



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNDC-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The landlord and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the landlord's evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlord failed to provide a detailed calculation or breakdown of her monetary claim, as required by the Rules and the Act.

Rather than decline to hear or proceed with her application, I asked the tenant if he understood the components of the claim. The tenant said he understood roughly the amount.

The landlord was then questioned about her claim and I required her to provide the breakdown at the hearing. I later confirmed the breakdown with the landlord, and the hearing proceeded on the four items.

Issue(s) to be Decided

Is the landlord entitled to receive monetary compensation from the tenant and recovery of the filing fee?

Background and Evidence

The evidence provided showed that this tenancy ended on April 30, 2020, and had began eight months earlier, between the landlord and three tenants. Each tenant paid a security deposit of \$500, or a total of \$1,500. The landlord testified she has returned the security deposit to the other tenants. There was no written tenancy agreement filed into evidence.

The tenants had filed an earlier application for dispute resolution seeking the return of their security deposit, and in a Decision of July 6, 2020, another arbitrator granted the tenants' application and awarded them a monetary order of \$3,100, which was the original security deposit of \$1,500, doubled to \$3,000, plus the filing fee of \$100. Therefore, contrary to the landlord's testimony, it appears the landlord has not returned any portion of the tenants' security deposit.

In response to my inquiry, the landlord said she has not paid the amount ordered by the other arbitrator.

In the present application, I had the landlord confirm her monetary claim, which was as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Shower door	\$1,376.48
2. Shower door pick-up	\$201.06
3. Guide rail replacement	\$925.12

4. Filing fee	\$100.00
TOTAL	\$2,602.66

Later in the hearing, the landlord said part of her original monetary claim also included the cost of a home inspection report.

In support of her claim the landlord said the tenant caused the glass shower door to be shattered and it had to be replaced. The landlord said that she ordered a shower door, which turned out to be the incorrect size. That shower door was \$715.68. The landlord said she originally agreed with the tenant that she would keep his security deposit of \$500 in satisfaction of the matter of the damaged shower door.

A text message filed into evidence showed the agreement.

The landlord said that after this agreement, she learned that the proper shower door cost \$1,376.48, and therefore, the original agreement of keeping the \$500 was no longer binding.

The landlord is also claiming the costs of pick-up for the shower door and installation of a guide rail.

The landlord submitted that the guide rail was warped and had to be replaced.

The landlord submitted that her photos show that the tenant's shampoo bottle caused the door to come out of the guide rail. The landlord submitted that the shower unit was put into the rental unit in 2019.

The landlord said that there had been a move-in inspection with the tenants; however, she gave them the condition inspection report (CIR) and does not have a copy.

Additional evidence filed by the landlord included photographs, text messages between the parties, and the home inspection report.

Tenant's response –

The tenant said that on March 24, 2020, as he was getting into the shower, closing the shower door, the door shattered, leaving him holding the handle, with his hand bleeding. He asked his girlfriend to come over to take him to the hospital.

The tenant said he contacted the landlord, who, in turn, mentioned that there was a warranty on the shower door.

The tenant said he did not believe he was responsible for any damage. The tenant submitted, however, that he agreed with the landlord to forfeit his security deposit as he was in the middle of exams at university and just wanted the matter to be behind him.

The tenant said the landlord just came down to the rental unit later on, said she made a mistake about the price of the shower door and wanted more money.

The tenant said that the guard rail appeared to be warped and he had not used the shower door in any different way than usual. The tenant also denied his shampoo bottle had anything to do with the shower door coming off, as the landlord has presented.

The tenant denied there was a move-in inspection and that they never received a CIR from the landlord.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove their claim with 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 obligation to prove their claim and the claim fails.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

Damage to a landlord's property or other losses are not the responsibility of the tenant unless the tenant has been negligent in the duty owed to the landlord or have breached the Act.

It is undisputed that the shower door in the rental unit shattered when the tenant attempted to take a shower, leaving him holding the door with glass all around.

The issue is whether the tenant was negligent or breached his responsibility under the Act, which is to leave the rental unit reasonably clean and undamaged, less reasonable wear and tear.

The landlord claimed the tenant's shampoo bottle caused the shower door to come off the rail and the tenant said the guard rail was already warped, causing it to exit the guard rail.

I find the landlord submitted insufficient evidence to prove that the tenant was using the shower negligently, in any manner other than its intended purpose, causing the shower door to shatter. The tenant denied he used the shower in any way other than the usual way and the landlord's evidence failed to prove otherwise on a balance of probabilities.

The landlord submitted a home inspection report done in June 2020, two months after the tenancy ended, showing that the "shower door and all its components remains in its original condition as it was built, only the inside door glass and its towel bar are recently installed". I do not find this report to be conclusive that the user was negligent. For instance, the age of the components was not given.

For these reasons, I find the landlord submitted insufficient evidence to support her application against the tenant. **As a result, I dismiss the landlord's application in its entirety, without leave to reapply.**

Conclusion

Due to insufficient evidence as noted above, the landlord's application is dismissed, 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: November 12, 2020

Residential Tenancy Branch