

DECISION

Dispute Codes MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for damage to the rental unit and to recover the cost of the filing fee from the tenant for this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 30, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on April 5, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to a monetary claim under Section 67 of the *Act* for damage to the rental unit
- Whether the landlord is entitled to a Monetary Claim under section 72 of the *Act* to recover the cost of the filing fee from the tenant.

Background and Evidence

The tenancy began November 1, 2004 and ended on approximately October 11, 2007. Rent was payable on the first of each month in the amount of \$187.00 and there was no security deposit paid by the tenant to the landlord.

The landlord testified that the tenant was issued a notice to end tenancy with an effective date of September 30, 2007 but that the tenant did not vacate the unit until sometime during the second week of October 2007. The landlord stated that she was in town doing site visits and that she checked in with the tenant daily between October 8th, 2007 and October 11th, 2007.

The site maintenance person testified that he found the tenant's keys to the rental unit in the mail box on October 12, 2008, and after entering the unit the site maintenance person determined that the tenant had abandoned the unit leaving a large amount of garbage and old broken personal property in the rental unit.

The site maintenance person stated that the tenant did not leave a forwarding address and did not contact the maintenance person so a move out inspection report was conducted without the tenant on October 16, 2007 and pictures were taken of the condition of the rental unit.

The landlord is claiming for damage and loss to the rental unit and to recover the cost of \$53.00 for when the landlord changed the locks to the rental unit, at the request of the tenant, prior to the tenant being issued the notice to end tenancy for cause, a cost that the tenant failed to pay prior to her abandoning the rental unit.

The site maintenance person testified that everything in the rental unit was in good condition, painted the month before the tenancy began and new carpets were installed, as notated on the move-in inspection report dated October 29, 2004 and signed by both the tenant and maintenance manager.

A move-out inspection report was conducted on October 16, 2007, in the absence of the tenant as she abandoned the rental unit.

The landlord provided pictures in their documentary evidence which support the landlord's testimony that the tenant left behind a large amount of garbage, damaged

mattresses, broken furniture, broken toys, damaged walls, an un-kept yard, and that the tenant did not clean the rental unit or appliances prior to her departure.

The landlord is requesting a monetary amount to cover the following costs:

- 1) Replacement cost of the fridge and stove \$1163.90. The site maintenance person testified that the fridge was missing the door handles, missing the food crispers and shelves and that the stove was dirty and the bottom element did not work. The site maintenance person stated that him and his father took the fridge and stove to the landfill and they did not have a receipt or any documentation to prove that the fridge and stove were actually disposed of.
- 2) Removal of garbage, broken furniture and toys by a local waste removal company in the amount of \$609.50.
- 3) Cost to repair drywall and paint the entire rental unit done by a local painter in the amount of \$3,392.00.
- 4) Work done by the maintenance manager to clean the exterior of the rental unit, remove garbage from the yard and repair lawn, replace the laundry tub as it was dirty, cleaned the light fixtures, heat ducts, replace some electrical outlets for 20 hours of labour @ \$20.00 per hour, plus GST, for a total of \$424.00.
- 5) Cost to professionally clean the carpets for a total of \$238.50 as supported by the invoice entered into evidence by the landlord
- 6) The cost of the electrician to replace the smoke detectors of \$87.50. The maintenance person testified that the smoke detectors were wired in and not battery operated and two detectors needed replacement as supported by the pictures entered into evidence.
- 7) The cost to replace window screens that were damaged in the amount of \$75.68 and which were replaced by a local glass company.

The total amount of the landlords claim for damage and loss is \$6,044.08 as listed above and the landlord is seeking to recover the cost of the filing fee of \$50.00 from the tenant for their application.

Analysis

I find that in order to justify payment of damages under section 67 of the *Act*, the Applicant landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant landlord pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

The landlord has submitted into evidence a copy of the move-in inspection report which was completed and signed by both parties prior to the tenant occupying the rental unit, in accordance with Section 23 of the *Residential Tenancy Act*. I find that the landlord has provided evidence of the condition of the rental unit at the time the tenant took possession of the rental unit.

I find that the landlord acted in accordance with Section 35(5)(b) of the *Act* which stipulates that the landlord may make the inspection and complete and sign the report without the tenant if the tenant has abandoned the rental unit, and has proven with the documentary evidence and testimony what the condition of the rental unit was at the time the tenant vacated the rental unit.

Section 7 of the *Act* stipulates that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act* must do whatever is

reasonable to minimize the damage or loss. Based on the above, I find that the landlord has met the test for damages as listed above and find in favour of the landlord's monetary claims as follows:

- 1) Replacement cost of the fridge and stove \$1163.90. Based on the pictures, testimony, and documentary evidence provided by the landlord, I do not find that the fridge and stove were needed to be replaced instead of cleaned and repaired. By the maintenance person's testimony the fridge and stove were not more than seven years old. I agree that the oven was dirty but have no evidence before me to indicate that the oven could not be cleaned. In the documentary evidence the landlord states that the oven element did not work but I find that the element could have been replaced. The landlord claims the food crispers and shelves for the fridge were missing and yet they provided a picture of these items soaking in the bathtub. The maintenance person claimed after that the crispers and shelves were broken, but if that was the case they could have been replaced. As for handles missing from the fridge, they too could have been replaced. The landlord could not provide evidence that the fridge and stove were disposed of in the landfill. While I disallow the landlord's claim to replace the fridge and stove I hereby approve a monetary claim in the amount of \$450.00 for cleaning and repair parts for the fridge and stove.
- 2) Removal of garbage \$609.50 – I find that the landlord has proven the actual cost incurred to remove the garbage left behind after the tenant abandoned the rental unit and approve their monetary claim of \$609.50
- 3) Cost to repair drywall and paint the entire rental \$3,392.00 – The landlord has claimed the full cost to repaint the entire rental unit and repair what was determined in the verbal testimony as four sections of drywall where the tenant had left holes in the wall. The *Residential Tenancy Police Guideline* stipulates that the usual life of an interior paint job is 4 years. In this case the tenant occupied the rental unit for 2 years and 11 months so the unit would have been due to be repainted in another year. The 4 sections of drywall or walls that were damaged, as proved by the pictures and testimony to not constitute normal wear

and tear, nor does the area of walls that had writing and drawings on them by felt markers. Based on the aforementioned I hereby allow a monetary claim in the amount of \$2,196.00 which represents \$1,000.00 for labour and materials to repair the damage to the drywall and \$1,196.00 for painting required before the usual life of an interior paint job and as a result of the deliberate action of writing or drawing on the wall.

- 4) Invoice from the maintenance manager for cleaning and repairs \$424.00 – I find that the landlord has proven that the exterior and interior of the rental unit needed cleaning however I do not find that there was evidence to support the claim that the wash tub needed replacing or that electrical outlet covers needed replacing. There was no evidence to support the actual cost incurred to replace the light fixtures and it appears that the invoice is strictly for labour with no mention or evidence of the actual cost of items replaced such as the wash tub or the light fixture. I must also take into account the amount approved above for the professional who removed the garbage and the landlord has claimed above in the amount of \$609.50. The maintenance person stated that the garbage removal invoice of \$609.50 was strictly for the inside of the rental unit and that it did not involve the clean up of the exterior. I also note that GST is claimed on the maintenance manager's invoice however there is no GST number listed as required by law. I hereby approve the monetary claim from the maintenance manager in the amount of 10 hours at \$15.00 per hour for a total of \$150.00.
- 5) Professional Carpet Cleaning \$238.50 – I find that the landlord has proven the test for damages in relation to carpet cleaning and I hereby approve the landlord's claim for \$238.50 as supported by the invoice entered into evidence.
- 6) Electrician \$87.50 - I find that the landlord has proven the test for damages in relation to the repair of the smoke detectors and I hereby approve the landlord's claim for \$87.50 as supported by the invoice entered into evidence.
- 7) Replace / repair window screens \$75.68 - The maintenance person testified that the rental unit was approximately 30 plus years old and that the screens were

well maintained and replaced as required. The maintenance person could not advise the age of the window screens that had to be replaced but did state that the windows had been replaced in the house about five years prior to the tenant taking possession which would make the screens approximately 8 years old.

The average life of a window and screen as stipulated in the *Residential Tenancy Policy Guideline* is 15 years. Based on the above I find that the landlord is entitled to a monetary claim in the amount of \$40.36 which is 8/15 of the cost to replace the screens.

Monetary Order – I find that the landlord is entitled to a monetary claim, and that the landlord is entitled to recover the filing fee from the tenant as follows:

Repair and Clean Fridge and Stove	\$450.00
Garbage removal	609.50
Painting and repairs to walls of entire rental unit	2,196.00
Cleaning and repairs done by maintenance manager	150.00
Carpet Cleaning	238.50
Electrician to repair smoke detectors	87.50
Repair/replace window screens	40.36
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$3,821.86

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$3,821.86. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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 22, 2009.

Dispute Resolution Officer