



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2225044 Alberta LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on February 10, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation or loss; and
- an order granting recovery of the filing fee.

The Landlord's Agent A.R. and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage, compensation, or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 31, 2011. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$800.00 to the Landlord each month. The Tenant paid a security deposit in the amount of \$370.00 which the Landlord continues to hold. The tenancy ended on January 27, 2020 and the Tenant has not yet provided the Landlord with their forwarding address in writing.

The Landlord is claiming \$2,280.79 in relation to a variety of repairs which were completed by the Landlord at the end of the tenancy. The Landlord created their own invoice which outlines a detailed account of material used and the costs associate with each item. During the hearing, the A.R. referred to the poor condition of the paint throughout the rental unit. A.R. suggested that there may have been a cooking fire in the kitchen which damage the wall and countertop which needed repair.

A.R. stated that the flooring in the bathroom was old and in need of replacement. The A.R. stated that in order to do so, she was required to remove the toilet and baseboard before replacing these items. A.R. stated she also refinished the cabinets. A.R. stated that the windowsills in the rental unit were damaged as well as baseboards have come loose, which also needed repairing. Lastly, A.R. stated that the plug for the stove plug needed replacement.

The Landlord provided a condition inspection report that A.R. completed on her own at the end of the tenancy. A.R. stated that she did not have any contact information for the Tenant, therefore, was unable to provide him with an opportunity to attend the inspection. A.R. stated that the previous Landlord did not provide her with any paperwork, therefore, the move in condition report was not produced in the Landlord's evidence. The Landlord provided several pictures of the damage to the windowsills and the kitchen countertop. The Landlord did not provide receipts in support of the costs associated with the repairs.

A.R. stated that the repairs took one month to complete, during which the she was unable to re-rent the rental unit until March 1, 2020. As such, the Landlord is seeking compensation for loss of rent in the amount of \$1,100.00 which was the new rental amount for the tenancy that commenced on March 1, 2020.

If successful, the Landlord is seeking the return of the filing fee.

The Tenant responded by stating that he completed a condition inspection with the previous landlord on January 27, 2020 once he had moved out of the rental unit. The Tenant stated that he was never provided with any documentation, however, there were no concerns noted aside from what could be considered normal wear and tear.

The Tenant stated that the damage to the windowsills was from a moisture issue in the rental unit which had been raised by the Tenant with the previous landlord. The Tenant stated that the previous landlord was not concerned regarding any maintenance issues relating to the rental unit.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. An applicant must prove 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or 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 what was reasonable to minimize the damage or losses that were incurred.

According to the Residential Tenancy Policy Guideline 1;

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

According to Section 23(1) of the Act; The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

The Landlord has made several claims in relation to repairs made to the rental unit. A.R. stated that the Tenant caused the damage to the rental unit which required repair. The Tenant denied causing the damage to the rental unit aside from what could be considered reasonable wear and tear. I accept that the parties agreed that there was no condition inspection completed at the start of the tenancy and that the Tenant was not offered an opportunity to take part in the move out condition inspection by the new Landlord at the end of the tenancy.

I find that without a condition inspection being conducted at the start of the tenancy, it is difficult to compare the condition of the rental unit prior to the commencement of the tenancy, to the condition at the end of the tenancy. As such, I find that the Landlord has provided insufficient evidence to demonstrate that the damage to the rental unit was caused by the Tenant.

Furthermore, I find that the Landlord has not provided any invoices to support the costs associated with repairing the rental unit, aside from the invoice the Landlord created. In light of the above, I dismiss the Landlord's claims for repairs without leave to reapply.

With respect to the Landlord's claim for loss of rent during February 2020, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant damaged the rental unit, or that the repairs were so extensive, that the rental unit could not be rented during this time. As such, I dismiss the Landlord's claim for loss of rent without leave to reapply.

As the Landlord was unsuccessful with their Application, I find they are not entitled to the return of the filing fee.

Conclusion

The Landlord's Application is dismissed in its entirety 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: June 11, 2021

Residential Tenancy Branch