

DECISION

Dispute Codes:

MND, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues to be Decided

- Is the Landlord entitled to a monetary award for damage to a glass top stove and replacement of burned out light bulbs at the end of the tenancy?

Background and Evidence

A copy of the tenancy agreement, which was signed by the parties on April 24, 2009, was entered in evidence. The tenancy was a fixed term tenancy, starting on July 1, 2009 and ending on June 30, 2010. Monthly rent was \$1,700.00 due on the first day of each month. This was the second tenancy agreement between the parties. The Tenants initially moved into the rental unit on July 1, 2008. The Tenants paid a security deposit in the amount of \$850.00 on June 2, 2008.

A copy of the Condition Inspection Report was entered in evidence. The move-in condition inspection was performed, with both parties present, on June 30, 2008. Both

parties were present at the move-out inspection which took place on June 30, 2010. The Landlord seeks a monetary award in the amount of \$896.00 for the cost of replacing a damaged glass stove top. The Landlord's agent testified that the Tenants broke the glass top during the tenancy. The Landlord's agent stated that the Landlord became aware of the damage in March of 2010. The Landlord's insurance company declined to cover the cost of repairing the stove because they did not believe that the falling trees were the cause of the damage. The insurance company told the Landlord that there would be more damage to the rental unit if that were the case (i.e. broken windows).

The Landlord's repairman advised the Landlord's agent that it would cost more money to replace the stove than to replace the glass top. The Landlord's agent testified that a new stove was \$700.00 or more and that installation was not included in that price. The Landlord's agent stated that the stove was 7 years old. The Landlord attempted to find a second hand stove, but was unsuccessful.

The Landlord seeks a monetary award in the amount of \$56.90 for the cost of replacing burned out light bulbs at the end of the tenancy. The Landlord provided a copy of a receipt for the cost of the light bulbs.

The Tenants testified that they did not cause the damage to the glass top on the stove. The Tenants stated that in March, 2010, 14 large trees were removed from the lot adjacent to the rental property. The Tenants stated that the rental unit shook when the trees were felled. The Tenants believe the crack occurred because of the falling trees. The Tenants stated that they noticed cracks in the walls and ceilings after the trees were felled, but no windows were broken. The Tenants testified that there were existing cracks on the stove top when the Tenants moved into the rental unit and believe the integrity of the glass top may have been compromised before the top cracked.

The Tenants testified that some of the light bulbs were not working when they moved into the rental unit. They stated that some of the burned out light bulbs required a ladder to change them and that they did not change them.

The Landlord's agent testified that the cracks in the walls and ceiling were minor cracks that occurred as a result of the house settling. The Landlord had the cracks repaired after noticing them on a routine inspection in March, 2010. The repairs were covered by warrantee. The Landlord's agent testified that the pre-existing scratches on the glass top were superficial and did not compromise the integrity of the glass.

Analysis

This is the Landlord's claim for damages and therefore it is the Landlord's responsibility to prove their claim on the balance of probabilities. The Landlord must prove four different elements:

1. proof that the damage or loss exists,
2. proof that damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act or agreement'
3. establishment of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. proof that the Landlord followed section 7(2) of the Act by taking and reasonable and necessary steps to mitigate or minimize the loss or damage being claimed.

With respect to the Landlord's claim for damages to the glass top stove, I find that the Landlord has not provided sufficient evidence to prove the second or fourth element as listed above, for the following reasons:

- The Residential Tenancy Branch Policy Guidelines provide a useful life of 10 years for stoves. The Landlord's stove was 7 years old. A glass top stove is more vulnerable to damage than a metal top stove. I am not satisfied that the Tenants were negligent or caused the glass stove top to break. There were cracks in the walls and ceiling that were discovered at the same time as the broken stove top, which occurred at the same time as large trees on the lot next door were being felled.

- The Landlord replaced the stove top at a cost of \$896.00, including installation, and seeks to recover the total cost from the Tenants. Following the guidelines, if the Landlord was successful in its claim, the Landlord would be entitled to 30% of that cost (the stove was at 70% of its useful life), or \$268.80. The Landlord's agent testified that a new stove would cost more than a new stove top, but did not provide sufficient evidence of the cost of a new stove. The Landlord did not provide sufficient evidence of its attempts to find a used stove of a similar kind.

The Condition Inspection Report does not indicate any light bulbs were burned out at the beginning of the tenancy. Tenants are required to replace burned out bulbs at the end of a tenancy. The Landlord provided a receipt for the cost of replacing the bulbs. Therefore, I find that the Landlord has proven this portion of its claim.

The Landlord has been partially successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply \$106.90 of the security deposit towards satisfaction of its monetary award.

The remainder of the security deposit, together with accrued interest in the amount of \$7.42, must be returned to the Tenant forthwith.

Conclusion

The Landlord has established a monetary award in the amount of \$106.90, which it may deduct from the security deposit. I hereby provide the Tenants with a Monetary Order in the amount of \$750.52 against the Landlord, representing the balance of the security deposit together with accrued interest. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 02, 2010.
