

DECISION

Dispute Codes:

MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a monetary order for damage to the unit, compensation for damage and loss and recovery of the filing fee, as well as an order allowing the landlord to retain part or all of the security deposit in partial satisfaction of the monetary claim.

Both parties attended the conference call hearing and participated with their submissions, testimony and documentary evidence, and were permitted to ask questions and attempts to settle all matters.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The landlord seeks to recover costs borne by the landlord for:

- Replacement of a stove for the rental unit \$159.09
- Repair costs for the above stove \$ 82.86
- Cleaning of the rental unit after the tenant vacated \$ 50.00

The landlord is claiming compensation of costs for damages to the unit, the cost of replacing a stove for the rental unit, and for some minor cleaning of the unit's stove, stove canopy fan, and cleaning behind the stove and refrigerator upon it being vacated by the tenant.

The tenant acknowledges responsibility for cleaning of the stove in the amount of \$25.

The following is undisputed. The tenancy began on April 01, 2004 and ended October 31, 2009 when the tenant vacated. The tenant provided a forwarding address on November 30, 2009. At the outset of the tenancy the landlord collected a security deposit of \$440 which the landlord still holds. Both parties performed an end of tenancy inspection on November 01, 2009 and a report of the inspection was completed and submitted into evidence. The report identified that the tenant owes the landlord for

cleaning in the total amount of \$50, and for a used / reconditioned stove provided to the tenant 17 months earlier in May of 2008 in the amount of \$159.09. The tenant did not agree that the inspection report fairly represented the condition of the rental unit, or that he owed the landlord the cost of the stove which had been previously replaced, stating that the stove was worn out and is the landlord's responsibility.

The landlord provided photographs and documentary evidence in support of their claims.

The landlord provided a copy of a letter to the tenant outlining that since the outset of the tenancy, five (5) years prior, the rental unit incurred problems and consequent repairs to the unit's stove. The tenant reported the stove not operating properly very soon after the tenant moved in.

- The first complaint was that a burner was not working,
- the first dated complaint was August 2004 of stove not working,
- Big burner not working – June 2005
- Kitchen stove not working – January 2006
- Big burner not working – February 2008
- May 2008 – *stove replaced - \$159.09*
- Oven handle required repair – November 2008
- Big burner broken – “sparking” – July 2009 - tenant discards burner – landlord replaces burner with new.

In May of 2008 the landlord simply replaced the stove with a used / reconditioned stove at a cost of \$159.09. the landlord provided photographs of the replacement stove when installed. As well, the landlord gave the tenant a letter informing the tenant that their “cooking methods” were responsible for past and current problems with the stove – primarily the issues with a particular burner. In a subsequent letter of August 2009, the landlord explains the, “cooking method “ is alleged to be that the tenant, “ shakes the pans on a burner on a very high temperature for extended periods and repeated daily use, the burner plug gets shaken around and the connection becomes damaged.”

The tenant testified that the landlord has never seen him cook, and that he has never explained to the landlord his method of cooking, therefore questioned why the landlord is holding him accountable for the stove damage, and purports to conjecture on the

landlord's part as to how he cooks, because of his ethnicity. The tenant does not dispute the landlord's accounting of complaints. To his recollection the stove was not new when he moved in - over the years he reported problems as they arose - the landlord then replaced the old stove with another used stove - and when the burner on the replacement stove failed, he reported it broken and discarded the burner, "As it was broken".

The landlord testified that when their repairman went to fix the reported broken burner, the burner was missing altogether and could not ascertain why it would fail, and consequently paid for a new burner and labour at a cost of \$82.86, for which they provided an invoice.

In respect to the landlord's claim for cleaning of the stove fan and behind the stove and refrigerator, the landlord claims the stove fan required additional cleaning and the landlord provided photographs of the apparent unclean condition behind the appliances. The tenant testified that he cleaned the stove fan to the best of his ability and that it was reasonably clean – not wanting to delve into the cleaning too much as it contained electrical parts which caused him some concern.

Analysis

I have considered all evidence and all submissions to all claims and have considered all testimony given in the hearing.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test for damage and loss claims:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party (the tenant) in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement, whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

The landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. The claimant must then provide evidence verifying the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

Generally, the landlord testified and submitted that the tenant's conduct caused extraordinary damage to the stove – beyond reasonable wear and tear – for which the tenant should be responsible. The tenant testified that his conduct was not responsible for the damage to the stove – that the damage occurred as a result of normal wear and tear, and the landlord is responsible for wear and tear.

Section 32 of the Residential Tenancy Act (the Act), in part, states as follows:

Landlord and tenant obligations to repair and maintain

- 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.

On preponderance of all the evidence and testimony in the hearing, and on the balance of probabilities, **I prefer** the landlord's testimony and evidence and **I find** that the landlord's claim for damages and loss generally meet the components of the above test for same. I find the evidence supports the landlord's claim that the tenant's conduct likely was responsible for wear and tear on the stove, beyond *reasonable wear and tear*; and, is therefore partially responsible for the landlord's added costs for repeated repairs to the stove of the rental unit.

I find the landlord is entitled to recover the costs for remediation of the stove in the amount of **\$100** for the period of the tenancy up to and including May 2008, and **\$82.86** for the period after May 2008, in the total amount of **\$182.86**.

The tenant acknowledged owing **\$25** for cleaning of the stove. **I find** that a tenant is not responsible for cleaning behind major appliances unless they are equipped with wheels. **I prefer** the tenant's testimony that he cleaned the stove fan to a reasonable and safe state. Therefore, **I dismiss** the balance of the landlord's claim for cleaning in the amount of \$25.

As the landlord's application had sufficient merit, I grant the landlord recovery of the filing fee in the amount of **\$50**, for a total entitlement for the landlord in the amount of **\$257.86**.

Conclusion

I order that the landlord may retain \$257.86 of the tenant's security deposit and accrued interest of \$455.59 and **return the balance of \$197.73 to the tenant**, forthwith.

I grant the tenant an order under Section 67 of the Act for the amount due of **\$197.73**. *If necessary*, this order may be filed in the Small Claims Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.