



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant PK" did not attend this hearing, which lasted approximately 54 minutes. The landlord, tenant JK ("tenant"), the tenant's English language interpreter ("tenant's interpreter"), and the tenants' lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that he owns the rental unit. He confirmed the rental unit address. He provided an email address for me to send a copy of this decision to him after the hearing.

The tenant confirmed that his interpreter had permission to assist him at this hearing. He confirmed that his lawyer had permission to speak on his behalf. He stated that tenant PK was unable to attend this hearing (collectively "tenants"). He provided an email address for me to send a copy of this decision to the tenants after the hearing.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord, the tenant, the tenant's interpreter, and the tenants' lawyer all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, as well as the potential outcomes and consequences, to both parties. I informed both parties that I could not provide legal advice to them. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The tenants' lawyer confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application.

The landlord stated that he did not serve a copy of the tenancy agreement, text messages with monetary estimates, or an excel spreadsheet to the tenants. He said that he did not think it was evidence. He claimed that he only uploaded it to the online RTB website. The tenants' lawyer confirmed that the tenants did not receive the above documents from the landlord. I informed the landlord that I could not consider the above documents at this hearing or in my decision because it was not served to the tenants, as required by section 88 of the *Act* and Rule 3.1 of the *RTB Rules*.

The landlord asked whether he could serve the above documents to the tenants after the hearing. I notified him that he could not, as the tenants would not have a chance to respond, and the hearing would be over. I informed him that he had ample time from filing this application on June 5, 2021, to this hearing date of December 6, 2021, a period of over 6 months, to serve his evidence to the tenants. I further informed him that he was notified in the fact and information sheets and the notice of hearing, which he received from the RTB when he filed this application, to serve all of his documents that he intended to rely upon at this hearing, to the tenants, prior to the hearing. The landlord confirmed his understanding of same, claiming that it was his mistake. As noted below, I found that the landlord's above documents were insufficient in any event, to prove his monetary claims.

Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit?

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

Background and Evidence

Both parties agreed to the following facts. This tenancy began with the former landlord in 2015. The landlord purchased this rental unit in March 2021, assumed this tenancy, and did not sign a new tenancy agreement with the tenants. The tenants signed a written tenancy agreement with the former landlord. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants to the former landlord. The landlord returned the security deposit to the tenants in full. No move-in or move-out condition inspection reports were completed for this tenancy.

As per the online RTB application details, the landlord claimed that this tenancy ended on June 4, 2021. Neither party provided testimony about this during the hearing.

As per the online RTB application details, the landlord was previously seeking a monetary order of \$6,775.00 plus the \$100.00 application filing fee. The landlord provided documentation with this application, indicating that he was seeking a higher amount of \$8,361.25 plus the \$100.00 filing fee.

The landlord testified regarding the following facts. There was a deep crack on the kitchen countertop. The landlord was told to replace it and an estimate was given to him. This damage was not noted in the previous tenancy agreement with the former landlord, so the landlord presumed that the tenant caused the damage, because there was no one living in the rental unit before the tenant. The three damages noted in the previous tenancy agreement were the cracks above the door and on the living room wall, and the hole in the bedroom closet door. The landlord spoke with the tenant and he said that he did not know about the kitchen countertop damage. There was no way that this damage happened by itself. There was water damage to the flooring at the entrance of the room. The flooring expanded and the landlord was told that the entire flooring had to be replaced. This was not an issue with the former landlord. This damage happened during the tenancy. The landlord does not want to pursue his claim for the window seal damage in the corner of the living room. The landlord wants this claim dismissed because he knows that it is due to the water ingress from the outside, and not the tenant's issue.

The landlord stated the following facts. The tenant lived for more than one year at the rental unit. The tenant was supposed to do professional steam cleaning of the carpet, but the landlord had to hire someone to clean the rental unit. The bathroom was not clean, the bathroom sink was clogged, and the kitchen cabinets and floor were sticky.

The tenant did not have any professional cleaning done at the rental unit. The tenant also left three personal items behind, including a drawer, a TV stand, and a Christmas tree piece in storage. The landlord provided photographs of the rental unit. He received an invoice for cleaning but did not provide it for this hearing. He did not get any written estimates from the cleaners, except for text messages. He provided an excel spreadsheet of costs. He did not have any move-in or move-out condition inspection reports so that is why he repaid the security deposit to the tenant.

The tenant testified regarding the following facts. There was a crack in the kitchen countertop when the tenant moved in and it was a thin line. The crack got larger over time in the past year of the tenant's tenancy. The landlord installed the dishwasher under the kitchen countertop, which could have caused the crack to grow. Even now the crack is not noticeable. In the landlord's photograph, the floorboard popped out. The former landlord had to fix the dishwasher and it caused leakage in 2016, which damaged the flooring. The three items that the landlord said the tenant left behind were there when the tenant moved into the rental unit. The tenant cleaned the rental unit himself, using professional detergent, and he cleaned each room. The tenant cleaned the carpet with a carpet cleaner detergent. The tenant cleaned the bathroom, and it was very clean after. The tenant did not clog the bathroom sink.

The tenants' lawyer made the following submissions. No move-in or move-out condition inspection reports were completed for this tenancy, of which the tenant is aware. The landlord has the burden of proof for his monetary claims. The notations in the previous tenancy agreement with the former landlord is not proof that the tenant caused damages to the rental unit. The landlord is supposed to complete condition inspection reports to detail the condition of each room in the rental unit. The damages claimed by the landlord are not the tenant's fault. The dishwasher being fixed was not the tenant's fault, as it was done by the former landlord, which caused leakage and damage to the flooring. The kitchen countertop had a thin crack when the tenant moved in and because the landlord installed the dishwasher the crack got bigger, which is wear and tear. The tenant cleaned the entire rental unit before he moved out. The landlord's bathroom photographs are all blurry, which do not show anything. The clogged sink that the landlord claimed only shows one hair in the landlord's photographs. The landlord did not submit any receipts for any work done. The landlord said that he submitted rough estimates of the work, but he has not completed this work, in order to receive reimbursement.

Analysis

The following RTB *Rules* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord did not properly present his evidence and claims, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

During this hearing, the landlord failed to properly go through his claims and the documents submitted in support of this application. The landlord did not indicate any amounts for his monetary claims, aside from cleaning. The landlord did not indicate whether he had any repairs done, aside from cleaning, which he claimed actually cost \$750.00, not \$700.00. This is despite the fact that I repeatedly asked the landlord whether he had any repairs done, whether he actually paid for any repairs, and whether he had any other information to add. This hearing lasted 54 minutes, so the landlord had ample opportunity to present his application.

The landlord simply stated that he was at this hearing for a “friendly conversation to see where things were at” with the tenant and that he came “alone” unlike the tenant who appeared with an interpreter and a lawyer. The landlord was not required to be represented by an agent or a lawyer but was free to do so, as noted in the application documents provided to him, prior to this hearing. I informed the landlord that this was a serious, legal, binding proceeding, where I would make a decision regarding his application for a monetary order.

At the outset of this hearing and throughout this hearing, I repeatedly informed the landlord that as the applicant, he had the burden of proof, on a balance of probabilities, to prove his monetary claims.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for \$8,361.25 without leave to reapply. This includes \$700.00 for cleaning, \$200.00 for removal of belongings, \$1,500.00 for flooring replacement, \$4,961.25 for kitchen countertop replacement, and \$1,000.00 for window seal repair. These amounts were not mentioned by the landlord at all during this hearing, except for the cleaning cost. The above amounts were taken from the landlord's online RTB application details.

The landlord did not complete or provide any move-in or move-out condition inspection reports to document the condition of the rental unit when the tenants moved in or out. I find that the landlord's presumption that the damages to the kitchen countertop and flooring, as well as the items left behind, are based on speculation and assumption, rather than documented evidence and proof. Therefore, I find that the landlord cannot show if the tenants caused any damages at the rental unit, if damages were pre-existing when the tenants moved in, or if the tenants left any items behind in the rental unit.

During this hearing, the landlord confirmed that he did not want to pursue his claim for the window seal damage in the corner of the living room, and he wanted it to be dismissed. This claim for \$1,000.00 is dismissed without leave to reapply.

I accept the tenant's affirmed testimony that a small thin crack was there when he moved in and it grew over time with reasonable wear and tear. I find that the tenants did not wilfully or negligently cause the damage to the kitchen countertop. I further find that the landlord failed to show that he actually replaced the kitchen countertop and the

cost that he paid. The landlord did not testify about this, despite being specifically asked by me. The landlord did not provide documentary proof that the kitchen countertop had to be replaced rather than repaired. I find that this damage is reasonable wear and tear, and the landlord did not indicate that the kitchen countertop was not usable or functioning properly. The landlord's own photographs show a crack in the kitchen countertop, which is difficult to see in some of the photographs. The landlord failed to provide invoices or receipts to show the cost of same. The landlord initially applied for \$3,375.00 in the online RTB application and did not amend his application to increase this claim. He only submitted an email with an excel spreadsheet estimate that is not signed by any professional contractor for \$4,961.25. When I questioned him about this, he did not respond to same. This claim for \$4,961.25 is dismissed without leave to reapply.

I accept the tenant's affirmed testimony that the flooring was damaged when the landlord fixed the dishwasher, which was leaking at the rental unit. I find that the tenants did not wilfully or negligently cause the damage to the flooring. I further find that the landlord failed to show that he actually replaced the flooring and the cost of same. The landlord did not testify about this, despite being specifically asked by me. The landlord did not provide documentary proof that the flooring had to be replaced rather than repaired. The landlord failed to provide invoices or receipts to show the cost of same. The landlord's own photographs show one small area where two floorboards have a small, minor gap, compared to the other surrounding floorboards. The landlord provided an unsigned estimate for \$630.00 for both the flooring and the window seal, which is far less than the \$1,500.00 for the flooring and the \$1,000.00 for the window seal (\$2,500.00 total), claimed by the landlord in this application. This claim for \$1,500.00 is dismissed without leave to reapply.

I accept the tenant's affirmed testimony that he sufficiently cleaned the rental unit and the carpet before he moved out. Residential Tenancy Policy Guideline 1 does not require the tenants to professionally clean the carpet or the rental unit before moving out. It requires the tenants to shampoo or steam clean the carpet themselves, if the tenancy is longer than one year. I find that the tenants met these requirements. I find that the landlord's own photographs of the bathroom are blurry and difficult to see, and that they do not show a lack of cleaning or a clogged sink in the bathroom. The landlord's photographs actually show that the rental unit carpet appears to be clean.

The landlord failed to provide invoices or receipts for cleaning, despite claiming that he had an invoice in his possession during this hearing. Further, I informed the landlord during the hearing that he only provided photographs of text messages on a cellular

phone, for cleaning costs, which were not sufficient. The landlord claimed that I could call the telephone numbers myself to verify the information after the hearing, which I informed him was not my role as an Arbitrator, since I was not required to investigate his claims. The landlord was given an opportunity to call witnesses during this hearing and declined to do so. The landlord maintained that the cleaning companies no longer provided invoices for cleaning, despite claiming earlier that he received an invoice for the cleaning. The landlord's text messages indicate that cleaning for a 2 bedroom and 2 bathroom condo could cost \$399.00 plus GST and carpet cleaning could cost \$170.00 plus GST, which does not add up to the \$700.00 that the landlord applied for, or the \$750.00 that the landlord stated that he actually paid during this hearing. This claim for \$700.00 is dismissed without leave to reapply.

I accept the tenant's affirmed testimony that the three items, including the drawer, tv stand and Christmas tree piece, left behind in the rental unit were there when the tenant moved in. The landlord did not respond to the tenant's claim, despite being given the opportunity to do so. Therefore, I find that the tenants are not responsible for the cost of removing these items. I further find that the landlord failed to show that he actually removed the items and the cost of same. The landlord failed to provide invoices or receipts for same. This claim for \$200.00 is dismissed without leave to reapply.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 application filing fee from the tenants.

Conclusion

The landlord's entire application 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: December 06, 2021

Residential Tenancy Branch