

DECISION

Dispute Codes:

MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the landlord for:

- A Monetary Order to recover costs for damage to the rental unit - the rental unit stove, and for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.
- An order to retain the security deposit in partial satisfaction of the monetary claims.
- Recovery of the filing fee associated with this application in the amount of \$50

Both parties attended the conference call hearing and were given opportunity to submit relevant evidence prior to the hearing, provide relevant testimony at the hearing, ask relevant questions of one another and this Arbitrator, and attempt to resolve their dispute. At the end of the hearing both parties stated they had presented all their evidence.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed ?

Background and Evidence

The following is undisputed. The tenancy began on June 15, 2009 and ended April 29, 2010. Rent in the amount of \$1400 was payable in advance on the first day of each month, plus the cost of utilities. At the outset of the tenancy the landlord collected a security deposit in the amount of \$700. Both parties conducted a start of tenancy inspection and completed the requisite report. At the end of the tenancy the parties conducted an end of tenancy inspection and the requisite report. Despite the contents of Section Z. 2., the parties both agree that the completion of this section was not completed as intended by either party and does not reflect agreement by the tenant. At the end of the inspection, the parties did not come to an agreement in respect to

administering the security deposit. However, both parties agree on the contents of section Z. and Z.1. –“*Some stains on stove*”, and, *that the tenant agree that the report fairly represents the condition of the rental unit.*

The disputed claim and testimony of the landlord is that the tenant caused damage to the rental unit stove – of “serious scratches and stains on some parts of the stove”. The tenant’s claims that any markings present on the stove at the end of the tenancy should be considered as the result of normal wear and tear.

The landlord testified that the rental unit gas stove was brand new at the start of this tenancy. At the end of the tenancy the landlord noted on the end of tenancy inspection report that the stove reflected ‘*lots of stains and cleaning*’, and, ‘*Some stains on stove*’. Two(2) days later, the landlord determined to revisit the stove and took photographs of what the landlord determined was *damage* to the stove. The landlord provided photographs of the stove-top grates, cook-top, oven door handle and the knob control panel at the front of the stove. The landlord claims the grates were “excessively” scratched and stained, the cook-top was pitted, the oven door handle was stained, and the front control panel showed scratches on the right sides of the right control knobs. The landlord testified that the purported damage was not normal wear and tear for a year old stove. The landlord provided estimates from the manufacturer to fully replace the aforementioned parts of the stove the landlord determined are damaged. The landlord provided that the parts are special order items only, and gave an accounting for estimated transportation and labour charges, inclusive of taxes, to an estimate of \$1000.

The tenant disputes that the stove has endured *damage*, and that the purported damage is simply normal wear and tear and therefore the landlord’s claim is not reasonable. The tenant also provided photographs into evidence that the tenant claims they took of the stove on the actual day of the inspection of April 29, 2010 and which reflect the “true condition” of the stove components at issue.

The tenant also provided a signed letter / testimonial by an individual who was contracted by the tenant to clean the rental unit prior to the end of the tenancy and the end of tenancy inspection of April 29, 2010. The individual purports to have experience as a cleaner and in their opinion categorized the condition of the stove as displaying, “normal wear and tear”.

Analysis

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

I must emphasize 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 test below:

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 in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to 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.

As well, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs (with some allowance for loss of rent or loss of occupation during the repair), or replacement. In such a case, the onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable.

Therefore, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant 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. Once that has been established, the claimant must then provide evidence that can verify *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 reasonably mitigate the damage or losses that were incurred.

I find that neither party has provided conclusive evidence in support of their respective position on this claim. However, in this matter, the onus is on the landlord to prove their claim.

On the balance of probabilities and on the preponderance of all the evidence before me, I find **I prefer** the tenant's evidence. I find that the landlord has not proven their claim - that the tenant caused damage to the stove; but rather, that the condition of the stove at the end of the tenancy had, as the landlord's condition inspection report states, some stains and required cleaning. It is my finding that the issues with the stove, which the landlord purports to be damage, are the result of reasonable wear and tear.

The Residential Tenancy Act Regulations state that a tenant is not responsible for repairs for reasonable wear and tear to the residential property. As a result, **I dismiss** the landlord's claim for damages, without leave to reapply, effectively dismissing the landlord's application in its entirety.

In respect to the security deposit, Residential Tenancy Branch Policy states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant's security deposit. I so Order and I grant the tenant a Monetary Order in the amount of **\$700**.

Conclusion

The landlord's application **is dismissed**.

I grant the tenant an Order under Section 67 of the Residential Tenancy Act for the amount of **\$700**. 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*.