



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord seeks to amend the application to replace Landlord SP named in the application with the Landlord HDMI named in the tenancy agreement. The Tenant consents to the amendment.

Rule 4.2 of the RTB Rules of Procedure provides that in circumstances that can be reasonably anticipated, an application may be amended at the hearing. Given that Landlord HDMI is named as the Landlord on the tenancy agreement and considering the Tenant’s consent, I find that the circumstances for the amendment have been met. The Landlord’s amendment is accepted.

The Landlord’s application sets out a total claim of \$2,875.00 for damage to a carpet, a transition strip, wall tiles and a drawer front. The Landlord did not provide a detailed

monetary order worksheet and the estimates provided as evidence to support the claimed amount exceeds the amount set out in the application.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. The Tenant consents to the Landlord setting out its monetary amounts to match the total claimed amount at the hearing. The Landlord clarified that its claim for \$2,875.00 would be allocated to the damage to the marble tiles and the Landlord seeks to withdraw the claim for damage to the transition strip, wall tiles and drawer front. Given the Landlord's submissions, I dismiss the claims to the transition strip, wall tiles and drawer front.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on March 1, 2014 and ended on May 31, 2020. Rent of \$3,151.10 was payable on the first day of each month. The security deposit has been dealt with. The Parties mutually conducted both a move-in and move-out inspection with completed reports copied to the Tenants.

The Landlord states that the Tenants left marble tiles on a feature wall with damage caused by holes. The Landlord believes the holes look like a tv may have been hung in the location as the holes are located 6 feet up. The Landlord states that this damage is not noted in the move-out inspection report as it was not noticed until after the Tenants left. The Landlord confirms that it did not provide a witness statement from the agent who conducted the move-out inspection and completed the report. The Landlord states that the agent sent the Tenants an email about the damage on November 30, 2020. The Landlord states that they were informed by the agent that in a previous conversation Tenant OE told the agent that white paste had been used to fix the holes. The Landlord provides estimates for the repairs to the marble tiles and claims

\$2,875.00. The Landlord states that the repairs have not been completed. The Landlord states that the unit was re-rented at the same rental rate starting June 1, 2020. The Landlord states that the new tenants were not given any rental discount for the damages or any promises for repairs. The Landlord states that the repairs will be done, nonetheless.

The Tenant states that they lived in the unit for more than 7 years and at no time were holes drilled or noticed on the feature wall. The Tenant states that because the marble tiles were above the fireplace that was not exhaust vented, the heat from the fireplace caused the tiles to be extremely hot and discoloured. The Tenant states that they made no repairs to the tile and cleaned them regularly to keep them from discoloring.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove that costs for the damage or loss have been incurred or established.

Although the Landlord has photos that dimly show damage to a wall, the Landlord has no supporting evidence that the Tenants caused that damage. The Landlord's evidence of when that damage was found was vague and only supported by an email dated some several months after new tenants occupied the unit. Given the Tenant's evidence that no damage was caused by them and considering the intervening tenancy I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damage claimed. Further, the Landlord has not incurred any costs to date, provides no evidence to substantiate any rental loss associated with the damage and does it

provide any evidence of an agreement with the new tenants to make the repairs that would support the claimed amount being incurred. For these reasons I dismiss this claim. As the Landlord's claim has not been successful, I dismiss the claim for recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

The 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 Act.

Dated: June 7, 2021

Residential Tenancy Branch