

## **Decision**

### **Dispute Codes:**

MND, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for damage to the unit due to a fire caused by the tenant.

Both the landlord and tenant appeared and each gave testimony in turn.

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

The landlord was seeking a monetary order for damage to the unit for a total claim of \$3,920.00.

The issues to be determined based on the testimony and the evidence 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. This determination is dependant upon answers to the following questions:

- Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing on a balance of probabilities:
  - a) that the damage was caused by the tenant and
  - b) a verification of the actual costs to repair the damage
  - c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

### **Background and Evidence**

The tenancy began as a fixed term on December 1 2009 at which time a security deposit of \$387.50 was paid. The agreement was to end on November 30, 2010, but

the tenant vacated in mid-October but had paid rent until the end of October. The landlord testified that on February 28, 2010 there was a fire in the unit which caused mostly smoke damage. The landlord testified that the fire occurred due to the tenant's negligence in leaving the stove on. The landlord testified that because of the smoke damage the unit had to be cleaned, repainted, new cabinets, new flooring and new baseboards put in. The landlord submitted a copy of an invoice into evidence listing the following:

- Demo – 280.00
- Cleaning - 604.00
- Paint - 800.00
- Floor – 700.00
- Base-boards & trim – 150.00
- Cabinets 1000.00
- Misc – 200.00

The invoice showed \$2,384.00 for labour and \$1,350.00 for materials with \$186.70 GST for a total amount of \$3,920.00 being claimed. The landlord testified that, although the owner did have insurance, a decision was made not to submit a claim for the damage because the deductible was too high. The landlord could not provide information on the precise amount for the deductible.

The tenant testified that the stove controls were at the front of the appliance and in the small space were particularly prone to being bumped and accidentally jostled into the “on” position. The tenant testified that the landlord had originally offered the tenant the opportunity to do the clean-up on his own and he was in the process of taking care of this when a contractor of the landlord advised him that they would be taking over the job. However, according to the tenant, he was never advised that he would then be charged the costs. The tenant stated that some of the work done appeared not to be necessary for the purposes of merely restoring the unit. The tenant also objected to the fact that the landlord chose not to make an insurance claim but bill the tenant for all of the refurbishment instead. The tenant stated that he should have only be held accountable for the deductible on the insurance.

### **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,
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 the claimed 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

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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to mitigate the damage or losses that were incurred.

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 pay for or repair damage to the rental unit caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear or for damage that was not caused by the tenant. This responsibility falls to the landlord under the Act.

The landlord has alleged that the tenant caused the damage in violation of the Act. However, I find that there would only be a violation of the Act if the tenant was solely responsible for the damage and did not repair the damage. In this instance, I find that the tenant's testimony that the stove controls were easy to bump into and move into the "on" position by accident may have some merit. I also accept that, the tenant was willing to take on the clean-up and re-painting but was prevented from doing so by the landlord. Given the above, I find that the landlord's claim does not fully meet element 2 of the test for damages

I also find that the landlord's claim does not satisfy element 3 of the test for damages because the invoice submitted into evidence to justify the costs was challenged by the tenant and was not sufficiently detailed to properly verify the expenditures being claimed. Finally, because the landlord declined the tenant's participation in the clean-up and refused to submit a damage claim to the insurance company, I find that the claim fails element 4 of the test for damages. The landlord was required under section 7(2) of the Act to take reasonable steps to minimize the damages. Based on the evidence and testimony, I find that the landlord's request for compensation of \$3,920.00 is not sufficiently supported. That being said, I find that the landlord is entitled to retain the security deposit of \$387.50 because the tenant vacated the unit prior to the end of the fixed term.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that under the Act, the landlord is entitled to retain the tenant's security deposit in satisfaction of the damages claimed.

The remainder of the landlord's application is hereby dismissed without leave to reapply.

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: October 2010.

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Dispute Resolution Officer