



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL MNRL**

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damage to the rental unit pursuant to section 67; and
- A monetary order for rent and/or utilities pursuant to section 67.

Both the landlord and the tenant attended the hearing. As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages or for unpaid rent or utilities?
Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord provided the following evidence. The rental unit is one of several fully furnished bed and breakfast units the landlord rents out. The unit had new fir hardwood

floors installed in the unit in 2012. There were pre-existing marks on the floor from a previous guest staying in the bed and breakfast from bouncing on a chair, however the rest of the floor was undamaged.

The tenant contacted her in late September 2017 asking if she had any rentals. She agreed to rent it out to him as a bed and breakfast unit commencing October 1, 2017, the parties signed an 'upper suite guest agreement' on October 12, 2017. A copy of the agreement was produced as evidence. Rates listed are daily or monthly with monthly rent being \$1,000.00 per month, payable on the first day of the month. An additional term of the agreement was that the tenant allowed the landlord to inspect the unit on the 28th day of each month and upon satisfactory inspection, the agreement would be extended a further month. If the inspection was not satisfactory, the tenant would be asked to leave by the end of the month.

The landlord also points out that the tenant would pay 50% of the hydro usage and that the tenant may not hang pictures on the walls or remove anything from the suite without the landlord's permission.

The landlord testified she did not conduct a condition inspection report with the tenant at the commencement of the tenancy as she felt that the rental was not subject to the *Residential Tenancy Act* as it was rented out as a bed and breakfast rental. She didn't think the tenant was going to stay longer than a little while.

The landlord submits that the tenant was not allowed to have any dogs on the residential property, however this rule does not appear on the written agreement. The landlord testified the tenant brought his dog to the property when she was away on vacation and this was in violation of the agreement. The dog likely did damage to the fir hardwood floors, in the landlord's submissions. The landlord herself is blind so the landlord submits that the cleaning staff told her about scratch marks on the stairs from the dog.

The landlord ended the tenancy by serving the tenant with a Two Month's Notice to End Tenancy for Landlord's Use. When the tenant was moving out, the landlord went through the tenant's garbage and discovered the tenant had thrown out some cutlery and some of the dishes the landlord claims were chipped or broken by the tenant. A ceramic pot went missing as well as some of the knives in the landlord's knife set. The landlord seeks replacement costs for the missing or thrown out items.

The landlord also seeks replacement cost of the mattress and box spring she had in the furnished rental unit. The landlord claims the box spring in the second bedroom went missing and the top mattress in the first bedroom also went missing.

The landlord seeks a full refinishing of the rental unit's fir hardwood floors at a cost of \$9,988.05. The landlord claims the tenant didn't take care of the floors during the tenancy and the scratches and dents in the flooring were directly caused by the tenant, his guests or his dog. The landlord provided an estimate from a flooring company, however she did not provide any photographs of the damage the tenant is said to have done to the floors.

The landlord also seeks \$3,400.00 as costs to clean the unit at the end of the tenancy; the landlord testified that she expected the suite to be left in the same condition as when the tenant first moved in. The landlord paid a cleaning lady this amount because the unit was 'filthy' at the end of the tenancy. There are 51 drawers that were not cleaned out and the laundry room was left dirty and dirty rags were left behind by the tenant.

The tenant provided the following testimony. The landlord's claim was filed in retaliation for the award he was given by a previous arbitrator, compensation equivalent to 12 months rent in the amount of \$12,100.00.

Since the tenancy began, the tenant repeatedly asked the landlord for a tenancy agreement however the landlord refused to provide him with one because the landlord wanted to prevent the tenant from being afforded the protection under the *Residential Tenancy Act*. The landlord also refused to do a condition inspection report with the tenant at the commencement of the tenancy although he wanted it done and repeatedly asked her for that as well.

The floors were already in bad shape when the tenant moved in, however the tenant was willing to rent it. The tenant submits that the fir wood is soft and prone to denting and scratching. The tenant directed me to a review of the rental unit dated August 2017 when it was still used as a vacation rental whereby the reviewer notes this landlord charged them for scratches to the hardwood floors. The tenancy ended at the end of May, 2019 and has been used as a vacation rental by multiple vacationers since then. If there was any damage done to the floors, there is no way to determine if it was done before the tenant took possession, during the tenancy or after the tenancy since the landlord didn't have the floors examined by a flooring company until September 2019.

Throughout the tenancy, the tenant spent very little time in the rental unit, preferring to stay at his girlfriend's house, knowing that the landlord did not want the girlfriend's dog at his suite. The tenant never allowed the girlfriend's dog into the unit, the dog stayed in the girlfriend's vehicle when she came to visit. The tenant purchased bunk beds and put them up in the second bedroom of the rental unit for visits from his children, however he removed them when the tenancy ended.

The mattress supplied by the landlord was squeaky and not to the tenant's liking, so he purchased another one. The landlord's original mattress and box spring were never removed, they were left in the rental unit at the end of the tenancy, as was the one the tenant purchased.

In the residential property, there is a downstairs tenant who shared the laundry facility with the tenant. The tenant submits that this tenant was doing illegal drug selling activity in that unit and it was their activities that made the mess in the laundry.

The items the landlord claims are missing, such as the cutlery, knives and dishes were not there when he moved in. He used his own supplies while living in the furnished unit.

The condition in the agreement for monthly inspections on the 28th day of the month with the requirement that the tenant be asked to leave if the inspection is unsatisfactory is, in the tenant's opinion, contrary to the Residential Tenancy Act. Despite this, the tenant allowed the landlord to inspect his unit monthly and never was asked to leave by the landlord.

Lastly, the tenant directed my attention to a video he made of the condition of the rental unit at the end of his tenancy. The tenant submits that the video was taken approximately one week before the tenancy ended, however it depicts the state of the unit right before he left. The tenant also provided an audio clip of the landlord stating that 'everything is to [the landlord's] satisfaction' at move out.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 14 of the Residential Tenancy Regulations (“Regs”) state that the landlord and tenant must complete a condition inspection described in section 23 or 35 of the *Act* [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant.

Section 21 of the Regs state that 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.

Both the landlord and the tenant testified a condition inspection report was not completed, contrary to Section 14 of the Regs. In order for the landlord to succeed in proving the tenants damaged the rental unit, the landlord must first prove to me the condition of the rental unit at the commencement of the tenancy, as prescribed in Section 21. Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, the existence of the damages caused by the tenant when the tenancy ended. Though her testimony bears some weight, she has not met the burden of proof to show me the difference in condition between move-in and move-out. While the condition inspection report would provide the most compelling proof of damage, photographs to corroborate the landlord's claim would also have been informative. I have not been provided with photographs of the floors before the tenant moved in or after he moved out, preventing me from accurately assessing any damage to them, as claimed by the landlord. I find the landlord has not

proven the existence of the damages caused to the floors by the tenant (part 1 of the 4 point test) and her this portion of her claim is dismissed.

- Suite Cleaning claim

Section 37(2)(a) states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

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), 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 (the Legislation).** (emphasis added)

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

The landlord provided neither a condition inspection report for me to determine the cleanliness of the rental unit at the end of the tenancy, nor exemplary photographs of the unit to corroborate her testimony that the rental unit was left unclean. I find the photo taken with the open drawers with items on the counter not necessarily indicative of an unclean state. Understanding that this was a furnished unit, the photos do not allow me to accurately determine what was left behind by the tenant or what belongs in the furnished unit. Contrarily, I note that the tenant has provided compelling evidence taken a week prior to the move out that depicts a reasonably clean and tidy unit, hardly 'filthy' as the landlord described it. As it is the applicant's onus to prove their claim on a balance of probabilities, I find the unit was left reasonably clean and undamaged except

for reasonable wear and tear. I decline to award the landlord a monetary award for cleaning.

- Landlord's claim for missing or damaged items

As stated earlier, **the onus is on the applicant/landlord to prove to me on a balance of probabilities that her version of facts is to more accurate.** Despite her assertion that the tenant either threw out or damaged the items in the furnished unit, I find the landlord has not provided sufficient evidence to prove to me her version of facts is true. The landlord has not provided a detailed list of items in the unit, signed by the tenant at the commencement of the tenancy, to compare it to what is left at the end, acknowledged by the tenant. It is altogether reasonable to accept the tenant's counterargument that the items were simply not there when he moved in. Second, while the landlord has provided receipts for the purchase of replacement items, without original proof of purchase, I cannot determine the age or the purchase price of the original items or have any means to determine if the replacements are of similar quality and depreciated value as the replacements. In terms of the 4 point test, the landlord has failed in establishing the value of the damage, point 3. This includes the landlord's claim for a new mattress and box spring. Based on the insufficient evidence provided by the applicant/landlord, I am not satisfied she is entitled to compensation and I dismiss this portion of the landlord's claim.

The landlord also claims for unpaid rent or utilities. The landlord did not provide any testimony regarding unpaid rent or utilities and did not direct my attention to any documentary evidence to corroborate her claim for it. As rule 7.4 of the Residential Tenancy Rules of Procedure require that the applicant present the evidence in support of their claim, I find the landlord has provided insufficient evidence to support it. This portion of the landlord's claim is dismissed.

As the landlord was not successful in her claim the filing fee will not be recovered.

Conclusion

The landlord's claim is dismissed.

This decision is Final and Binding upon the parties 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: February 10, 2020