



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M123456 Holdings Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: MNDCT, MNRT, FFT
For the landlord: MNRL, MNDCL, FFL

Introduction

The tenant filed an Application for Dispute Resolution (the “tenant Application”) on December 13, 2020 seeking an order for monetary compensation, as well as reimbursement of the Application filing fee.

The landlord filed an Application for Dispute Resolution (the “landlord Application”) on March 8, 2021 seeking monetary compensation for unpaid rent, other compensation, and a repayment of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 20, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make oral submissions during the hearing.

At the start of the hearing, both parties stated that they mutually exchanged prepared evidence documents via email. On this basis, the hearing proceeded.

Preliminary Matters

There was a previous cross-application hearing between these parties regarding monetary compensation. In the prior hearing, the landlord asked for reimbursement of rent amounts owing, and amounts for cleaning, repair, and appliances. The landlord’s total claim was for \$15,359.20, with the individual piece for rent recovery being \$12,250.

The Arbitrator awarded \$9,000 to the landlord and provided a monetary order in that amount on December 6, 2020. The landlord provided a copy of that decision in their documents here.

Here, in the landlord's Application they ask for reimbursement of rent amounts outstanding for the months of July 2019 to February 15, 2020 in the amount of \$12,250. This is seven months of rent at \$1,750 per month. They also claim reimbursement from the previous hearing in the amount of \$200. They also here claim for two items related to the condition of the unit, discussed below. The total claim provided by the landlord here is \$12,903.75.

I find the landlord's claim for recovery of rent amounts outstanding is identical to what they claimed in their prior Application. Three items in their claim here were granted within the total monetary order in that previous hearing. In this hearing, the landlord stated they were fully aware that they were compensated for these items. Only two items which the landlord presents here are first-time expenses for which they seek reimbursement.

In the prior hearing, the tenant was seeking reimbursement for rental unit refurbishment, renovation, and improvement. These was for materials, appliances, and labour. The Arbitrator granted \$5,278.43 and ordered this amount to be offset from rent amounts owing from the start of the tenancy. The tenant also provided a copy of that decision in their documents for this hearing.

I find the monetary amounts claimed by the tenant here are identical to what they claimed for in the prior dispute resolution process. The tenant here provided responses to specific pieces of the Arbitrator's decision and presented in detail why they disagree with the Arbitrator's rationale on components of the decision. In this hearing, they stated they are "appealing the Arbitrator's decision and conclusions." They confirmed that individual pieces of their monetary claim are the same.

I find the individual claims, in both the landlord's Application and the tenant's Application, are identical to those already addressed in the prior hearing. An Arbitrator I decided on these matters in a prior hearing and made the decision dated December 6, 2020.

The *Act* s. 77(3) proves that, except as otherwise provided, a decision is final and binding.

I am bound by the principle of *res judicata* (“the matter is judged”). I gave a definition of this principle to the parties in the hearing. This principle prevents a party from pursuing a claim that has already been decided. This is an equitable principle that, when its criteria are met, precludes re-litigation of a matter. The preconditions are:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision are the same in both the proceedings.

All three of these preconditions apply in this case here. The monetary claims were decided by the Arbitrator, and the December 6, 2020 decision was final. That decision is final and binding and there is no jurisdiction under the *Act* that allows my reconsideration of this issue.

For these reasons I dismiss the tenant's Application for monetary compensation in its entirety, without leave to reapply. The tenant is not entitled to reimbursement of the Application filing fee for their Application here.

Similarly, I dismiss the portions of the landlord's Application for monetary compensation that were the subject of the prior hearing. These are the claim for rental repayment, and the three items that were awarded in the prior monetary order. These are dismissed without leave to reapply. The exceptions to this are discussed below.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for monetary loss or other money owed, pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee they paid for this hearing, pursuant to section 72 of the *Act*?

Background and Evidence

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

The tenancy started on April 5, 2019 and ended when the tenant moved out on February 15, 2020. A copy of the signed agreement is in the evidence. The landlord here purchased the rental unit and took control of this tenancy on July 15, 2019.

The landlord claims \$157.50 for carpeting cleaning. They included an undated receipt from a carpet cleaning firm in this amount. In the hearing they presented that this cleaning took place “right after moveout”, within late February or early March. This was for the purposes of re-renting the unit. In response to this, the tenant added that the only existing carpet in the unit that was downstairs was not cleaned when they moved in. They had cleaned the carpet in the bedroom area on their own, with this being the place where they stayed during the tenancy. They summarized their response: either there was no carpet, or it was not clean when they moved in.

The landlord also claims for window blinds, for \$246.24. They included receipts showing March 3 and March 10, 2020 purchase dates for separate amounts adding up to the total claimed. They established this portion as suitable for reimbursement because they did an inspection prior to their purchase, with everything very clean, and everything working fine. In response to this, the tenant presented that there were no window blinds, and some windows were smashed.

Analysis

The *Act* s. 37 states that when vacating a rental unit, a tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss 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.

On my review, I find the landlord did not provide sufficient evidence to prove that a loss exists. There is no information showing or describing the state of the carpeting or blinds at the start of the tenancy. Further, there is no evidence showing that any damage or loss resulted from any action or inaction of the tenant. The landlord has not established the need for either of these items as claimed.

For this reason, I dismiss these portions of the landlord's Application, without leave to reapply.

Because they were not successful in their claim for reimbursement here, the landlord is not entitled to reimbursement of the Application filing fee.

Conclusion

The tenant's Application is dismissed, without leave to reapply.

The landlord's Application is also dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77, this order is final and binding.

Dated: April 21, 2021

Residential Tenancy Branch