



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on September 9, 2020 seeking an order to recover the money for damages to the rental unit, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on December 21, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

One of the tenants and the landlord attended the hearing, and I provided each with the opportunity to present oral testimony. The landlord had a third party attending to help with translation.

In the hearing the tenant confirmed they were served with the notice of this hearing, as well as the landlord’s prepared evidence. This was via registered mail. The landlord also confirmed their receipt of the tenant’s prepared evidence package.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord applied for a monetary order for \$1,164.68 in damages that they state occurred during the timeframe the tenant lived in the rental unit. This is, as claimed by the landlord:

1. \$117.57 for a broken faucet
2. \$547.11 for cost of dishwasher and its installation
3. \$450.00 for fireplace repair
4. \$ 50.00 cost of nail removal from walls and paint chip repair

The total cost claimed by the landlord is \$1,164.68. They provided photos and receipts showing what they interpret to be damage for each item listed, and proof of the cost to them.

The tenancy agreement contains basic terms: \$2,200 monthly rent; and the tenant paid a security deposit of \$1,100 for the start of the tenancy on June 1, 2019. The tenancy began on June 1, 2019 and ended with the tenant providing a one-month notice prior to the final move-out date of July 5, 2020.

The tenant provided copies of text messages they had from July 7 forward. This shows the tenant responding to the landlord's query about the dishwasher appliance, and who would be responsible for any damage, with reference to the *Act*. The tenant cited policy and provided images of that. The tenant stated directly to the landlord: "As we did not damage the fireplace, faucet, or misuse the dishwasher we are not prepared to pay for your expenses." This was at the stage after the end of the tenancy when the tenant was asking for the return of their security deposit.

The landlord responded to this on that same date. They described their position for each item: the faucet is less than one year old; they replaced the dishwasher for tenant usage; and the fireplace "is not working like when [the tenant] moved in." In sum, the landlord stated: ". . . there are no reason for us to pay for all the damages that were caused."

The landlord also provided as evidence pictures of the Condition Inspection Report that show individual items on move-out: the dishwasher replaced, and the nails remaining in the walls. An image shows the tenant's signature and their indication on the report itself that they "do not

agree that this report fairly represents the condition of the rental unit. . .” In the hearing, the landlord described their issues with each of the items claimed:

1. The faucet was installed, then broken by the tenant when it was fairly new. The tenant responded to say the landlord fixed the faucet was fixed once in early 2020, then it leaked again down into the suite below. This was “just regular use”. The landlord also stated in the hearing that the faucet was replaced by the previous tenant; they did not know whether the previous tenant undertook this work on their own or whether they hired a plumber.
2. The dishwasher was four years old when it stopped working. The landlord found broken glass and plastics in the dishwasher and discussed this with the tenant. The tenant responded to say the landlord informed them that they had to replace it because of no parts being available. The tenant believes the dishwasher was more than 5 years old.
3. The gas valve on the fireplace broke down. The landlord stated this was due to “frequently switching on/off” and this amounts to faulty use by the tenant. This fireplace was “not actually for heat, it’s more of a display.” The tenant stated simply that a part within the fireplace was broken, and the landlord never said to them ‘do not use it’. Their use of the fireplace abated by spring 2020 when the weather warmed. They presented that the fireplace was not fixed until after they moved out.
4. The tenant stated they took out some nails and asked the landlord whether more should come out. To this, the landlord said to them “no problem”. This discussion took place at the final move-out inspection meeting.

Analysis

To be successful in a claim for compensation for damage or loss the applicant bears the burden of giving enough evidence to establish the following:

1. That the 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.

The relevant portion of the *Act* regarding landlord and tenant obligations to repair and maintain is section 32:

(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4)A tenant is not required to make repairs for reasonable wear and tear.

For these four claimed costs by the landlord, I find the tenant is not responsible, as per section 32 and an application of the above four criteria. Broadly, the repairs or replacement for damages are not caused by neglect or wilful damage by the tenant.

In the case of the faucet, the evidence has it that a previous tenant made the change to that individual piece. I find it more likely than not the issue of leaking carried over from that prior tenant installation. It was not known whether the previous tenant did the replacement on their own or called a plumber. I find it more likely than not that the issue of leakage comes from the prior installation, and not through damage by the tenant here. This does not constitute a 'damage' for which the tenant is responsible -- it is not due to any action or neglect on their part. This portion of the landlord's claim is denied.

Likewise, any dishwasher misuse is not established in the evidence. The tenant estimates the dishwasher age is over five years; however, what carries more weight as evidence is their statement that the landlord informed them that parts were not available. The picture provided shows a glass shard and plastic pieces inside the dishwasher. I find these are not pieces that would interrupt the normal operation of any dishwasher and do not constitute a deliberate action causing damage. In short, this damage or loss does not result from a violation of the *Act* or the tenancy agreement. The landlord did not prove the tenant's responsibility for this portion of the damage claim.

Similarly, what the landlord described for fireplace usage does not establish damage through the actions of the tenant. In the hearing the landlord vaguely described what they thought exceeded the bounds of normal fireplace usage. This was "frequent switching on and off", which I deem not abnormal usage under normal circumstances. They also questioned why the fireplace would be used for heating the entire house; however, I find this also is not questionable usage.

For the paint chips and other wall repair, I find the landlord has not established the value thereof. The photos provided do not show damage throughout the unit and show only one area surrounding a window. The landlord did not provide an itemized cost for this work, such as costs of materials needed to fix.

Therefore, I find section 32(3) of the *Act* does not apply, and these costs do not belong with the tenant. These are not damages “caused by the actions or neglect of the tenant.”

For these reasons, I dismiss the landlord’s application for compensation, without leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord’s claim for monetary compensation for damages or other money owed 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: December 23, 2020

Residential Tenancy Branch