



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application for dispute resolution and evidence package. In accordance with sections 88 and 89 of the *Act*, I find the tenant duly served with the landlords' application and evidence package.

Preliminary Issue – Tenant's Evidence

The landlord testified in the hearing that they did not receive the tenants' evidence. The tenant confirmed that due to an oversight, they did not serve the landlord with their evidentiary materials.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

As a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case, the tenant’s evidentiary materials were excluded for the purposes of this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on June 1, 2019, and ended on April 30, 2021. Monthly rent was set at \$1,800.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$900.00, which they still hold.

The landlord is seeking reimbursement of losses associated with the tenant’s failure to leave the home in undamaged condition, specifically the damaged blinds and countertops. The landlord submitted a quotation to repair the countertops in the amount of \$682.50, and an invoice for new blinds in the amount of \$106.68. The landlord is also seeking to recovery the fling fee.

The landlord is also seeking the cost of replacing the damaged countertop, which the landlord confirmed has not yet repaired as they were waiting for the decision from this hearing. The landlord testified that the countertops were approximately 2 years old. The landlord provided photos, a move-in, and move-out inspection report, as well as the invoices and quotes for their claim.

The landlord testified that there were other losses which the landlord did not claim, such as cleaning.

The tenant disputes both claims, noting that the 1950s home was aged and in poor condition upon move-in. The tenant disputes the age of the blinds and countertops provided by the landlord, and testified that the blinds were in bad shape upon move-in. The tenant testified that the blinds were taped together, and that the home was not renovated except the bathroom. The tenant testified that the claims were related to wear and tear rather than damage caused by the tenants.

The landlord testified that the tenant had attempted to conceal the fact that the blinds were broken during the move-out inspection by pulling the blinds up. Upon inspection, the landlord discovered that the blinds were broken. The landlord testified in the hearing that the blinds were approximately 4.5 years old.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it

stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(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.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I have considered the testimony of both parties, and while it was undisputed that the countertops and blinds were damaged, the tenant disputes that the damage was caused by the tenant rather than regular wear and tear.

The landlord confirmed that the home was older, but that the blinds were approximately 4.5 years old, and the countertops were 2 years old. The tenant disputes credibility of these claims. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of blinds is 10 years, while the useful life of countertops is 25 years. In consideration of the evidence before me, I note that the move-in inspection report does note that the blinds in the master bedroom were

broken. Although the broken blinds referenced in this claim are in the kitchen, I find that the tenant's testimony about the condition of the blinds, and possible discrepancy in the actual age and condition of the blinds, to be supported. As stated above, the landlord bears the burden of establishing their claim. In light of the disputed testimony about the actual age of the blinds, and whether the damage was due to the tenant's actions or wear and tear, I find that the evidence falls short. I find that there is evidence which raises considerable doubt about the true age of the blinds, as well as their condition upon move-in. I find that the landlord failed to establish that it was due to the tenant's neglect or actions that the blinds were damaged. On this basis, the landlord's monetary claim for the damaged blinds is dismissed without leave to reapply.

The landlord also filed a claim for the damaged countertops. Similarly, the tenant disputes the actual age of the countertops, and the landlord's testimony that the tenant had caused the damage. Although I note that the move-in inspection report does not note any damage to the countertops, in consideration of the disputed evidence before me, I find that the landlord had failed to demonstrate that the countertops were indeed only two years old. Considering the age of the home, there is a possibility that the countertops have exceeded their useful life of twenty-five years. I am not satisfied that the landlord had provided sufficient evidence to support that the countertops had been recently replaced as testified in the hearing. As I am not satisfied that age and wear and tear was a contributing factor to the damage, and as the burden of proof falls on the landlord to support their claim, I dismiss the landlord's claim for the damaged countertop without leave to repaly.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful in her application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$900.00 in the tenant's favour for the return of the tenant's security deposit, which the landlord still holds.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 24, 2021

Residential Tenancy Branch