



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG The Residential Group Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for alleged damage caused by the tenant;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee paid for this application.

The landlord, the tenant, and the tenant's advocate attended, the hearing process was explained, including the conduct expected during the hearing, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant 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. 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their monetary claim against the tenant and to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord submitted a written tenancy agreement showing a tenancy start date of July 1, 2019, a fixed term through June 30, 2020, monthly rent of \$2,000, due on the 1st day of the month, and a security deposit of \$1,000 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The tenancy ended on December 1, 2020, which was also the date of the move-out inspection.

The landlord's monetary claim against the tenant is \$3,537.27, comprised of \$505.01 for plumbing services for a washing machine repair, \$2,932.26 for a floor renovation, and the filing fee of \$100.

In support of their claim, the landlord submitted a new tenant moved into the rental unit on December 15, 2020, and on December 20, 2020, they reported a flood when using the washing machine. The landlord submitted that he called a plumbing company, who attended the rental unit on December 20, 2020.

The landlord submitted a copy of the invoice, which listed the services performed that day. The technician replaced a leaking supply hose, connected a washing machine drain hose, and connected the dryer vent properly. The invoice also reported the connection to the dryer was not properly connected.

On the invoice, the technician also reported that they found a couple of squares of raw salmon on top of the washing machine drain, that was capped. At some point, the salmon had become rotten.

The landlord submitted that the new tenant could not possibly have put the fish in the washing machine drain and they could not stay in the rental unit for about a month due to the overwhelming smell due to the fish.

The landlord submitted that they believed the tenant was the person responsible for leaving the fish in the drain, as he had access for 20-30 minutes after the move-out inspection.

As to the flooring, the landlord submitted that the flooding from the washing machine caused damage to the entire floor of the rental unit. The landlord submitted a copy of an estimate for flooring and said the flooring has not been replaced because the owner has not approved it. The landlord said that the owner wanted to wait for this hearing. The landlord did not know the age of the current floor.

In response to my inquiry, the landlord said that the new tenant reported the bad smell lasted about three weeks, but it does not smell now.

The tenant's advocate asked the landlord if they had seen the tenant put the fish in the washing machine, and the landlord said no.

The tenant's advocate submitted that there is no proof the tenant put the fish in the washing machine drain and there was no evidence of a flood. The advocate submitted that the plumbing company attended the rental unit, but made no mention of a flood.

The advocate submitted that the tenant did not have access to the rental unit for 20 days, prior to the plumbing company attending the rental unit.

The tenant submitted that he left the rental unit very clean and did not leave any mess behind.

The tenant denied putting the fish in the washing machine drain.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

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 onus to prove their claim and the claim fails.

As to the landlord's claim for plumbing service on the washing machine, the evidence was that the technician attended the rental unit due to flooding. The invoice showed the technician replaced a leaking supply hose and connected the washing machine drain hose. While the technician mentioned that they found a couple of squares of raw salmon, the technician did not attribute the flood to the fish being in the drain. Likewise, the landlord did not assert that the tenant was responsible for, or caused the leaking supply hose or disconnected drain hose.

The landlord did not submit a photo of the fish or of the location for me to review nor did the landlord explain how the fish would cause the flood.

Absence evidence to the contrary by the plumbing professional, I find it reasonable to conclude that the source of the flood was the leaking supply hose and the disconnected drain hose, not the fish.

I therefore find the landlord submitted insufficient evidence to support that the fish caused the flood or that the tenant placed the fish in the drain. The tenant had been out of the rental unit for 20 days before the fish was discovered. There was no evidence who had control over the premises until the new tenant moved in on December 15, 2020.

For these reasons, I **dismiss** the landlord's claim for plumbing costs of \$505.01.

As to the landlord's claim for floor renovation, as I have found the landlord failed to provide sufficient evidence that the tenant was the cause of the flood, I find the tenant cannot be held responsible for any resulting damage, if there was any. Other than an estimate for flooring, I find the landlord has not submitted evidence that the floor was damaged at all. The landlord failed to submit a photograph of the allegedly damaged floor and confirmed that the smell has disappeared.

The landlord failed to provide a compelling reason why they expected a new tenant to live in a rental unit with damaged flooring, which makes me question whether the floor was damaged.

I find it just as likely as not that after five months since the tenancy ended, the owner does not intend to replace the flooring, and thereby, the owner has not incurred a loss.

For these reasons, I find the landlord submitted insufficient evidence that the tenant caused the alleged damage to the flooring in the rental unit. I therefore **dismiss** the landlord's claim for \$2,932.26, without leave to reapply.

As I have dismissed the landlord's monetary claim, I decline to award recovery of the filing fee.

Conclusion

Due to the landlord's insufficient evidence as noted above, the landlord's monetary claim 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: May 28, 2021

Residential Tenancy Branch