



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim. The claim was for \$2,150.00 amended to \$3,500.00 on August 18, 2010 based on the landlord's expenditures to clean and repair the unit. The hearing was also to deal with an Application by the tenant for the return of the \$1,750 security deposit and \$350.00 pet damage deposit held since April 14, 2008.

Issue(s) to be Decided for the Tenant's Application

Whether the tenant is entitled to the return of the security deposit of \$1,750.00 and pet-damage deposit of \$350.00 plus interest.

Issue(s) to be Decided for the Landlord's Application

The issue to be determined for the landlord's application is whether the landlord is entitled to monetary compensation under section 67 of the Act for damages or loss and to retain the security deposit.

Background and Evidence

The tenancy began in April 14, 2008 and current rental rate was \$3,500.00. The tenancy ended on April 15, 2010. The tenancy agreement was for a furnished home and a 17-page Move-In Condition Inspection Report was completed with both parties in

attendance. The report included an inventory list of all items in the home. A security deposit of \$1,750.00 was paid and a pet-damage deposit of \$350.00 was paid.

The tenant testified that after the tenancy ended, the landlord did not return the security deposit or the pet damage deposit and instead made application for dispute resolution seeking damages.

Submitted into evidence was a copy of the tenancy agreement, a copy of the move-in and move out condition inspection reports, copies of communications, copies of written statements, photographs and copies of estimates, invoices and receipts.

The landlord testified that she was claiming \$300.00 that was paid to 2 individuals who worked for 14 hours to organize the contents listed on the 17 pages of the condition inspection report to determine the status of the landlord's household inventory in the rental unit at the end of the tenancy. The landlord testified that this was due to the fact that some items were not left in the rooms in which they were originally located at the beginning of the tenancy.

The tenant testified that, at the end of the tenancy, after the landlord had made numerous notations of missing items that were actually stored, most were subsequently located and crossed off the list. The tenant testified that early in the tenancy, the landlord had conducted a major renovation during which furnishings and many of the landlord's possessions had been moved by the contractors who were also responsible for returning them to their original places. The tenant testified that some household items listed on the move-in inspection report had been given back to the landlord early in the tenancy because they were not required by the tenant. Several items were apparently taken away and placed in the landlord's storage. The tenant disputed the \$300.00 claim and felt that the task of organizing the household inventory was not a valid liability for which a tenant would be found responsible under the Act.

The landlord testified that she spent 20 hours cleaning, repairing and replacing contents valued at \$30.00 per hour and was claiming compensation of \$600.00. According to the

landlord, the tasks included cleaning the freezer, vacuuming, an hour spent on cleaning a dirty stove vent, removing a tape-mark on the hardwood, half an hour to clean the tub-surround and time spent changing light bulbs.

The tenant testified that the rental unit was left in a reasonably clean condition. The tenant stated that after she had vacated the landlord had people occupying the unit who were using the appliances to cook meals and otherwise utilizing the premises. The tenant pointed out that the landlord had kept something in the freezer and that the tape was put on the floor by the landlord's contractors during the renovations. The tenant disputed the \$600.00 claim.

The landlord was claiming a total of 8 hours travel time to go to Vancouver to replace items and arrange repairs that could not be done locally. The charge was \$30.00 per hour totaling \$240.00. The landlord testified that one of the trips involved taking the push lawnmower in to be serviced, amongst the other activities. The landlord testified that the lawnmower was part of the household equipment covered by the tenancy and the tenant had not stored it properly or maintained it as was required. The landlord stated that the blades of the mower had to be sharpened and this was a specialty process that could not be done in the vicinity of the rental property. The cost of the service was \$47.60 in addition to the above travel claim of \$240.00.

The tenant disputed both the travel claim and the claim for the servicing of the push mower. The tenant stated that they had never used the landlord's mower as they had their own power mower and felt that they should not be held responsible for maintenance of the landlord's equipment. The tenant pointed out that the landlord did not have to make any special trips to Vancouver since she lives there and the tenant stated that in any case, owning a business property in another locality was a choice of the landlord and travel would be an operating cost not be the tenant's responsibility.

The landlord was claiming \$5.58 for a halogen light bulb, \$10.06 for garage opener light bulbs, \$8.16 for dining-room light bulb, \$40.29 for light fixtures and bulbs. The tenant

agreed to reimburse the reasonable cost of some light bulbs but questioned the claim for replacing light fixtures.

The landlord had submitted claims and receipts for \$8.94 for a waste basket, \$55.98 for a missing lawn chair, \$14.54 for a missing seed dispenser, \$100.79 for replacing a ripped pool-table cover, \$44.76 for a missing power bar and surge protector, \$33.56 for a missing exterior thermometer, \$10.85 for a missing glass jug, \$197.12 for 4 protective mattress covers, \$50.38 for a wooden chair, and \$19.58 for a plastic mattress cover.

The tenant testified that she did not know anything about the fate of the waste basket, seed dispenser, power bar, thermometer or glass jug. The tenant stated that they did not remove or take any of the landlord's possessions with them and did not destroy or discard any of the above items. The tenant stated that all of the bedding was returned including the mattress protectors. The tenant stated that one duvet that had been damaged, was replaced by a set of king-sized sheets, with the landlord's permission.

The tenant speculated that some of the missing inventory may have been removed or lost by the landlord's contractors when they had cleared out a section of the rental unit to do renovations, or the landlord may possibly have lost track of some of the household goods herself. The tenant pointed out that the landlord had forgotten about the items that were given back when the tenancy began and no list was kept of these. The tenant felt that that some items kept outside may have been removed by anyone. In addition, other people invited by the landlord were residing in the unit since the tenant vacated.

In regards to the lawn chair, the tenant stated that this had been replaced by the tenant. In regards to the wooden chair, the tenant accepted responsibility, but felt that the landlord had purchased and was claiming a more valuable chair than the original.

The tenant testified that the landlord has ignored the fact that there should be some expectation of wear and tear affecting the contents. The tenant pointed out that the pool-table cover only had a couple of minor rips and would hardly warrant replacement at a cost of \$100.79. The tenant was of the opinion that the \$1,057.28 estimate for

cleaning the mattress was not warranted. The tenant pointed out that during the move-in inspection they were not shown all sides of each mattress to confirm that these items were totally pristine. The mattresses were all used for sleeping and as such were subject to normal wear. The tenant stated that when the tenant returned for the meeting with the landlord after move-out, the various beds and mattresses were not as they were left, but had been disassembled and stacked in another area. The tenant stated that she did not recognize the mattress in question as being one that they had used.

While the tenant did not dispute that appropriate replacement costs may be owed for loss or damage to some items such as the chair, light bulbs and plastic mattress cover, the tenant felt that most of the claimed charges put forth by the landlord were excessive.

The landlord claimed \$200.00 to resurface the bathtub. The tenant also objected to this claim on the basis that there was no incident that left a substance on the bottom of the tub. Even if that did occur, the tenant felt that it would not warrant refinishing. The tenant also took issue with the documentation submitted in support of this job.

The tenant objected to the landlord's representation that a "Move Out Condition Inspection" was arranged in which the tenant allegedly agreed to everything. The tenant stated that the landlord did not offer an opportunity for the parties to do the inspection together but had proposed that the landlord do the inspection on her own and the parties meet merely to "sign-off" on the landlord's assessment. The tenant stated that when she arrived and they began to review the inventory, the landlord had already listed missing items that, as it turned out were able to be located. The inspection was further invalidated, as far as the tenant was concerned, by the fact that there were people staying in the unit who were using the facilities during the inspection. The tenant had submitted copies of emails and other evidence to support these allegations.

Analysis

In regards to an applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or

their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such circumstances.

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 must satisfy each component of the test below:

Test For Damage and Loss Claims

- [1] Proof that the damage or loss exists, and that it happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- [2] Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- [3] Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenant.

It must first be determined whether there was a violation of the Act by the tenant. I find that section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant, this section of the Act specifies that a tenant is not required to make repairs for reasonable wear and tear. Section 37 (2) of the Act states that in vacating a rental

unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the \$300.00 claimed for inventory organizing was not incurred by the landlord due to a violation of the Act or agreement by the tenant and therefore the claim fails to satisfy element 1 and 2 of the test for damages and must be dismissed.

I accept the tenant's evidence that the rental unit was left in reasonably clean condition. I find that the \$600.00 claim for cleaning and repairing the unit fails to meet element 1 of the test for damages and therefore must be dismissed.

I find that the landlord is not entitled to be reimbursed the \$90.00 and \$150.00 travel or time costs for transporting or purchasing items for the rental unit to and from Vancouver. I find these expenses relate to operational business costs that are not the tenant's to bear and not due to any violation of the Act. The claim must be dismissed.

In regards to the \$1,057.28 estimated cost to clean the mattress, I find that the landlord has not sufficiently proven that the tenant damaged the mattress. I find that this would not necessarily constitute a violation of the Act if it did occur. Moreover, as the estimated cleaning cost would likely exceed the value of a used mattress, the landlord would be required to minimize the loss to meet element 3 of the test. I find that this claim must be dismissed.

I accept that the landlord incurred expenditures of \$8.94 for the waste basket, \$14.54 for a missing seed dispenser, \$44.76 for the power bar and surge protector, \$33.56 for the thermometer, \$10.85 for a glass jug and \$197.12 for 4 protective mattress covers. However, I find the fact that the landlord made these purchases would only satisfy element 2 of the test for damages. I find that the proof submitted for the above items would not sufficiently establish that the damage or loss was caused by the tenant in violation of the Act. The landlord did not sufficiently prove that wear and tear or other factors would not apply. Therefore I find that these claims must all be dismissed.

In regards to the claim for \$55.98 for a missing lawn chair , I accept the tenant's testimony that the used chair was replaced with a new chair. In this regard, I find that the landlord has already received compensation in excess of the value lost.

In regards to the claim of \$50.38 for a new wooden chair to replace the used wooden chair discovered missing, I find that the tenant has accepted responsibility to compensate the landlord for this loss, but has estimated the value at \$22.50 for a comparable new chair, substantially less than the landlord's purchase. As the missing chair was used, I find the landlord is entitled to a pro-rated amount of \$11.25.

In regards to claim for replacing the torn pool-table cover with a new cover, at a cost of \$100.79, I find that by buying a new cover, without trying to repair the old cover. the landlord failed to take reasonable steps to mitigate in order to meet element 3 of the test for damages and loss. Even if the claim was accepted I find that the cover, being 5 years old, had likely exceeded its useful life expectancy and that the prorated value would likely be negligible. I find that this would also apply to the plastic mattress cover replaced at \$19.58 and many of the other missing items in question.

In regards to the lawn-mower costs, I find that the maintenance and repairs of this equipment was no the tenant's responsibility.. Even if the tenant had utilized the mower, periodic blade sharpening during the two years of usage would fall to the landlord under the Act. I therefore find this claim must be dismissed.

In regards to the \$200.00 cost for resurfacing of the tub, I find that maintenance of fixtures is the landlord's responsibility under the Act. However, where alleged damage beyond wear and tear is proven to be due to the negligent actions of a tenant, the tenant may be held responsible. In this instance the tenant denied causing the chemical substance in the tub. Even if the tenant did leave the residue in violation of the Act, thereby meeting element 1 of the test for damages, I would have to find that the landlord did not offer sufficient proof reasonable efforts were made to mitigate before

deciding that resurfacing was the only solution. I find that the claim fails element 3 of the test for damages and must be dismissed.

The tenant did not dispute that appropriate replacement costs may be owed for all of the light bulbs being claimed but felt that the landlord should have mitigated to find the lowest costs. I find that the landlord is entitled to an estimated amount of \$35.00 compensation for light bulbs.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to \$2,175.55 comprised of \$1,750.00 security deposit, \$350.00 pet damage deposit, \$22.55 interest and \$50.00 cost of filing the application. I find that the landlord is entitled to monetary compensation in the amount of \$46.25 comprised of \$11.25 prorated value of the lost chair and \$35.00 for light bulbs.

After setting off the amounts, I find that the tenant is entitled to a monetary order in the amount of \$2,126.30. This order must be served on the landlord and may be filed in Small Claims Court for enforcement if necessary.

August 2010

Date of Decision

Dispute Resolution Officer