



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site, or property, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail. The Tenant testified that she had received the hearing documents and had no issue with the service of documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to establish a monetary claim as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective July 1, 2008 which switched to a month to month tenancy after June 30, 2009. Rent was payable on the first of each month in the amount of \$1,548.00 and the Tenant paid a security deposit of \$750.00 on or before July 1, 2008. Neither a move-in inspection nor a move-out inspection report was completed. The tenancy ended August 31, 2010 and the Tenant provided her forwarding address, in writing, to the Landlords via registered mail on September 15, 2010.

The Tenant's witness testified and confirmed she provided a written statement and attended the hearing only to provide further clarification on her statement if required.

The Landlords testified they are seeking a reduced amount of claim of \$674.88 which includes \$60.00 for patching and painting the holes left in the walls of the bedroom and living room plus \$614.88 to replace the main electronic component of their built in surround sound system which stopped working during the tenancy.

The Landlords referred to their photographic evidence in support of their claim that there were holes left in the walls at the end of the Tenancy. Their photos were taken September 1, 2010 and they were repaired on September 8, 2010 as supported by the invoice they provided in their evidence.

They are seeking the cost to replace the electronic component of the sound system and stated that it began to malfunction in March 2009. The Tenant had informed them of problems she was having and at that time they thought the Tenant had blown the speakers so they left things as they were as they felt the tenant would have to repair the unit. It was not until they conducted the move out inspection on September 1, 2010 when they realized the speakers were not blown and that it was the "hub" of the unit which was damaged and the Tenant did not have it repaired. This surround sound system was installed in November 2007. The male Landlord stated "I cannot speculate what caused the damage". They confirmed that they had a verbal agreement with the Tenant that she could use the surround sound system and that they did not provide the Tenant with written instructions on the use and care of the unit.

The Tenant testified and argued that the majority of the holes the Landlords provided photos of were holes that were in the unit at the start of her tenancy. She referred to her photographs which were taken August 31, 2010 and noted that the living room drapes and curtain rod were in the unit at the onset of the tenancy and remained throughout the tenancy. She confirmed that she removed the window blinds that were in the bedroom and installed her own which she removed at the end of the tenancy. She claims there were pre-existing holes in the wall from when the Landlords first installed their blinds.

She confirmed that she began to have problems with the surround sound in March 2009 at which time the speakers were crackling. The Landlords thought the speakers had been blown and she thought the wires were chewed through by rodents as her photos support that there were squirrels in the ceiling of the rental unit. She stated that she had only used the system with computers plugged into them and that the computer(s) were plugged into one area of the "hub" which is different from what the Landlords are claiming is broken.

The Tenant stated that she had sent a text message to the Landlord on August 14, 2010 to find out when the move-out inspection time would be but heard nothing in return. Then later in the month she asked the male Landlord who stated she would have to ask the "boss". She called the Landlord at 6:05 p.m. on August 31, 2010 to advise she had completed her move and when the Landlord did not answer she left a message to request the move out inspection time. After receiving the Landlord's voicemail she did not contact the Landlord again until September 7, 2010. She did not receive anything in writing from the Landlords about attending the move-out inspection or that it had been completed.

The Landlords deny that there were any holes left in the walls at the onset of the tenancy. They confirmed that no notice of inspection was provided to the Tenant in writing as text messaging was the Tenant's preferred method of communication.

Analysis

Section 7(1) of the Act provides 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 24 (c) of the Act provides the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Therefore the Landlord is not entitled to retain the security deposit plus interest and is hereby ordered to return it to the Tenant forthwith.

The Landlord is seeking \$60.00 to repair holes in the walls at the end of the tenancy. The Tenant provided opposing testimony that the holes were present at the onset of the tenancy. Based on the opposing testimony and in the absence of a move-in inspection report I find the Landlord has provided insufficient evidence to support the repairs were required due to the Tenant's breach of the Act. Therefore I dismiss the Landlord's claim for \$60.00, without leave to reapply.

The evidence supports the Tenant was granted permission to use the electronic surround sound system and was not provided with written instructions on how to use the system. The Tenant testified that she used the system properly. It is not unusual for electronic equipment to stop working or to work intermittently even with proper use and care. Therefore, in the absence of a move-in inspection report, and in the presence of opposing testimony, there is insufficient evidence to support the Tenant breached the Act, regulation, or tenancy agreement in a manner that caused the electronic sound system to fail. This equipment has not been replaced and the Landlord is relying on an estimated cost to replace the unit. Based on the aforementioned I find the Landlord has provided insufficient evidence to prove the test for damage or loss, as listed above and I hereby dismiss their claim of \$614.88, without leave to reapply.

The Landlord has not been successful with her application; therefore she must bear the burden of the \$50.00 fee to file this application.

Conclusion

I **HEREBY DISMISS** the Landlord's application, without leave to reapply.

The Tenant's decision will be accompanied by a Monetary Order for the return of the security deposit plus interest, in the amount of **\$755.66** (\$750.00 + 5.66 interest). This Order must be served on the Landlord and may be filed in Provincial 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*.

Dated: February 15, 2011.

Residential Tenancy Branch