



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs and cleaning and to keep part of the security deposit in satisfaction of the claim. The application was also to deal with the tenant's claim for the return of the security deposit that was not refunded by the landlord. The landlord and the tenant both appeared.

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 damages.

Background

The tenancy began on April 22, 2008 and the tenant left on April 30, 2011. Current rent was \$1,950.00. A security deposit of \$1,000.00 was paid. No move-in condition inspection report was completed. However, the landlord testified that the unit was new when the tenant moved in. According to the landlord, when the tenant vacated, the unit was left in a state that required cleaning and repair.

The landlord testified that a move-out condition inspection was done and parties were in some agreement with respect to the burned portion of the stove and the stains on the carpet. However, there was a dispute over other findings made by the landlord. The landlord testified that the tenant was permitted an opportunity to return to the unit to finish cleaning the areas that the landlord found to be deficient, but this was never done and the landlord incurred the following costs:

- \$160.00 for 8 hours of cleaning at \$20.00 per hour
- \$316.14 for damage to the stove
- \$207.20 for the cost of cleaning the blinds
- \$168.00 for the cost of cleaning the carpet

Copies of the tenancy agreement, emails, invoices, photos of the unit, and a "Check-out Report" were in evidence.

The tenant testified that she had left the unit in a reasonably clean state and disagreed with the landlord's claims for the cost of cleaning the unit and the cost of professional cleaning of the blinds. The tenant acknowledged that the carpet had been stained. The tenant also objected to the portion of the claim relating to the costs to repair the stove burner igniter and the burner head and pointed out that the problems with the stove burners forced the tenant to use the rear burner which resulted in the scorching of the control panel area.

The tenant pointed out that there was no move-in condition inspection and that the move-out condition inspection report was not signed nor agreed to by the tenant. The tenant's position is that the landlord has imposed a higher standard for the unit's condition at the end of the tenancy than that accepted at the start of the tenancy.

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 cleaning and repairs, I find that section 37(2) of the Act 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).

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and I find that in this instance a move-out condition inspection report was completed. However, the parties disagreed with the outcome of the move out condition inspection report.

I find that each individual may have their own idea about what would constitute a unit being "reasonably clean". With respect to the landlord's claim for general cleaning, I find that the verbal testimony of the landlord was disputed by the tenant and the landlord did not furnish sufficient evidence to prove that the appliances, bathroom and other areas were not left reasonably clean by the tenant. Therefore I find that the portion of the landlord's \$160.00 claim for general cleaning must be dismissed.

With respect to the landlord's claim for cleaning of the blinds, I find that the allegation of a stubborn oily film left on the blinds was supported by a notation on the invoice from the professional blind cleaner. Accordingly I find that the blinds were not left reasonably clean by the tenant upon vacating contrary to section 37 of the Act. Therefore I find the landlord is entitled to be reimbursed \$207.20 for the cost of cleaning the blinds. I also find that the landlord is entitled to be reimbursed \$168.00 for carpet cleaning costs.

With respect to the stove, a landlord is responsible for repair and maintenance of appliances under the Act and therefore the problem with the stove burners and operation of the stove would be the landlord's duty to rectify, once reported. However, I do find that the tenant must pay for the cost of the part to replace the scorched console in the amount of \$53.81.

Based on the evidence and testimony I find that the landlord is entitled to total monetary compensation of \$479.01, comprised of \$207.20 for cleaning the blinds, \$168.00 for carpet cleaning, \$53.81 to replace the console and the \$50.00 cost of this application.

Conclusion

I find that the tenant would be credited with \$1,000.00, security deposit and \$10.41 Interest totaling \$1,010.41 and that the landlord was entitled to \$497.01 in compensation. In setting off the amount owed to the landlord from the funds being held on behalf of the tenant, this leaves a balance of \$513.40 in favour of the tenant. I hereby issue a monetary order to the tenant for \$513.40 reflecting the remaining balance of the tenant's security deposit. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application and the tenant's application are 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: August 23, 2011.

Residential Tenancy Branch