



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – MNDC, FF

For the landlord - MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover her filing fee. The landlord seeks a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover their filing fee.

The tenant served the landlords agent in person on May 03, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenant by registered mail on June 01, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. This hearing was originally scheduled to take place on September 13, 2010. The landlord states she did not receive the tenants evidence in time to dispute it so the hearing was adjourned to provided the landlord with time to review the tenants' evidence. The hearing was reconvened to today's date.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This tenancy started on April 01, 2004 and ended after the landlord obtained an Order of Possession and the court ordered bailiffs to remove the tenants' belongings from the rental unit on September 10 and 11, 2009.

At a previous hearing the tenant had applied for the return of her personal belongings. An Order was issued to the tenant for the landlord to return her belongings at a pre-arranged date and the tenant must collect her belongings within 15 days from the date of that hearing. The tenant states she was unable to collect her belongings within that time limit. The tenant states that the landlord still has some of her belongings but judging from the landlords' photographic evidence some of her belongings have been lost or damaged. The tenant states she was told by the landlords' agent that some of her shelving was damaged when it was removed by the landlords' contractor and the landlord no longer has these items. The tenant seeks compensation for the loss of these items as follows:

Two sets of curtain rod brackets; five years old at \$79.98, for rods and brackets.

Two light dimmers; \$19.99

Custom shelving unit; six years old at \$987.61

Eight metal shelves; five years old at \$239.92

Custom single unit; five years old at \$556.40

Custom unit; three years old at \$1,126.14.

The tenant states that she was told by the bailiffs that they had left these items in her unit as they were attached to the walls. The tenant states she could not remove them as the bailiffs had seized her tools.

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlords' agent states that they have no evidence that these items were in the tenants unit. She states the tenant has provided some receipts for some of the custom units and IKEA quotes for the remainder. The landlord states she agrees that she was told by her contractor who removed the remaining items from the tenants unit that some of her shelving was damaged however she does not know exactly what was damaged or removed. The landlord states they still have the remainder of the tenants' belongings in storage and she can collect this when she reimburses the landlord for their costs.

The landlord seeks compensation of \$150.00 for the removal of the tenants' wall shelving and cabinets as she failed to remove these at the end of her tenancy. The landlord also seeks the sum of \$50.00 for the caretaker to remove the tenants belongings to storage; \$75.00 because the caretaker took the tenants belongings out of storage when she arranged to collect them on December 18, 2009 and when she failed to arrive, her belongings had to be returned to the storage; \$295.00 for storage costs from September, 2009 to October, 2010; \$250.00 to patch and repair the numerous nail and screw holes; \$100.00 to sand the dry wall prior to painting; \$378.00 to clean the unit after the tenant had vacated as she failed to clean. The landlord states this took 21 hours at \$18.00 per hour.

The landlords' agent states the tenant failed to collect her belongings within the 15 days she was ordered to do so and therefore they should not have to reimburse the tenant for her belongings and they can be disposed of. The landlord states the tenant made arrangements to collect her belongings on December 18, 2009 and failed to appear as she told them the truck had broken down. The tenant did not contact the landlord again until January 14, 2010. However the landlords' agent states the tenant may collect her belongings after she has paid for the landlords costs incurred in removal and storage and for cleaning the unit.

The tenant disputes the landlords' costs. She agrees she did not clean the unit at the end of her tenancy but disputes it would have taken the landlord 21 hours to clean and disputes that the cleaners are paid \$18.00 per hour.

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant disputes the landlords' claim of \$75.00 to bring her belongings from storage and back again as she states she did not ask the landlord to do this and she was coming with her moving men.

The tenant disputes the landlords claim for storage costs. She states she came on four occasions with a truck to remove her belongings. The tenant states she told the caretaker at the end of the tenancy that she would return within a week to get her belongings but when she returned she was told to speak to the administrator who told her she would have to pay for the landlords costs before she could collect her belongings.

The landlords' caretaker states that the tenant did not arrive with a truck at any time. She was supposed to come on December 18, 2009 but failed to arrive and telephoned to say her truck had broken down.

The landlord has applied to amend her claim to include cleaning costs as this was not previously accounted for.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. At the previous hearing it was determined that if the tenants belongings were not all in place that she was at liberty to file an application for a Monetary Order for the value of the missing items. The tenant has now applied for the value of the missing items and the burden of proof falls on her as the claimant to provide sufficient evidence to support her claim. The tenant argues that although she has not been to collect her belongings she has seen from the landlords' evidence her belongings the landlord has in storage and has therefore deduced what is missing.

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists

Residential Tenancy Branch
Ministry of Housing and Social Development

- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 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 to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. 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 address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet all of the components of the above test. The tenant has not submitted evidence to show how she mitigated her loss in this matter pursuant to s.7(2) of the Act. With regard to the dimmer switches and curtain fixtures; #1 of the Residential Tenancy Policy Guidelines states: any changes to the rental unit not explicitly consented to by the landlord must be returned to the original condition. It also states: an applicant will not be entitled to recover compensation for loss that can reasonable be avoided. In this matter I find the tenant changed the light switches for dimmer switches and did not remove these at the end of the tenancy. I find she put up curtain rods and only removed the rods not the brackets at the end of her tenancy and I find she did not take the appropriate steps at the end of her tenancy to remove her personal belongings herself to minimize any loss or damage to these belongings. The tenant had ample opportunity to remove her units and shelving when she knew the tenancy was going to end but failed to do so and left it for the bailiffs and landlord to remove her personal items. The landlord has agreed that some of the tenants' belongings were damaged when they were removed and the tenant is unable to state that this damage would not have occurred if she had of removed her the shelving and units herself. Consequently, I find the tenant has not mitigated her loss in this matter and her application is dismissed.

Residential Tenancy Branch
Ministry of Housing and Social Development

With regard to the landlords claim for money owed or compensation for damage or loss; I have applied the same test for damage and loss claims for the landlords claim and again the burden of proof falls on the landlord to provide sufficient evidence to support their claim. I find the landlords claim for **\$150.00** to remove the shelving to be reasonable considering the amount of shelving present in the unit. I also find the landlords claim for **\$50.00** for removing these items to the storage to be reasonable and her claim for **\$75.00** to be reasonable to carry these items to the lobby for collection and then back again to the storage. I find the landlords claim for filling and sanding an excessive amount of holes to be reasonable and find the tenant is responsible to pay for this work at a sum of **\$350.00** pursuant to #1 of the Residential Tenancy Policy Guidelines which states: a tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails or screws or tape have been used and left wall damage.

I have considered the landlords claim for cleaning costs of **\$378.00** and find this is not an excessive amount of hours for cleaning a three bedroom unit and \$18.00 per hour is also not an excessive hourly rate for this work. Therefore, I have agreed to this amendment to the landlords claim.

At the previous hearing the landlord was requested to itemize the actual amount of costs incurred for the removal and storage of her personal belongings and give this account to the tenant to be reimbursed. The landlord has done this and therefore pursuant to s. 26 of the Residential Tenancy Regulations the tenant must reimburse the landlord for these costs for the removal and storage of the tenants' belongings and to satisfy the cleaning costs and costs for damages incurred by the landlord.

Consequently, I find the landlords' amended application is upheld and the landlord is entitled to recover costs incurred of **\$1,298.00** pursuant to s.67 of the *Act*.

As the landlord has been successful with her claim I find she is entitled to recover her **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. As the tenant has been unsuccessful with her claim I find she must bear the cost of filing her own application.



Dispute Resolution Services

Page: 7

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,348.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The Tenant's application is 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 25, 2010.

Dispute Resolution Officer