



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 as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation for monetary loss or other money owed of \$5,000.00; and to recover the \$100.00 cost of their Application filing fee.

The Landlord and a translator for the Landlord, K.G. ("Translator"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 35 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and her Translator, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and her Translator.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. 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.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents by mail and by posting it on the rental unit door on November 23, 2021. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and she provided the Tenant's mailing address in the hearing. The Landlord confirmed her understanding that the Decision would be emailed to the Landlord and mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Landlord that she is 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 Landlord said that she bought the house with tenants, but that the Landlord did not live there. She said: "We never saw [the Tenant]. Her stuff was there but not her." The Landlord said that the previous landlord did not give her a tenancy agreement for this unit, and did not transfer any security or pet damage deposit to the new Landlord for the Tenant. Also, the Landlord did not have a condition inspection report from the start of the tenancy, to compare to the condition of the residential property at the end of the tenancy.

I asked the Landlord to explain her claim to me and she said the following:

There was a flood at the residential property, and when we went in, we found her stuff there. The former landlord told us that [the Tenant] was admitted to hospital, and they said she moved elsewhere. We sent mail there – someone from [town] gave us [the Tenant's] friend's telephone number, and they came and took her stuff, but they left all the garbage behind. A week after the flood, they came and took all of her stuff. She didn't pay rent.

The thing was, when her friends moved all of her stuff out, the important stuff, the thing was, when she left, they took all the valuable items; other than that, they left garbage in the fridge. It was broken, everything was rotting. The stove didn't

work. The windowsills were broken, we don't know how. The blinds were broken, the walls – were like maybe there was a spill before the flood. The flood happened on the ground, but the walls were rotten from the sides, but we don't know what happened, because we weren't in there before.

We used the least expensive blinds. Even the toilet was broken and someone like never cleaned it. The countertops were also broken from the sides, the faucet part of the sink was also broken.

I asked the Landlord if she had submitted receipts for the work they did to repair the residential property. She said she only had a receipt for the garbage that was left behind, and the faucet and the rack, but no other receipts.

I asked the Landlord how she knew the residential property was not in bad shape when the Tenant moved in. She said:

When we came to look at the house and the basement condition – there was more stuff to hide everything, but you could tell that the condition was bad in the basement from the open house.

I looked at it and knew it was like that, but I didn't know that the Tenant didn't stay there. We were going to fix it. [The Tenant's] been staying here for a little bit – I wanted her to stay. When we came to see the house, we saw that the damage was there.

[The Tenant] was staying there for many years - even the neighbours said that she used to live there for many years.

The Landlord also mentioned involvement of the police with the Tenant, but that does not seem relevant to her claims. The Landlord said: "The neighbours told us this - the [former] landlord never told us this stuff."

The Landlord had complained of mould being in the rental unit, but I asked her what the Tenant did to cause the mould – why was it the Tenant's fault? The Landlord said:

No, it was on the ground, but there was also mould around the mattresses she had on the floor and on the walls where the flood never went.

I asked the Landlord how the kitchen cabinets were broken, as they looked fine in the

Landlord's photographs. She said:

The rack under the sink and racks in general were not in good shape. The wood wasn't that good, maybe she spilled water and never cleaned up. Inside, too, there was a lot of garbage and it spilled on the inside, and some of the woods separating the two shelves was kind of broken.

Before I ended the hearing, I gave the Landlord a last opportunity to say any last points. She said:

One thing to add that after the flood we had insurance for the flood. It was covered by the insurance. But they didn't cover the counters and the sink and the toilet sink or the blinds; we had to do that on our own. Even the paint on the walls – there was like mould on the walls, the flood couldn't cause that, because the flood was like a few inches.

There were mattresses thrown on the ground in the room, stacked up a few mattresses and that soaked up the water and damaged the walls more.

The Landlord submitted photographs showing:

- damaged kitchen floor;
- large garbage bags in the rental unit kitchen and bathroom;
- random belongings, such as a plastic shelf unit and shoes left behind;
- dirty/mouldy window frames;
- mould or dark patches on walls and in closets; and
- videos showing water draining very slowly in the bathtub, and a plugged toilet.

The Landlord submitted a receipt for \$499.59 that they said they paid to have the garbage and junk left behind by the Tenant removed. The Landlord said they have not done much to repair the residential property yet, otherwise.

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 Landlord testified, I let her know how I analyze the 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. RTB Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, 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”)

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant’s pets. Section 37 requires a tenant to leave the rental unit undamaged.

However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 (“PG #16”), “the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or

loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

The Landlord may have had information from a neighbour about how long the Tenant lived in the residential property; however, the Landlord did not submit a tenancy agreement nor a condition inspection report indicating the condition of the residential property at the start of the tenancy. As such, the Landlord has little means of proving what damage was caused by the Tenant and what damage was present at the start of the tenancy. Further, there is little evidence of what damage was caused by the flood, and not the Tenant, such as the condition of the kitchen floor in the photographs submitted by the Landlord.

Further, the Landlord has provided limited evidence to establish the cost of the repairs to the residential property.

I find that the Landlord has provided insufficient evidence to establish a claim in the amount of \$5,000.00. There is no evidence as to the condition of the residential property at the start of the tenancy, or even prior to the flood to prove that the damage was the result of the Tenant’s actions while living there.

I find that the Landlord provided sufficient evidence to establish that the Tenant left garbage and other debris behind and that the Landlord had to pay to have it removed. I, therefore, award the Landlord with **\$499.59** from the Tenant in this regard, pursuant to section 67 of the Act.

Given the Landlord’s limited success in her Application, I decline to award her with recovery of the \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act.

Conclusion

The Landlord is partially successful in her claim for compensation from the Tenant. The Landlord is awarded recovery of the cost to remove the garbage from the residential property in the amount of **\$499.59**.

The Landlord failed to provide sufficient evidence to prove on a balance of probabilities that the Tenant caused the remainder of the damage found in the residential property after the flood and after the end of the tenancy. The remainder of the Landlord’s claim is dismissed without leave to reapply.

Pursuant to section 67 of the Act, the Landlord is awarded a **Monetary Order** of **\$499.59** from the Tenant. This Order must be served on the Tenant by the Landlord 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: July 18, 2022

Residential Tenancy Branch