

The tenant was of the position she was not negligent and that she and her family used the bathtub reasonably in the circumstances. The tenant submitted that the bathtub apparently had been reglazed based on what is seen when the white glaze peeled up and revealed a surface that was probably original to the 1980’s era house. The tenant pointed out that she was unaware of the reglazing prior to the tenancy starting or during the tenancy since the bathtub appeared to be an ordinary tub and the landlord had not made her aware of the prior reglazing. As such, the tenant treated the bathtub as she has treated all of her previous bathtubs, which is to place a purpose made bathmat in the bottom of the tub so that her children did not slip in the tub.

The tenant acknowledged that the bathtub saw a lot of use as it was used twice a day by her two teenage children; however, she claims to have regularly cleaned the tub and lifted the bathmat without any issues until August 2019.

The tenant submitted that she has done research on reglazed bathtubs after the landlord pursued her for the damage to the bathtub and she determined that they do not hold up as well as the original factory finish and do not come with warranties. Her research also revealed that a bathmat with suction cups, as the kind she used, is not recommended for reglazed bathtubs. The tenant submitted that had she been aware of or informed of the reglazed surface she would have taken appropriate care of reglazed surface since she took very good care of the rental unit during her tenancy.

2. New deadbolts

The landlord claimed the cost to install two new deadbolts on the rental unit after the tenancy ended. In submitting the claim, the landlord wrote: “The Tenant did not return 2 master keys at the end of the tenancy, resulting in the owner having to change the deadbolts for security”; however, during the hearing, the landlord’s agent acknowledged the tenant did return the master key for the side door and the landlord’s agent withdrew the request to recover the cost of one of the new deadbolts.

With respect to the front door, the landlord’s agent testified that the tenant returned a key for the front door lock but that it was not the original key given to her. The landlord had requested the tenant return the original key approximately one week after the tenancy ended, via email, but the tenant did not return it.

The tenant acknowledged that her husband had the original key for the front door at the end of the tenancy but pointed out that the landlord's agent did not require its return at the move-out inspection. When the landlord asked for its return a week later the tenant decided to not return it because she was insulted by other statements the landlord made in the email. The tenant also pointed out that the locks had not been changed prior to her tenancy starting and the landlord did not specify how the key was to be returned. When I suggested the tenant could have returned the key to the landlord's office the tenant conceded she could have done that.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

1. Bathtub damage

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant, or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Upon review of the photographs of the bathtub taken at the end of the tenancy, the landlord's written statement and the tenant's submissions, I find it very likely the bathtub had been reglazed prior to the tenancy to change the original tub from a brown/beige colour to a white colour.

Based on the testimony of both parties and upon review of the move-in inspection report, I accept that the tenant was not notified of the prior reglazing of the bathtub since the landlord's agent was unaware of that fact as well. I also accept the testimony of both parties that the bathtub looked like an ordinary tub and that it was not obvious from looking at the bathtub that it had been reglazed previously. As such, I find it reasonable that the tenant would treat the bathtub as one would treat any factory finished bathtub, which includes placing a bathmat in the bottom of the tub.

The tenant argued that a reglazed bathtub is not as durable as a factory finished surface and I accept that argument on the balance of probabilities considering reglazing amounts to painting over the original factory finish and done while the bathtub is in place as a less expensive alternative to installing a new bathtub. Having accepted that a reglazed surface is likely not as durable as a factory finished surface, I also find it likely that a reglazed surface would require extra care or caution in caring for the tub.

To find the tenant negligent, as put forth by the landlord, I would have to find the tenant knew or ought to have known the bathtub had been previously reglazed and take the extra care that a reglazed surface requires. To have knowledge of the reglazed surface would require that it be plainly obvious to a reasonable person or disclosed to the tenant. Since it was not obvious to either the landlord or the tenant at the start of the tenancy and not disclosed to the tenant, I find it unreasonable for the landlord to expect the tenant to have taken the extra care that is not otherwise required in a factory finished tub.

In light of the above, I am unsatisfied that the tenant was negligent in her use of the bathtub and I deny the landlord's request to recover the cost to reglaze the tub from the tenant.

2. New deadbolt for front door

Section 37 of the Act provides, in part:

- (2) When a tenant vacates a rental unit, the tenant must
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

There is no exemption from the requirement above. As such, the tenant's argument that the locks were not changed prior to her tenancy starting is irrelevant.

Although the landlord did not note the missing master key on the move-out inspection report, it is undisputed that the tenant had another key for the front door and that she still had it when the landlord asked for its return a week after the tenancy ended. I find a reasonable person would have returned the key to the landlord to comply with section 37(2) of the Act. As such, I find the tenant's decision to not return the key because she

felt insulted by comments the landlord made in an email is her decision that comes with a cost, which is the cost to install a new deadbolt.

The receipt provided by the landlord shows that each new deadbolt cost \$61.44 plus tax. Therefore, I award the landlord \$68.81, including tax, for a new deadbolt.

3. Filing fee

The landlord was partially successful in this application and I award the landlord recovery of one-half of the filing fee from the tenant, or \$50.00.

Security deposit and Monetary Order

The landlord is authorized to deduct \$68.81 and \$50.00 from the tenant's security deposit and is ordered to return the balance of the security deposit to the tenant, in the amount of \$781.19, without delay.

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenant with a Monetary Order in the amount of \$781.19 to ensure the balance of the security deposit is returned, as ordered.

Conclusion

The landlord is authorized to deduct a sum of \$118.81 from the tenant's security deposit and is ordered to return the balance of \$781.19 to the tenant without delay.

The tenant is provided a Monetary Order in the amount of \$781.19 with this decision to ensure payment is made.

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 22, 2020

Residential Tenancy Branch