Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Legal Counsel for the Landlord stated that on May 15, 2020 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch in May of 2020 were sent to the Tenant, via email. Email service was permitted on May 15, 2020 due to the COVID-19 pandemic. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In August of 2020 the Landlord submitted additional evidence to the Residential Tenancy Branch, most of which was previously submitted. Legal Counsel for the Landlord stated that this evidence was served to the Tenant, via registered mail, on August 25, 2020. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In August of 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on August 16, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord and the Tenant each

affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter

A hearing was convened on May 28, 2020 to consider a different Application for Dispute Resolution filed by the Tenant in regard to the same tenancy. In that Application for Dispute Resolution the Tenant applied, in part, for the return of his security deposit.

I considered that Application for Dispute Resolution and rendered a written decision, dated May 31, 2020. In that decision I granted the Tenant's application for the return of the security deposit. The file number for those proceedings appears on the first page of this decision.

As the issue of the security deposit has been previously determined, the principle of res judicata prevents me from considering the Landlord's application to retain the security deposit.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that the tenancy began in 2017 and that it ended on November 30, 2019.

The Landlord is seeking compensation, in the amount of $2000.00, for an insurance deductible related to repairs made by the Landlord's insurer following a flood in the unit on March 31, 2019. The Tenant does not dispute that the Landlord paid an insurance deductible of $2000.00.

The aforementioned flood was the subject of considerable discussion at the previously described hearing on May 28, 2020. In my written decision of May 31, 2020, I found that the flood was likely caused by the actions of the Tenant.

On page 2/3 of my decision dated May 31, 2020 I wrote, in part:

As explained in the analysis portion of this decision, I have concluded that the water damage that was reported to the Landlord on March 31, 2020 was more likely the result Page: 3 of the kitchen sink overflowing, as the Landlord contends, than the result of a slow leak from a kitchen faucet, as the Tenant contends. Either party is at liberty to present this finding at the hearing on September 14, 2020, as it may result in the Arbitrator concluding that the issue of liability for the damage has been decided and cannot, therefore, be considered on September 14, 2020. This would not, of course, prevent the Arbitrator from determining whether the Landlord is entitled to compensation for the water damage.

On page 7/8 of my decision dated May 31, 2020 I wrote, in part:

On the basis of the undisputed evidence, I find that on March 31, 2019 the Tenant informed the Landlord of water damage in the rental unit. After considering all of the evidence, I find that the water damage was more likely the result of the kitchen sink overflowing, as the Landlord contends, than the result of a slow leak from a kitchen faucet, as the Tenant contends.

In adjudicating this matter, I was influenced, in part, by the restoration company report, dated August 09, 2019, in which the author of the report declared that the damages were the result of "a kitchen sink overflow". I find that this report supports the Landlords' submission that the damage was caused by an overflowing sink.

In adjudicating this matter, I was influenced, in part, by letter from the owner of the construction company that repaired the rental unit, in which he declared that when he was replacing the kitchen sink he noted that the sink pipes were filled with "what appeared to be mold caused by food, along with remnants of eating utensils including wood from a chopstick and plastic debris"; and that these remnants created an obstruction for water flow and caused the flood. I find that this report supports the Landlords' submission that the damage was caused by an overflowing sink.

In adjudicating this matter, I have placed less weight on the email from an insurance adjustor, dated October 10, 2019, in which the adjustor declared that "it sounds like the water damage leak was from the kitchen faucet"; "my insured has sent me screenshots of text messages hat he sent to your insured (his landlord) November 2018 and February 2019"; and "these messages show that our insured advised your insured that the kitchen tap was malfunctioning and leaking months before the leak caused this damage.

Even if I accepted that the Tenant reported a leaking kitchen faucet, which the Landlord denies, I find that there is no evidence that the leaking faucet caused the damage that the Tenant reported on March 31, 2019. I find it highly unlikely that a kitchen faucet that has been leaking over an extended period of time would be the result of a sudden influx of water into the rental unit. Rather, a sudden influx of water on the living room floor is more consistent with a kitchen sink overflowing, I find that water damage from a leaking faucet would likely spread slowly from the area of the sink and would be noticed long before it pooled in the living room. (Emphasis added)

The Tenant submits that he should not have to pay the deductible because the flood was the result of a slow leak in the kitchen faucet. He submits this leak was reported to the Landlord in November of 2018 and February of 2019; but was never repaired. This is a submission that was presented at the hearing on May 28, 2020.

The Tenant acknowledged that he made the aforementioned submission at the hearing on May 28, 2020. He submitted copies of the text messages he sent regarding those leaks, which were not submitted for the hearing on May 28, 2020.

Legal Counsel for the Landlord noted that the text messages are dated, but without the year. The Landlord stated that the kitchen faucet was repaired in 2018.

The Tenant referred to documents submitted for the hearing on May 28, 2020 for the purposes of arguing that he was not responsible for the flood. He was not permitted to discuss evidence presented at the hearing on May 28, 2020 or to re-argue submissions made at that hearing, with the exception of the submissions noted here.

The Landlord is seeking compensation, in the amount of $418.95, for cleaning. The Landlord submitted a cleaning invoice for this amount.

The Landlord submitted photographs of the rental unit which she stated were taken the day the rental unit was vacated on November 29, 2019. (Photos on page 25-28, 32-34, 36-41) She stated that these photographs represent the cleanliness of the rental unit when the unit was vacated.

The Tenant stated that the aforementioned photographs do not represent the cleanliness of the unit when it was vacated on November 29, 2019. He noted that the cleaning invoice shows that the rental unit was not cleaned until December 12, 2019 and that the dirt shown in the Landlord's photographs could have accumulated between November 29, 2019 and December 12, 2019.

The Landlord submitted a letter, dated November 29, 2019, in which the Landlord declares that a cleaning fee will be deducted from the Tenant's security deposit because the rental unit was not cleaned to the "standards as outlined" by the *Act*. The Landlord stated that this letter was personally given to the Tenant on November 29, 2019, which the Tenant denies.

The Landlord submitted a copy of an email, dated December 14, 2019, which she sent to the Tenant. In this email the Landlord outlines areas in the rental unit that were

cleaned after the Tenant vacated the unit. It also indicates that 16 photographs of the unit were forwarded to the Tenant with the email, some of which were submitted as evidence for these proceedings.

The Tenant stated that he cleaned the rental unit prior to vacating it on November 29, 2019 and that when he met with the Landlord on November 29, 2019, she told him that it was sufficiently cleaned.

Analysis

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In my decision of May 31, 2020, I determined that the flood that occurred in the rental unit on March 31, 2019 was the result of the Tenant's actions. As that matter was decided at a previous hearing, I find that the principle of res judicata applies.

Res judicata is a rule in law that a final decision, determined by an officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

In *McIntosh v. Parent*, 55 O.L.R. 553 (Ont. C.A.) at p. 555, the court defined the principle of res judicata as follows:

> Any right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery, or as an answer to a claim set up, cannot be-retried in a subsequent suit between the same parties or their privies, though for a different cause of action. The right, question, or fact, once determined, must, as between them, be taken to be conclusively established so long as the judgement remains.

In *Leonard Alfred Gamache* and *Vey Gamache v. Mark Megyesi* and *Century 21 Bob Sutton Realty Ltd*., Prince George Registry*,* Docket No. 28394 at p. 12 Mr. Justice Hall of the Supreme Court of British Columbia, stated

> Disputed issues that are finally determined in one proceeding may be held to be binding on

> a party when that issue comes up in subsequent litigation.

Section 32(3) of the *Residential Tenancy Act (Act)* requires a tenant to 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. As I previously concluded that the Tenant was responsible for the flood that occurred on March 31, 2019, I find that the Tenant was obligated to repair the resulting damage, pursuant to section 32(3) of the *Act*.

On the basis of the undisputed evidence presented by the Landlord, I find that the Landlord paid an insurance deductible of $2,000.00 to repair the damage caused by the flood on March 31, 2019.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord when a landlord suffers a loss because the tenant did not comply with the *Act*. As the Tenant breached section 32(3) of the *Act* when he did not repair the flood damage and the Landlord paid a $2,000.00 insurance deductible to repair the damage, I find that the Tenant must compensate the Landlord for the deductible paid by the Landlord.

Residential Tenancy Branch Policy Guideline #1 reads, in part:

> 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.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was heavily influenced by the photographs submitted in evidence by the Landlord which, in my view, show the rental unit was not left in reasonably clean condition.

I find the Tenant's submission that the dirt depicted in those photographs could have accumulated between November 29, 2019 and December 12, 2019 is simply not credible. I find that the type of dirt shown in those photographs is typical of dirt that has accumulated over an extensive period of time and is not typical of the amount of dirt that would accumulate in less than 2 weeks. I therefore find that the logical conclusion is that the photographs represent the cleanliness of the unit at the end of the tenancy.

In adjudicating this matter, I was influenced, to some degree, by the email dated December 14, 2019, in which the Landlord informed the Tenant of areas in the rental

unit that were cleaned after the Tenant vacated the unit. I find that this email serves to establish that the Landlord believed cleaning was required at the end of the tenancy.

In adjudicating this matter, I placed no weight on the letter dated November 29, 2019 in which the Landlord declares that a cleaning fee will be deducted from the Tenant's security deposit because the rental unit was not cleaned to the "standards as outlined" by the *Act*. I have placed no weight on this document because the Tenant disputes the Landlord's testimony that it was given to the Tenant.

In adjudicating this matter, I have placed little weight on the Tenant's submission that he cleaned the rental unit prior to vacating it. The Tenant submitted no evidence to corroborate this testimony, it is disputed by the Landlord, and it is refuted by the photographs submitted by the Landlord.

In adjudicating this matter, I have placed little weight on the Tenant's submission that when he met with the Landlord on November 29, 2019, she told him that it was sufficiently cleaned. The Tenant submitted no evidence to corroborate this testimony, it is disputed by the Landlord, and it is refuted, to some degree by the email the Landlord sent on December 14, 2019.

As the Tenant failed to comply with section 37(2) of the *Act* when he did not leave the unit in reasonably clean condition, I find that he must compensate the Landlord for the of $418.95 she paid for cleaning. I find this a reasonable claim considering the cleanliness of the unit at the end of the tenancy.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $2,518.95, which includes a $2,000.00 insurance deductible, $418.95 for cleaning, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for $2,518.95.

This Order may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that in my decision of May 31, 2020 I granted the Tenant a monetary Order for $2,318.95. Typically, when both parties have been awarded a monetary Order and those parties attempt to enforce those Orders through the Province of British Columbia Small Claims Court, the Court will simply offset the Orders.

In the event these two monetary Orders are enforced through the Province of British Columbia Small Claims Court, it is possible that the Court will offset the two Orders and determine that the Landlord owes the Tenant $200.00. This information is being provided to the parties in an attempt to bring the matter to a simple conclusion.

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

Dated: September 16, 2020

Residential Tenancy Branch