



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNDC, FF

Introduction

This hearing was reconvened after the granting of a request for adjournment by the landlord's counsel for the hearing originally scheduled for March 16, 2009. The hearing dealt with an application from the landlord for a monetary order in compensation for repairs to damage, compensation for loss, and recovery of the filing fee. Both parties, including legal counsel for the landlord and witness for the tenant, participated in the hearing and gave affirmed testimony.

Issue to be Decided

- Whether the landlord is entitled to a monetary order under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy in this furnished house began on May 15, 2004. Rent in the amount of \$800.00 was due each month; between them the parties reached an agreement whereby approximately \$666.00 of the monthly rent was paid to the landlord and \$133.34 was set aside / paid into a tax account. A security deposit of \$400.00 was collected at the start of tenancy.

On December 20, 2008, the tenant gave verbal notice of his intent to vacate the unit and did so by on or about January 14, 2009. For the period December 15, 2008 to January 14, 2009, the tenant's payment of rent was limited to \$266.00.

There are two principal areas of dispute: the first concerns the amount of rent still outstanding, and the second concerns the disposition of furnishings in the house.

During the hearing the parties engaged in a conversation about outstanding rent with a view to resolving that aspect of the dispute.

As for the second area of dispute, efforts by the parties to resolve it through discussion were largely without success except for agreement that one item from the furnishings inventory provided by the landlord would be deleted: one queen size bed @ \$479.99.

There was neither a move-in condition inspection and report nor a move-out condition inspection and report completed, respectively, at the outset and end of tenancy. However, upon recent inspection of the house, the landlord determined that certain items provided at the outset of tenancy are now missing. For his part, the tenant acknowledges that he disposed of certain furnishings, in some cases because he considered they were no longer fit for use or were simply beyond repair. Items disposed of were either taken to the dump or burned. The tenant maintains that certain other items remain on the property, if not inside the house itself then in storage.

The landlord's inventory of furnishings deemed comparable to items either disposed of or no longer situated in the house is reproduced below, as written; these items and their respective purchase price have been identified from the Sears website:

Large floor model TV	\$599.99
French Provincial loveseat/pull out bed	\$699.99
Bay window Venetians blinds x 2	\$159.98
Dresser x 2	\$639.98
Pair of window drapes	\$249.99
Bed and 2 mattresses	\$899.98
Bed Frames x 2	\$179.98
Kitchen table with 6 chairs and leaf	\$399.99

Coffee table (home made)

\$299.99

\$4,129.87

Analysis

Pursuant to section 63 of the Act, during the hearing the parties reached a settlement of the aspect of the dispute concerning outstanding rent. Specifically, it was agreed as follows:

- that by no later than April 17, 2009, the tenant will deliver a bank draft in care of the landlord's counsel in the full amount of \$1,333.40 (monthly tax portion of rent in the amount of \$133.34 x 10 months);
- that by no later than April 30, 2009, the tenant will deliver a bank draft in care of the landlord's counsel in the full amount of \$400.00 (amount of rent overdue for the period December 15, 2008 to January 14, 2009).

In order to decide the other issue in this dispute, I have carefully weighed the testimony and documentary evidence presented by the parties. A test for assessing credibility is set out in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BCCA). In part, the test reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject the story to an examination of its consistency with the probabilities that surround the story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize in that place and those circumstances...(pp. 356-357).

I find that certain furnishings were provided in the house and use of same was included in the tenant's monthly rent. The exact condition of the furnishings at the outset of tenancy is unclear but, generally, none of the furnishings appear to have been new or even near new. A determination as to which items actually still remain on the property is at best inconclusive. Further, while the landlord's interest in some items appears to be mainly sentimental, the landlord also feels aggrieved by what he considers was the absence of any direct consultation with him by the tenant about disposal, dismantling or storage of any of the furnishings.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(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 tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Residential Tenancy Policy Guideline # 37 speaks to the “Useful Life of Work Done or Thing Purchased,” and assigns a value in general to furniture of 10 years. It appears that most, if not all of the furnishings in question, were beyond 10 years in age.

Notwithstanding, in spite of their age and the impact of normal wear and tear, it is arguable that some of the items disposed of had some useful life remaining. As to assignment of monetary worth for sentimental value, this guideline is less instructive.

Residential Tenancy Policy Guideline # 16 speaks to “Claims in Damages.” Under the sub - heading “Types of Damages,” this guideline provides in part, as follows:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered “pecuniary” losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered “non-pecuniary” losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer’s willful or reckless indifferent behaviour. They are measured by the wronged person’s suffering.

By his own admission, the tenant acknowledged disposing of certain furnishings provided for his use in the house by the landlord. I find that the tenant disposed of

certain items without the consent of the landlord. Further to the landlord's material loss, I find the landlord suffered a loss arising out of a sentimental attachment to certain of these furnishings.

After careful consideration of all the documentary evidence, testimony from the parties, and the relevant legislation and guidelines, further to the compensation agreed to between the parties for taxes and outstanding rent, I find that the landlord has established a claim of compensation for loss related to furnishings which is of both a pecuniary and non-pecuniary nature. I assess this to be in the value of two months' rent which is \$1,600.00.

In sum, I find the landlord's claim to be in the total amount of \$3,383.40. This is comprised of taxes and outstanding rent in the total amount of \$1,733.40 (as above: \$1,333.40 + \$400.00), compensation for loss in the amount of \$1,600.00, and recovery of the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$400.00 plus interest of \$14.17, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$2,969.23 (\$3,383.40 - \$414.17).

Conclusion

I hereby grant the landlord a monetary order under section 67 of the Act for **\$2,969.23**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 16, 2009

Dispute Resolution Officer