Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the "Application") on April 22, 2021 seeking compensation for damages to the rental unit caused by the Tenant. 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 November 8, 2021 after a prior adjournment. In the conference call hearing I explained the process and provided each party the chance to present their evidence and testimony.

In the reconvened hearing each party confirmed they received the evidence of the other. Proper disclosure was the reason for adjourning the matter at the original hearing on October 21, 2021.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for Damage or Compensation, applying the security deposit to the claim, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The parties had a tenancy agreement in place from January 15, 2019. The rent during the contract remained at $1,200 per month. The Tenant paid a security deposit amount of $600. An addendum to the agreement contains a clause setting out the Tenant's acknowledgment that the condition of the rental unit is comparable to how it was at the start of the tenancy.

Should the need for any cleaning arise, the addendum provides that the Tenant will agree to deduct the amount from the security deposit.

The Tenant advised the Landlord of their desire to end the tenancy by written notice dated December 31, 2020. The Tenant advised the Landlord of s. 38 of the *Act*, dictating that a landlord has 15 days from the end of tenancy, or the forwarding address obtained to return the full deposit to them. The Tenant provided their forwarding address to them at this time.

The tenancy ended when the Tenant moved out on January 31, 2021. In their response statement, the Tenant set out that there was no condition inspection meeting, neither at the start nor the end of the tenancy. There is no document in either party's evidence that definitively sets out the condition of the rental unit at the start or end.

Both the Landlord and the Tenant in the hearing described the event of March 2, 2019. In the Tenant's above unit, the toilet caused water backup which leaked through the floor to the ceiling underneath the washroom. This was the Landlord's kitchen area below. The Tenant described that they explained the incident to the Landlord at the time, both in person and via emails that are in their evidence.

The Landlord in the hearing described the incident as they remembered it, with "a ton of water", with the extent of water being "incredible." This resulted in damage to the kitchen ceiling which as of the hearing date was not repaired yet. The hood fan above the stove no longer worked. They could not understand why there was so much water and remembered that the Tenant seemed hesitant at the time to allow the Landlord to enter and assist.

The Landlord included photos in their evidence to show ceiling damage and discoloration. This shows areas both separate from and surrounding the hood fan duct with discoloration and damage. Other images show the hood fan itself.

With their initial Application, the Landlord provided a worksheet that added up separate portions of their claim to a total of $9,200. There was no documentation attesting to these listed amounts. After applying, the Landlord submitted an estimate of work to be done to the kitchen ceiling, for $4,538.71, dated July 27, 2021. This is for work including the delivery/supply of materials, area protection during work, demolition of ceiling drywall, new drywall installation, cleanup. A separate worksheet breaks down each individual area of work involved, with the largest cost being for the actual materials and labour, at $2,600.

The Landlord went ahead with a replacement of the hood fan. This invoice for installation shows $145.16, for work on June 5, 2021.

In their written timeline the Tenant presented that there was no initial move-in inspection in the rental unit. By March 5, 2021 the Landlord had proposed that would keep half of the security deposit amount toward the cost of fixing drywall. The Tenant applied for dispute resolution through the Residential Tenancy Branch direct request method on March 26. They received a monetary order for double the security deposit amount on April 21, 2021. The Tenant served this monetary order on the Landlord shortly thereafter via registered mail, as acknowledged by the Landlord in the hearing. As of the hearing date, the Landlord had not paid the monetary order amount to the Tenant. The Landlord filed their own claim the following day on April 22.

The Tenant, via their assistant in the hearing, questioned the Landlord on detailed points in the hearing and the Landlord confirmed the specific point that the house was built before 1926, and there were no recent renovations involving drywall.

The Tenant submitted that the Landlord did not discuss the matter specifically with the Tenant at the end of the tenancy, and "did not imply that the Tenant was responsible." The Tenant also made the following points:

- The flood was the Landlord's fault. This is due to the Landlord's knowledge of the age of the house and associated issues. The Landlord's email of April 4, 2019 shows the Landlord stating, "it is a very, very old house" and "Many of the idiosyncrasies . . .just come with the territory of being in an old house." The message also contains the Landlord's instruction/guidance: "We do. . .expect that if the toilet is plugged again, that you will not continue to try to flush it, and know how to unplug it with a plunger before it overflows – because that is something that can be correct before it becomes a flood."

  The Tenant's assistant in the hearing submitted the Landlord had knowledge of the toilet's propensity to plug, yet took no steps to correct the situation

- The Landlord has not met the burden to show this was the Tenant's fault. The Tenant did all that could be expected in the situation by acting immediately. With an older house, and a sensitive toilet, just because the flood happened when the Tenant was here does not make this the Tenant's fault.

  The Tenant's email of March 11 shows that they set out the details of the incident. This includes covering the toilet with big towels and putting big containers to catch water. They were stopping water flow to prevent other damage to the floors in the rental unit.

- If the Tenant is found to be at fault, any damage should be lessened given the age of the house and the Landlord's contributing negligence. All elements damaged here are older than the useful life of the building element; specifically, this is 20 years. There have been no renovations in the last 20 years.

The Landlord explained in the hearing that they did not have resources to fix the issue, both in terms of the cost being "prohibitive" and the difficulty with finding tradespeople. This accounts for their not dealing with the situation in a timely manner during the tenancy. Replacing the oven hood alone took quite some time. The Landlord maintains their offer of returning half the security deposit to the Tenant was done in good faith.

Analysis

The relevant portion of the *Act* regarding the return of the security deposit is s. 38:

> (1) . . .within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the Landlord receives the Tenant's forwarding address in writing,
> The Landlord must do one of the following:
> (c) repay. . .any security deposit. . .to the Tenant. . .;
> (d) make an application for dispute resolution claiming against the security deposit. . .

In this hearing, the Landlord is precluded from making any claim against the security deposit. They did not make a claim within 15 days after the end of the tenancy. Additionally, there was no record of inspections at the time of the start of the tenancy, or a final move-out inspection with the Tenant at the end. By s. 36 the Landlord's right to claim against the deposit has extinguished also for this reason.

The dispensation of the security deposit is therefore a previously closed issue. A different Arbitrator awarded twice the amount of the security deposit to the Tenant, and my decision here will not alter or vary that decision as it was based on the dispensation of the security deposit, as set out in the *Act*. Instead, my decision here is limited to the assignment of responsibility, if at all present, for the water leak causing damage to the kitchen area below.

Concerning claims for damages, a party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

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

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

I look to the *Act* s. 32(3) which states "A tenant . . . must repair damage . . . that is caused by the actions or neglect of the tenant . . ." I find as fact that there was no deliberate action or neglect from the Tenant that caused the toilet to overflow to the extent that it caused leakage to the Landlord's own living space below. The Landlord did not provide evidence to clearly link the actions of the Tenant to the ensuing damage. I thus give more weight to the evidence of the Tenant where they have shown they provided their explanation to the Landlord on March 11, 2019 soon after the incident. This is a detailed account of what happened in the moment.

There was no violation of the *Act* or the tenancy agreement by the Tenant here. It was an unfortunate accident beyond the Tenant's control.

I find the Landlord did not take steps to mitigate the damage. I find it more likely than not the damage to the drywall/ceiling increased over time – this is an issue of water damage and of course that spreads over time. It was not until close to two years after the incident that the Landlord focused on the task of assessing the damage, after the end of the tenancy. The evidence for this is their message to the Tenant of March 5, 2021 when they informed the Tenant that the cost of fixing drywall will be quite expensive. I find it more likely than not that water damage would not have naturally abated over this time, and in all likelihood the damage continued to spread after the incident. I find that what the Landlord provided in their photos was more likely than not images captured much later.

Further, I do not accept the Landlord's explanation that tradespeople were not obtainable during this time. There was no communication to the Tenant of any kind that they were undertaking to have this looked at but were facing roadblocks doing so.

Because the Landlord did not mitigate the damage, there is no compensation for the amounts claimed by the Landlord for drywall/ceiling repair.

Regarding the Tenant's liability for range hood fan damage, I find a separate consideration applies with respect to the age of that that individual appliance present in the Landlord's

kitchen. The Landlord provided photos of the range hood that was damaged or left inoperable as a result of the flood. The Landlord did not submit evidence to show this item was still within its useful life cycle, and still operational. Further, there is no evidence that the Landlord identified this as an issue to the Tenant. The Landlord's communication to the Tenant on March 5, 2021 – two years after the event and over one month after the end of the tenancy – does not mention the need for replacement of the oven-range hood, focusing only on the drywall.

For these reasons, I dismiss the Landlord's claim for a monetary order for compensation. Because they were not successful in their Application, I find they are not entitled to recover the filing fee paid for this Application.

Conclusion

I dismiss the Landlord's application for compensation, without leave to reapply.

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: December 3, 2021

Residential Tenancy Branch