



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: MNDC, MND, MNR, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for utilities owed, repairs, yard work and missing property and to keep the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

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 rent owed and damages.

Background

The landlord testified that the tenancy began on February 16, 2008 and rent was \$2,000.00. A security deposit of \$1,000.00 was paid. The tenancy ended on August 31, 2010. No copy of the tenancy agreement was in evidence.

The landlord testified that at the time the tenant left, utilities \$228.13 for water and sewer charges was owed by the tenant. However, the landlord did not receive the bill until after the tenant left. No copies of these invoices were submitted into evidence. The tenant testified that they will pay the utility charges as soon as the landlord provides them with a copy of the bill. Therefore, this matter is seen as resolved and this portion of the landlord's claim will be dismissed with leave to reapply should the utilities not be paid in future as promised.

The remainder of the claims are as follows:

\$474.49 for a new washer after an unsuccessful attempt to fix the old washer

\$171.01 for repairs to the refrigerator

\$200.00 estimated to repair cracked glass on the oven door

\$245.33 for repairs to the dryer

\$150.00 – \$250.00 estimated cost to clean and repair the gas fireplace

\$95.00 parts and labour to replace a glass deck panel

\$50.00 for yard one hour of work

\$50.98 to replace missing garbage pail, broom, dustpan, shower curtain and rod

The landlord also pointed out that the tenant apparently had a dog in violation of the tenancy agreement and stated that after the tenant had delivered and installed the new washing machine, they failed to remove the old washing machine and just left it on the premises for the landlord to deal with.

The total amount being claimed was \$1,000.00, plus the \$50.00 cost of filing. Submitted into evidence by the landlord were photos, written details of the claims, a copy of an email from the appliance repair technician listing service calls and repair work to the subject address and an invoice for the purchase of the washing machine.

The tenant disputed all of the landlord's claims and pointed out that repair and maintenance of appliances are the landlord's responsibility under the Act. The tenant testified that the tenant had not abused nor willfully damaged any of the vintage appliances in the rental unit and that any repair issues were due solely to normal wear and tear. The tenant stated that it was difficult to get the landlord to address repair issues in a timely fashion and the tenant often had to deal with any problems themselves during their two-year tenancy.

In regard to the glass panel on the deck, the tenant testified that in early August 2010 they contacted the landlord to report that the wooden structure holding up the panels was starting to warp and fail but the landlord failed to respond. By August 18, 2010 one of the glass panels had come loose and fallen to the ground. Both the landlord and the tenant had submitted photographs showing the deck and railings.

The landlord had provided a photograph showing some overgrown weeds in certain sections of the yard and a photo of the yard after it was trimmed by the landlord. The tenant argued that they had performed basic yard work as agreed, but did not feel responsible to do anything further in regard to the landscaping nor gardening tasks, which the tenant felt should fall to the landlord to do. The tenant stated that the landlord had never done any work at all to maintain the exterior grounds during their tenancy.

The tenant stated that the landlord's claims for the allegedly missing garbage pail, broom, dustpan, shower curtain and rod had no merit because these items were never supplied at the start of their tenancy.

The tenant pointed out that, on the Move-Out Condition Inspection Report the landlord had indicated that there was no damage and provided a copy of the report. Under the

heading, "End of Tenancy 2. *Damage to rental unit or residential property for which the tenant is responsible:* ", the landlord had written and initialed the comment; "NONE".

The landlord explained that this comment was made in error due to being rushed through the final inspection by the tenant.

With respect to the allegation that the tenants had a pet dog in the unit, the tenant testified that they did not get their new pet until after the end of the tenancy and that, in fact, this was the reason they had terminated the tenancy to move to a place where dogs were permitted.

Analysis:

With respect 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 the Act, the regulations or the tenancy agreement, the non-complying party 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 to order payment under these 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 was on 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 respondent.

In regard to the repair and maintenance of appliances, I find that this responsibility falls to the landlord under the Act and would not be a responsibility of the tenant.

Moreover, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. 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, 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 other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear. (my emphasis)

Section 37(2) of the Act also states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. (my emphasis)

I find that the portion of the landlord's claim pertaining to appliance repairs must be dismissed, because all of the appliances were at least 8 years old and would naturally be subject to maintenance issues as they aged through normal wear and tear. Accordingly, I find that the landlord is not entitled to be compensated for \$474.49 for a new washer, \$171.01 for repairs to the refrigerator, \$200.00 estimated to repair cracked glass on the oven door, \$245.33 for repairs to the dryer or \$150.00 to \$250.00 estimated cost to clean and repair the gas fireplace.

With respect to the \$90.00 being claimed as compensation for replacing the glass panel in the deck railings, I find that the landlord did not provide a receipt for the purchase of the glass. I find that both the landlord's and the tenant's photos indicate that the wood supporting the glass panels on the deck consisted of a 2-by-4 plank along the top and bottom of each pane with a narrow channel along the length, in which the glass was inserted. The close-up photos of the wood confirm that the railings had not been painted for some time and were showing clear signs of serious wear. Given the above, I find that the landlord's claim for the cost to repair damage to the deck railing must be dismissed.

In regard to the \$50.00 claim for one hour of yard work, I find that the landlord's photos do indicate overgrowth of weeds around the perimeter of the building. I find that the tenant was responsible for basic grass trimming under the Act and the landlord is therefore entitled to be compensated for one hour of trimming. However, I find that the hourly amount to be charged would be set at \$20.00 per hour.

In regard to the replacement costs being claimed for the garbage pail, broom, dustpan, shower curtain and tension rod, I find that this claim was not sufficiently proven by the landlord and this portion of the landlord's application must be dismissed .

Conclusion

I order that the landlord retain \$20.00 from the tenant's security deposit of \$1,000.00 in compensation for the yard work left undone by the tenant, leaving a balance of \$980.00 still owed to the tenant. I hereby issue a monetary order to the tenant for this amount. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The landlord's claim for the cost of outstanding utility charges is dismissed with leave to reapply if these remain unpaid by the tenant.

The remainder of the landlord's application including the cost of filing is dismissed without leave.

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: January 2011.

Residential Tenancy Branch