



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT FFT

Introduction

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

- a monetary order for the cost of emergency repairs to the rental unit in the amount of \$4,444 pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties 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 tenant was assisted by a translator.

This hearing was reconvened from a previous hearing on November 5, 2021. Following that hearing I issued an interim decision on that same date. This decision should be read in conjunction with the interim decision.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Landlord's Counterclaim

In their materials, the landlord referred to making a counterclaim against the tenant for \$41,000. However, they did not file an application for this amount with the residential Tenancy Branch (the "**RTB**") prior to the November hearing, or at all. Accordingly, the matter of the landlord's entitlement to this amount is not before me. At the hearing, I advised the landlord of this, I also advised them that, in any event, the RTB does not have the jurisdiction to adjudicate disputes greater than \$35,000. The landlord may make a claim at the RTB after the hearing, if they waive their entitlement to any amount over \$35,000. The landlord indicated they understood this, and that they understood this hearing would only address the tenant's application.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$4,444;
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting February 1, 2019. Monthly rent was \$3,500 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$5,250 at the start of the tenancy. The tenancy agreement contained an addendum with the following term:

Since the tenant is new to Canada and does not have credit history or government issued identification card, the tenant agrees to pay one and a half month's security deposit. This is explicitly agreed on an understood between the two parties.

I note that this amount exceeds the amount permitted by section 19 of the Act, which limits the amount of a security deposit to a half month's rent.

At the end of the tenancy, the parties reached an agreement whereby the landlord was permitted to retain the deposit and the tenant does not seek the return of any portion of it as part of this application.

The rental unit is a ground floor apartment. In addition to the living space, the rental unit includes the use of a private, ground level garage which is accessible from the exterior of the building. The building also had an underground parking lot. The tenant testified that they "never really used the garage" because the landlord told them that it was narrow, and their car was "very wide". The tenant parked in the underground parking lot.

The tenant vacated the rental unit on March 28, 2021.

The tenant testified that they returned to China on May 13, 2020 due to the COVID-19 pandemic. They advised the landlord of this and continued to pay rent every month. They stated that prior to leaving, they gave the landlord the key and asked the landlord to "help look after" the rental unit. The tenant locked and secured the door and windows to the garage before they left.

In January 2021, the tenant received a message from the landlord stating that the strata council discovered that two homeless people were living in the garage. The landlord asked if the tenant gave them permission to do so. The tenant stated that they did not. The strata called the police to remove the homeless people.

These individuals caused not insignificant damage to the garage. Electrical wires were tampered with, a window was broken, furniture was damaged, and the interior was covered in graffiti.

The landlord then messaged the tenant and asked them if they was going to clean it or if the strata should. The tenant told them that the strata should take care of cleaning. The strata arranged for the garage to be cleaned and replaced the lock on the door. remove the mattress from the garage and replace the lock on the exterior door. The strata sent two invoices to the landlord for this work (\$2,254.59 for the cleaning and \$415.01 for the lock replacement). The landlord sent these invoices to the tenant, demanding payment.

The tenant contacted the landlord, and stated that since they did not cause the damage, they should not responsible for paying it. They stated that the landlord told them that since the damage occurred during the tenancy, the tenant was responsible for paying for it. The tenant testified they were unaware of the state of the law in Canada on this point and paid the landlord these two amounts.

After paying these amounts, the landlord provided the tenant with three more invoices (two for electrical repairs totalling a combined amount of \$430 and one for repainting totalling \$1,344). The tenant paid these amounts as well. The tenant submitted copies of the five invoices into evidence.

In total, the tenant paid the landlord \$4,443.60 for remediation of the garage, as follows:

Cleaning	\$2,254.59
Lock replacement	\$415.01
Electrical - Rewiring garage power for ceiling plug	\$150.00
Paint garage	\$1,344.00
Electrical - Troubleshoot circuit and replace lighting fixture	\$280.00
Total	\$4,443.60

In a written statement provided to the RTB prior to the hearing, the tenant wrote that “the landlord forced me to pay for the repair of the garage caused by the hobos breaking into and destroying and threatened to keep me from moving if I didn’t repair the garage and pay for it.”

The tenant returned to Canada on March 5, 2021 and decided to terminate the tenancy. The tenancy ended on March 30, 2021.

The landlord agreed that all the damage repaired was caused by the homeless people who took up residence in the garage. However, they denied that the forced the tenant to pay for the damage repair. They testified that the whole process was “friendly” and that

there was no dispute when the tenant paid him, as “it was clear that it was [the tenant’s] liability”. They agreed that the invoices submitted into evidence by the tenant were those that they provided to the tenant or that the tenant paid them the amounts specified.

Rather, the landlord argued that it was the tenant’s responsibility to pay for the remediation of the garage, as the damage occurred during the tenancy.

Analysis

1. Amount of Deposit

As stated above, the Act prohibits security deposits greater than one half a month’s rent. Section 5 of the Act states that parties “may not avoid or contract out of [the] Act”. As such, despite the term of the addendum to the tenancy agreement stating that the parties agree the landlord could collect a security deposit in excess a half month’s rent, I find that such a term is a breach of the Act.

However, the Act does not contain any provision which penalizes a landlord for requiring a security deposit in excess of a half month’s rent once a tenancy has ended. There is no order with regards to this breach of the Act. I mention it solely for the purpose of educating the parties as to the Act’s requirements.

2. Liability for Paying Cost of Remediation

The central facts at issue in this case are not at dispute. The parties agree that the garage formed part of the rental unit, that homeless people took up residence in the garage, that the tenant was living overseas when this occurred, that the homeless people caused damage to the garage, and that this damage cost \$4,443.60 to remediate.

The parties agree that the tenant paid this amount to the landlord upon being provided with the receipts.

The parties disagree as to whose responsibility, under the Act, it was to pay for the remediation of the garage. They also disagree as to the tenor of the discussion between them when issue of responsibility for payment first arose.

Section 32 of the Act address landlord’s and tenant’s obligations to make repairs. It states:

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.

[...]

(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.

This section limits the tenant's scope of liability for repairing damage to the rental unit. Based on the evidence presented at the hearing, I do not find that the homeless people were permitted onto the residential property by the tenant. Similarly, the tenant's actions did not cause the damage to the garage; the damage was caused by the actions of the homeless people living in the garage.

I do not find that the tenant acted negligently either. They locked the door and windows of the garage before they returned to China. I do not find they could have reasonably been expected to install a security system in the garage. The tenant made the garage as secure as they could prior to leaving. Despite this, it was broken into. I do not find that the tenant could have reasonably done more to prevent this break-in from happening.

It is not enough that the damage occurred during the tenancy for a tenant to be responsible for the repairs. The damage must be the result of the tenant's action or negligence. This is not the case here.

As such, I do not find that the tenant is responsible for the cost of remediation pursuant to section 32(3) of the Act. Accordingly, the responsibility for paying for the remediation falls to the landlord.

I do not find that, since the tenant has already paid the cost of the remediation, that they cannot recover the amount paid. As stated above, section 5 of the Act prohibits parties from avoiding or contracting out of the Act. As such, any agreement whereby the tenant agreed to pay the cost of the garage remediation is not enforceable. The amount the tenant paid the landlord for the remediation must therefore be returned.

Accordingly, pursuant to section 65(1)(c)(i) of the Act, I order the landlord to pay the tenant \$4,443.60, representing the return of the amount the tenant paid to them (or to contractors on their behalf) for the remediation costs of the garage.

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, they may recover their filing fee from the \$100.00.

Conclusion

Pursuant to sections 65 and 72 of the Act, I order that the landlord pay the tenant \$4,543.60, representing the return of the amount paid by the tenant for the remediation of the garage plus the reimbursement of the filing fee.

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: July 13, 2022

Residential Tenancy Branch