Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the "*Act*") for a monetary order for unpaid rent, for a monetary order for damages, and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on February 10, 2021, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenants had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Landlord was advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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.

Preliminary Matter – Amendment Application

At the outset of the hearing, it was noted by this Arbitrator that the Landlord had submitted an amendment application to the Residential Tenancy Branch (RTB) on May 21, 2021, requesting to increase their monetary claim.

Section 4.6 of the *Residential Tenancy Branch Rules of Procedure* states the following:

> **4.6 Serving an Amendment to an Application for Dispute Resolution**
>
> As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.
>
> The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.
>
> In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

The Landlord testified that they had included a copy of their amendment application in their service to the Tenant's sent on February 10, 2021, but that they had not provided a copy of that amendment application to the branch until several months later. When asked why the submission of this amendment application was delayed, the Landlord testified that they had just not gotten around to sending in their application to the RTB.

I find that the Landlord's explanation as to why they waited so long to submit their application to amend to the RTB to be insufficient cause to allow the late amend of their application to these proceedings. Consequently, the Landlord's application to increase their monetary claim is dismissed with leave to reapply.

Preliminary Matter – *Issued removed*

At the outset of these proceedings, the Landlord testified that the issue of the unpaid rent had been resolved for these proceedings and that they wish to withdraw that portion of their claim from these proceedings.

I find it appropriate to grant the Landlord's request to withdraw their request for a monetary order for unpaid rent.

I will continue in these proceedings on the Landlord's remaining claim items of a monetary order for damages and an order to recover the cost of filing the application,

Issues to be Decided

- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on November 24, 2018, as a one-year, six-month and six-day tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of $2,200.00 was to be paid by the first day of each month, and the Landlord had been given a $1,100.00.00 security deposit and a $1,100.00 pet damage deposit at the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement and move-in inspection into documentary evidence.

The Landlord testified that the tenancy ended on February 1, 2021, and that they did do the written move-out inspection for this tenancy; however, they acknowledge that they did not make any notations or comments in the "Condition at End of Tenancy" sections, located on pages 1-3 of this document. The Landlord submitted a copy of the move-out inspection into documentary evidence; it was noted that this document was signed by

the Tenant on February 1, 2020, and granted permission to the Landlord to retain the $1,100.00.00 security deposit and a $1,100.00 pet damage deposit for this tenancy.

The Landlord testified that in October 2020, the Tenants advised them that they had found a water leak on the property. The Landlord testified that when they sent someone to investigate the leak it was noticed that the leak had caused extensive damage to the property. The Landlord testified that they had not spoken to the Tenants directly at that time but that their father had attended the property on their behalf.

The Landlord's father attended the proceedings as a witness; the witness was affirmed to be truthful in their testimony, and their name was recorded on the style of cause page on this decision. The witness testified that the Tenants had told them that they had noticed a small drip when using the kitchen faucet but that they had not felt it was a bit deal, so they did not report it to the Landlord.

The Landlord testified that when they had a plumber/restoration company attend the property it was discovered that there was a hole in the kitchen sink spray hose that had caused the water leak. The Landlord is claiming for the full cost of the emergency repair and full renovation in the amount of $24,822.42, consisting of $5,148.19 in emergency work, 19,219.44 in repair work, and $454.79 for a new facet. The Landlord testified that they feel that the Tenants were negligent when they did not report the water leak and that they are therefore responsible for the full costs of the repairs. The Landlord submitted three invoices into documentary evidence.

Analysis

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

The Landlord has claimed for compensation in the amount of $24,822.42 for the recovery of their costs for emergency repairs and restoration of the rental unit due to water damage. Awards for compensation due to damage 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:
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> - 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.

First, I must determine if there has been a breach of the *Act* by these Tenants during this tenancy. Section 32(3) of the *Act* requires that a tenant is responsible for the repair of damage they caused to a rental unit.

> ***Landlord and tenant obligations to repair and maintain***
>
> ***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.*

I accept the undisputed testimony of the Landlord that a water leak was discovered during this tenancy and that this water leak had caused extensive water damage to the rental unit. However, for a landlord to be successful in proving a breach of section 32 of the *Act* by their tenant, they must demonstrate what their tenant had done to cause the damage or prove that the tenant knew or ought to have known that damage existed or was being cause by something or some event and that they failed to notify the landlord.

This in case the Landlord is claiming that these Tenants knew about the water leak, cause by the hole in the kitchen sink spray hose and failed to report that leak to the Landlord, which resulted in the follow-on effect of causing the extensive water damage to the rental unit. I have reviewed the testimony and documentary evidence presented by the Landlord in these proceedings, and I find that the Landlord has not provided sufficient evidence to satisfy me that these Tenants were aware of the hole in the kitchen sink spray hose, for three reasons.

First, I noted that no pictures of the damaged spray hose had been submitted into evidence; however, I find it reasonable presume that a kitchen sink spray hose would normally be house under a sink or behind a cupboard or wall. During a review of the testimony provided by the Landlord it was noted that they did not provide an explanation of how the whole in the spray hose ought to have been easily seen by these Tenants.

Second, it was not adequality explained how the drip the witness testified to was related to the later discovered hole in the spray hose, or how these Tenants ought to have known that the small drip they saw was a large problem that required repair.

Finally, the Landlord has not provided any professional testimony or statements as to how noticeable this water leak would have been nor how long this leak had been going on; was this a small leak that slowly created this damage over months or was this a catastrophic rupture of this hose that cause extensive damage in a few minutes.

I acknowledge the witness testimony provided during these proceedings; however, I found this testimony be lacking and insufficient to substantiate what these Tenants knew or for how long.

Overall, I find that the Landlord has provided insufficient evidence to support their claim that the Tenants breach section 32 of the *Act* during this tenancy. Consequently, I dismiss the Landlord's claim in its entirety.

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 they are not entitled to the recovery of their filing fee for this application.

Conclusion

The Landlord's application is dismissed.

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 9, 2021

Residential Tenancy Branch