



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

The Tenant, the Tenant's Daughter (the “Tenant”) and the Landlord attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

The Tenancy agreement recorded that this tenancy began on September 1, 2019, as a one-year fixed term tenancy that rolled into a month-to-month at the end of the initial fixed term. Rent in the amount of \$2,400.00 was payable on the first day of each month, and the Tenant had paid a security deposit of \$1,200.00 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that sometime in mid-July 2020, the Tenant had called them to advise the Landlord of a water leak in the rental unit. The Landlord testified that the water leak had been centred around a spray hose located on the kitchen sink faucet.

The Landlord testified that the building maintenance had attended the rental unit and taken care of the repair but that the water damage due to the leak had cost \$2,118.06 to repair. The Landlord testified that the repair was covered by their insurance but that they are seeking to recover their \$1,000.00 insurance deductible from the Tenant. The Landlord submitted a copy of the quote for the repair into documentary evidence.

The Landlord testified that they did not know what the Tenant had done to cause the water leak but that they think the Tenant must have used the sprayer improperly for this water leak to have occurred. The Landlord submitted a copy of an email from the restoration company into documentary evidence.

When this Arbitrator asked the Landlord how the Tenant had caused this damage, the Landlord responded that the Tenant must not have completed the necessary maintenance in order to prevent the water leak.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Landlord is claiming to recover \$1,000.00 in losses due to water damage caused to the rental unit during this tenancy. Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to award the Landlord the requested compensation, the Landlord must first prove that the tenant breached the Act. Section 32 of the Act sets out the obligations to repair and maintain the rental unit, stating the following;

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(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.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Pursuant to section 32 of the Act, a tenant is responsible for repairing all damage they or their guests caused to a rental unit during their tenancy. Accordingly, in order for the Landlord to be successful in their claim for damages, they must prove that the Tenant willfully or through neglect damaged the rental unit.

I have reviewed the totality of the Landlord's testimony and documentary evidence, and I find the Landlord has not provided sufficient evidence, to satisfy me, that the Tenant damaged the kitchen facet sprayer during this tenancy. Therefore, I dismiss the Landlord's claim for the recovery of an insurance deductible due to water damage.

As it has been determined that the Landlord has not proven their entitlement to their claim, I must also dismiss the Landlord's claim to retain the security deposit for this tenancy.

During these proceedings, I ordered the Landlord to return the security deposit that they are holding for this tenancy to the Tenant within 15 days of the date of this decision.

If the Landlord fails to return the security deposit to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their security deposit for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to the recovery of their filing fee for this application.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I order the Landlord to return the Tenant's security deposits to the Tenant within 15 days of the date of this decision.

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 12, 2021

Residential Tenancy Branch