Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of $567.00 for damages, retaining the security deposit to apply to the claim; and to recover the $100.00 cost of their Application filing fee.

The Tenant, D.S., and an agent for the Landlord, M.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said he had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that he had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on December 1, 2018, and ran to November 30, 2019, after which time, it operated on a month-to-month or periodic basis. The Parties agreed that the Tenant was obliged by the tenancy agreement to pay the Landlord a monthly rent of $2,900.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of $1,450.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the Tenant's security deposit in full, to be applied to this claim.

When I asked him to explain the Landlord's claim, the Agent said the following:

> Basically, this Tenant never had issues with payments – they were always on time. There are no issues; he kept the unit in great condition. The only item we noticed after he vacated - and it was in the condition inspection report ("CIR") - was basically there was water clogging in the sink; it didn't drain properly. We sent someone to investigate when we got the keys to the unit. So, what happened was the garburator was blocked and needed to be replaced.
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> We brought different work orders in the past to change appliance, but we had no knowledge of this until we got the keys. We created a work order and sent in a plumbing company. There are two parts – the new garburator is similar to the one there - plus there's the plumbing that we did not charge the Tenant for. We only claimed the garburator. This was the entire issue.

The Tenant responded, as follows:

> When we moved in the garburator was not working. If you look into tenancy agreement, the garburator is not part of the rental. We never had it, we never used it, we were told not to use it, because it's not working, so don't bother. The garburator was not part of the unit. The CIR was all good when we moved out.

> Even in the CIR the garburator is not even in there - not before and after – that line is missing, which is another indication that the garburator was not part of the rental. We were surprised after the move out about this claim that we broke the garburator.

The Agent said:

> Looking at the tenancy agreement, it's not ticked off that it is included, but it was, and there was no mention that it was broken. But there were numerous work orders that came in, and whatever needed to be fixed was fixed. We found out at the end of the tenancy; we could have fixed it at the beginning.
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> He was not billed for other fixes. An oven was replaced – it was done by the owner. We've never had any issues with the Tenant.

I asked the Agent that if the Landlord had not billed the Tenant for other repair work in the residential property, why is the Tenant being billed now for this appliance? He said: "It was working at the time, either they – sometimes you throw something in the sink and clogs it. If we could have dealt with it earlier…."

The Tenant responded:

> The reason we never mentioned it, was because it was not considered part of the rental. We were told by the agent - this is what I was told - I'm under oath. Using the garburator in this building is against Strata rules. They even moved the garburator; it was disabled. We didn't use it, and that's the information I had.
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> I would have loved a garburator and I would have had it fixed sooner, if we were allowed to use it. Unplugging and removing stuff manually was pretty annoying; it was better to have a clear pipe right through it. It was not removed; it was disabled - that's why I never asked for it to be fixed, in comparison to everything else. They were pretty good at replacing things, although I had to ask a few times. . ., but in the end they did the right thing with those other appliances. But the garburator is not a part of the unit in our perspective.

I asked the Parties for their last statements before the hearing ended, and they said the following:

The Agent said:

> Just re his last comment, this building has no restrictions on garburators; I'm not sure who that agent is who told him not to use the garburator. Nobody that I know of here would have mentioned that.

The Tenant said;

> I think I mentioned everything. It's been a hassle not having my money returned. Now I'm at work and have to take time to do this - it's my time and I'm a contractor and it's costing me money. That's more of complaining.

I note that section 3 of the tenancy agreement sets out what facilities and services are included in the tenancy. "Garburator" is listed, but it is not checked as being part of the tenancy. Both Parties agreed that garburator was not checked in the tenancy agreement.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, I advised that the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Rule 6.6 sets out the standard of proof and onus of proof. Pursuant to Rule 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Accordingly, the Landlord has the burden of proving their claim here on a balance of probabilities standard.

I find both Parties to be credible, and I have a “he said/he said” situation regarding the Tenant’s use of the garburator. I agree with the Tenant that neither the tenancy agreement nor the CIR refer to the garburator as being part of the tenancy. There is no reference to the garburator in the move-in CIR, nor in the move-out CIR. In the tenancy agreement “garburator” is an appliance that could be checked as being included in the tenancy; however, this appliance is not checked.

I infer that the Tenant did not hesitate to let the Landlord know when something was not working; therefore, I find it more likely than not that he would have asked the Landlord for the garburator to be fixed, if it was something that the Tenant used.

The Agent said that the Landlord would not have charged the Tenant for this repair, if the Tenant had asked about it during the tenancy; the Agent could not explain why the Tenant should pay for it after the tenancy was over, other than by suggesting that the Tenant threw food down the drain that was clogged. However, the Agent did not point me to any evidence of proof of this suggestion.

Based on the evidence before me overall, I find that the garburator was not included in the tenancy, and it is more likely than not that the Tenant did not use it during the tenancy. The Landlord has not provided any evidence or authorities setting out that the Tenant should be responsible for the cost of repairing the garburator in this set of circumstances. As such, I find that the Landlord has not provided sufficient evidence to meet their burden of proof on a balance of probabilities. I, therefore, dismiss the Landlord’s Application wholly without leave to reapply.

The Landlord is Ordered to return the Tenant’s security deposit as soon as possible. I grant the Tenant a Monetary Order of **$1,450.00** for the return of the security deposit.

Conclusion

The Landlord is unsuccessful in their Application, as they provided insufficient evidence and authorities to meet their burden of proof on a balance of probabilities. The Landlord’s Application is dismissed wholly without leave to reapply.

As the Landlord holds the Tenant’s security deposit for this claim, I Order the Landlord to return the security deposit to the Tenant as soon as possible. In this regard, I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **$1,450.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 30, 2022

Residential Tenancy Branch