

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied 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.

The Tenant filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that she served a package containing fifty-two pages of evidence to the Tenants, by regular mail, on July 13, 2010. The Tenants contend that this evidence was not received. As I find it entirely possible that both parties are being truthful in this regard, I provided the Landlord with the opportunity to re-serve this evidence package to the Tenants, by registered mail, by July 30, 2010. I was prepared to adjourn the hearing for the purposes of re-serving this evidence although the hearing was adjourned in any case because there was insufficient time to conclude the hearing. The evidence submitted by the Landlord was not considered at the original hearing.

The male tenant stated he personally delivered a package containing one hundred and eighteen pages of evidence to the Landlord's business address on July 15, 2010. The Landlord stated that she was aware documents were delivered to her office but she did not have those documents with her at the time of the original hearing. In the absence of evidence to the contrary, I find that those documents were properly served on the Landlord and they were considered at both hearings.

Both parties were represented at both hearings. They were provided with the opportunity to submit to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to compensation for damage done to the rental unit;

to retain all or part of the security deposit paid by the Tenants; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Landlord is entitled to compensation for loss of quiet enjoyment of the rental unit; to compensation for deficiencies with the rental unit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on June 01, 2008; that the Tenants were required to pay monthly rent of \$1,350.00; that they paid a security deposit of \$675.00 and a pet damage deposit of \$675.00 on May 15, 2008; that the tenancy ended on May 31, 2010; and that the Tenants provided the Landlord with a forwarding address on May 31, 2010.

The female Tenant stated that in October of 2008 they noticed a crack in the glass of the oven door and that shortly thereafter one of the windows in the door shattered, rendering the oven unusable. The female Tenant stated that they advised a former manager of the broken door and that the door was not replaced until January of 2010. The Tenants are seeking compensation, in the amount of \$3,000.00, for the fifteen months they were without an oven.

The Landlord stated that the oven door was not replaced because the Landlord believed that it was broken due to the Tenants' negligence. She stated that she spoke to several appliance experts over the telephone, none of whom had viewed the damaged door, who advised her that the damage to the oven door was likely caused by negligence.

The Tenants are seeking compensation, in the amount of \$232.97, for the purchase of barbecue, which they contend was necessary because they did not have the use of an oven. The Tenants submitted a receipt to establish that they purchased a barbecue in April of 2009. The Tenants are still in possession of the barbecue.

Analysis

I find that the Landlord submitted insufficient evidence to show that the Tenants damaged the oven door, either by neglect or by their actions. I find that the information provided to the Landlord by the appliance experts is hearsay evidence and is of little evidentiary value, given that they did not view the damaged door. As there is insufficient evidence to show that the Tenants damaged the door, by act or negligence, I find that they were not obligated to repair the door.

Section 27(2) of the Act stipulates that a landlord may terminate a service or facility, in some circumstances, if the Landlord reduces the rent in an amount that is equivalent to the reduction in value of the tenancy agreement resulting from the termination or restriction of the service or facility. In my view, the Landlord's failure to repair the oven

door so that the oven could be safely reduced the value of this tenancy. Establishing the value of the reduced tenancy in such circumstances is difficult because it is entirely subjective, however in my view the absence of an oven reduced the value of this tenancy by \$50.00 per month, which I find to be reasonable given that the monthly rent was \$1,350.00. As the Tenants were without an oven that could be operated safely for fifteen months, I find that they are entitled to compensation in the amount of \$750.00.

I find that \$750.00 is reasonable compensation for living without an oven. I dismiss the Tenant's claim for compensation for the cost of the barbecue as I find that they have already been reasonably compensated for the inconvenience of living without an oven and that they are still in possession of the barbecue that they purchased in April of 2009.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$387.00, which is comprised on \$337.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount \$102.88. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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*.

Dated: July 27, 2010.

Dispute Resolution Officer