



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The tenant stated that they were away when the hearing package was delivered, and it was returned to the landlord. However, they received a copy from the Residential Tenancy Branch. The tenant confirmed that they had received the landlord evidence that was provided from a previous hearing. The tenant was given the option to have this matter adjourned to receive a second copy; however, the tenant stated they were prepared to proceed. The landlord confirmed they received the tenant’s evidence.

The tenant indicated that the landlord’s application should be dismissed because the landlord made the same application before; however, they withdrew that application prior to the hearing. The tenant stated that they also received orders for the return of double their security deposit and for one month’s compensation of rent for receiving a notice to end the tenancy for landlord’s use of property.

In this case, I cannot dismiss the landlord’s application simply because they withdrew their previous application as the merits were not heard. Further, simply because the tenant has received monetary orders does not bar the landlord’s application to claim for damages as long as their application was made within 2 years of the tenancy ending.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages and cleaning?

Background and Evidence

The parties agreed that the tenancy began on September 13, 2020. Rent in the amount of \$1,625.00 was payable on the first of each month. The tenant paid a security deposit of \$812.50. The tenancy ended on December 31, 2022.

The landlord submitted a move-in condition inspection report which was signed by the tenant. The move-in condition inspection report (the "Report") is not completed as the landlord has not described the condition of the rental, by making any comments or using any of the required codes, such as F=fair.

The landlord's agent stated that the rental unit had to be in good condition because the tenant signed the Report and paid the security deposit.

The landlord claims as follows:

a.	damages	\$4,616.92
b.	Cleaning	\$ 375.00
c.	Filing fee	\$ 100.00
	Total claimed	\$5,091.92

The landlord testified that in the bathroom they had to replace the flooring, shower head and the shower wall and in other areas of the rental unit they had repair the walls and fixed some other areas due to moulding. The landlord stated they did not pay to have the work completed in the estimate as they did the work themselves and had supplies on hand.

Filed in evidence is a quote for \$4,616.92, this is for \$1,906.98 in material and labour in the amount of \$2,490.00, these prices include GST. The only photographs the landlord provided were of the bathroom mostly taken part and one photograph of the tub surround which I note is a solid piece, which the tub seal is crack lifting and is missing in sections.

The landlord testified that the tenant did not clean the rental unit and they obtained a quote; however, they cleaned the entire unit themselves, which included cleaning the carpet, removing the mould from walls and windows. Filed in evidence is a copy of the quote for \$375.00, which is at the rate of \$45.00 per hour and \$15.00 traveling, and photographs of mould on the wall and windows.

The tenant testified that they did not cause any damage to the bathroom. The tenant stated floor was substandard when they moved into the premises and not properly installed, and bathroom tub-surround was not properly sealed by the landlord.

The tenant testified when they moved into the rental unit they noticed condensation and water leakage on all windows from inside and that they brought this issue to the landlord attention and request that the landlord provide a dehumidifier, but the landlord refused or ignored. The tenant stated that they were informed that new windows for the entire house will be installed in December 2020, and this will fix this issue; however, this was not done until February 2021 and even after they were installed there was still an issue with humidity and they again requested a dehumidifier, which the landlord provided but for only one week.

The tenant testified that they did not clean the mould from the windows as this was a health issue, and it was there when they moved into the premises and was an issue the entire time during their tenancy.

Filed in evidence is a video recording taken by the tenants when vacating the rental unit and other photographs of the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I do not accept the landlord's agent's testimony simply because the tenant signed a blank Report and paid a security deposit that this is proof that the rental unit was in good condition. This is simply not true and clearly by the evidence the windows were not in good condition at the start of the tenancy, as they were replaced during the tenancy.

It is the landlord's responsibility to fill out the Report completely and only then can a tenant agree or disagree with the contents written within the Report. The landlord has provided no photographs of the rental unit prior to the tenant moving into the rental unit to support the condition of the rental unit.

In this case, the landlord is claiming \$4,616.92 for a quote. The landlord cannot claim the amount of a quote when the work was completed by themselves, and they did not purchase the supplies listed in the quote, pay for the labour, or pay GST. I find this is unreasonable as the landlord had more than sufficient time to provide hours they worked and any cost of materials.

Further, clearly from the landlord's photograph the bathroom tub-surround was not caulked properly and was old. I find it highly unlikely that this was properly done and in

good condition at the beginning of the tenancy as it would not be in such poor condition just 15 months later. This is the landlord's responsibility to maintain and make repairs during the tenancy to ensure damage does not occur.

As I have no evidence from the landlord showing the condition of the rental unit at the start of the tenancy and the tenant denies they cause damage. I find the landlord has not met the burden of proof. Therefore, I find I must dismiss this portion of the claim.

I have reviewed the tenants' video recording of the rental unit at the end of the tenancy. The rental unit was left in a reasonable state of condition, with the exception of the windows, which I will address later in my decision. The quote provided by the landlord cannot be accurate as clearly the premises was cleaned by the tenant and the appliances show they were clean and in a reasonable state. The tenants are only required to leave the rental unit reasonably clean by the Act. I find it more likely than not that the landlord wanted to bring the rental unit to a higher standard since their child was to be moving into the premises and only cleaned it after they made repairs to the rental unit.

While I accept the photographs show the windows were not cleaned as there is mould on them and it is the tenant's responsibility to clean the windows, tracks during the tenancy; however, it was also the landlord's responsibility to ensure the windows were clean and in a reasonable state at the beginning of the tenancy. Clearly the windows were not in a reasonable state at the start of the tenancy because they were required to be replaced. I have no evidence from the landlord that they were cleaned and in a reasonable state at the start of the tenancy for the tenants or that even that the repairs were made after the windows were replaced.

Based on the above, I dismiss the landlord's application for damages and cleaning without leave to reapply.

Conclusion

The landlord's 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: May 17, 2023

Residential Tenancy Branch