



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on September 6, 2022 seeking compensation for damages to the rental unit. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 25, 2023.

The Landlord attended the conference call hearing; the Tenant did not attend. I explained the hearing process and the Landlord had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding and evidence

At the start of the hearing, I confirmed with the Landlord that they served the Notice of Dispute Resolution Proceeding to the Tenant as required. The Landlord advised they served the document by posting on the door of the rental unit.

The Tenant had disputed a notice to end tenancy served by the Landlord, and the Landlord then used the postal address from the Tenant’s Application to send a copy of the Notice of Dispute Resolution Proceeding for this hearing. The Landlord obtained an approval from the Residential Tenancy Branch for this, and the branch approved this method of service by written decision on October 5, 2022.

The Landlord’s registered mail included the Landlord’s evidence they prepared for this hearing. The Landlord provided a registered mail tracking number. This package was unclaimed and returned to sender.

I find the Landlord served the Tenant with the Notice of Dispute Resolution Proceeding and their evidence as required. The Landlord sent registered mail to the Tenant on September 16, 2022. As per s. 90(a) of the *Act*, I deem service to have occurred on September 21, 2022. The hearing proceeded in the Tenant's absence.

Issues to be Decided

Is the Landlord entitled to compensation for damages to the rental unit, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in their evidence. The tenancy started on June 1, 2017 as stated in that document. The rent amount of \$900 increased to \$913 as of February 1, 2022. The Tenant paid a security deposit of \$450, still held by the Landlord as of the date of this hearing.

in their evidence package, the Landlord presented clauses from the agreement that highlight the Tenant's obligation to "take necessary steps to repair damage to the residential property caused by the actions or neglect of a tenant. . ." The Landlord has the right to seek a monetary order through dispute resolution for the cost of repairs or end the tenancy should the Tenant refuse to repay.

The Landlord and Tenant jointly completed a Condition Inspection Report at the start of the tenancy. The Tenant signed the document to show that they agreed with the contents of that document, as recorded, on May 30, 2017.

The tenancy ended after the Landlord proposed an agreement about how the Tenant could pay back what the Landlord submits was extensive damage caused by the Tenant's own neglect and lack of notification to the Landlord about an ongoing leak in the kitchen sink. The leak was prolonged, and the Tenant clearly knew about it, in the Landlord's estimation. The Landlord issued an end-of-tenancy notice, citing the Tenant's extraordinary damage to the rental unit.

The Tenant initially disputed the One-Month Notice to End Tenancy for Cause, and instead of completing that dispute process, moved out from the rental unit at the end of August 2022. The Landlord visited to the rental unit on September 6, 2022 to find the door unlocked, with the key remaining in the deadbolt. The Landlord text-messaged to the Tenant to no avail.

The Landlord presented that they did not have a chance to end the tenancy with a condition inspection meeting with the Tenant.

The Landlord described their discovery of the leak on June 12, 2022, as well as the Tenant's reaction to the leak and the Landlord's efforts to rectify the damage caused by the leaking hose attachment to the kitchen sink. The Landlord provided all communication they had with the Tenant about the matter. The Landlord, upon inspecting the area, noticed the flooring was damaged, and all contents in the cabinet beneath the sink soaked with water. The base of the cabinet was "sunken" with a "moldy wall" inside the cabinet, and the floors were damaged from the entry to the kitchen to the bedroom and extending into the living room.

During the tenancy, the Tenant could not answer how long the problem had continued. The Tenant claimed the problem was attributable to wear and tear. The Tenant stated the damage was unintentional and not caused by them. On June 22, 2022, in a text message, the Landlord informed the Tenant that they were "100% liable for damages."

The Landlord obtained an estimate for repairs and set a date. The Tenant agreed to making monthly payment installments to pay back for the cost of repairs. This is shown in text messages provided by the Landlord in the evidence. Work was completed from July 12, 2022 to July 17, 2022.

The Landlord described the Tenant not answering messages and avoiding the Landlord. The agreement was for the Tenant to repay \$200 monthly in installments until the \$4,675 repair invoice was paid in full. The Landlord sent the agreement to the Tenant on July 18, and the Tenant did not sign it. The Tenant then advised the Landlord to call the Residential Tenancy Branch, after stating the damage was wear and tear, and these damages were not "directly or unintentionally caused", nor caused by negligence. The Landlord contacted Residential Tenancy Branch on their own, following the suggestion to give the Tenant a demand letter (included in their evidence), followed by an end-of-tenancy notice (also included in their evidence).

The Landlord's invoice in the evidence dated July 18, 2022 is for \$5,775. This included vinyl flooring as installed, after the original laminate flooring was removed. The Landlord removed

\$1,000 from the claimed amount for this. The Landlord proposed 23 payments of \$200, totalling \$4,600 to the Tenant.

On August 30, 2022 the Landlord completed a Monetary Order Worksheet, listing the following:

#	Items	\$ claim
1	remove and dispose of old kitchen floors and cabinets	600
2	supply and install flooring	1,500
3	supply and install cabinets	1,400
4	drywall repairs	100
5	self-leveling cement	260
6	sink and faucet	340
7	reset plumbing fixtures	200
8	tax 5%	220
Total		4,620

I reviewed individual pieces of the claim in detail with the parties in the hearing. The Landlord presented their invoice, their photos, and gave a description of their rationale for claiming these amounts from the Tenant. They provided detail on the following points listed above:

- 4 Drywall required repair because of water damage behind the sink. This is shown in pictures in the Landlord's evidence.
- 5 This "self-levelling cement" was required because the wood underneath the flooring was sunk, and cement levelled that portion of the flooring base. Without this, the Landlord could not put new flooring down.
- 7 All plumbing had to be removed from the cabinet interior and replaced.

Analysis

The Act s. 32(2) sets the obligation on the Tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. As well, in s. 32(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 tenancy or a person permitted on the residential property by the tenant.

And: "A tenant is not required to make repairs for reasonable wear and tear."

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

I find as follows, in regard to each separate item listed above:

- I find as fact that the Tenant caused the damage within the rental unit. This was through the Tenant's neglect in not adjusting the sink hose or calling for assistance, and the Tenant's action in not notifying the Landlord in a timely manner exacerbated the damage to an extreme degree. This is a direct application of s. 32(3) of the *Act*. This was not reasonable wear and tear as the Landlord tried to state to the Landlord during the time they still resided in the rental unit.
- I find the Landlord has established the value of the damage. This is with the evidence of the invoice they paid on July 20, 2022.
- I Landlord seeks the amount of \$4,620. I find this is a reduced amount with consideration to the type of flooring taken out, offset by the cost of the vinyl flooring that the Landlord installed. The Landlord did not charge the Tenant for the new type of flooring installed. I find this is an effort and mitigating the damage cost impact to the Tenant.

In total, I find the Landlord has established a claim of \$4,620. This is based on a review of the available evidence and the Landlord's description of the matter in the hearing.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit and/or pet damage deposit held by a landlord. The Landlord here has established a claim of \$4,620. After setting off the security deposit \$450, there is a balance of \$4,170. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$4,170.23 as compensation for the rental unit damage claim.

Because the Landlord was minimally successful in their claim, I grant \$100 reimbursement for the Application filing fee

Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,270 for compensation set out above and the recovery of the filing fee for this hearing application. I provide this Monetary Order in the above terms and the Landlord must serve the Monetary Order to the Tenant as soon as possible. Should the Tenant fail to comply with the Monetary Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 1, 2023

Residential Tenancy Branch