



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNDC, MNSD, FF

Introduction

This was an application by the landlord for a monetary order for damage to the rental unit, a monetary order for loss of revenue following the end of the tenancy, to keep the security deposit, and to recover the filing fee of \$100. The application was verbally amended by the landlord in the hearing to exclude the request to retain the security deposit as the administration of the security deposit was previously determined by a decision of a Dispute Resolution Officer.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters:

I have disallowed the landlord's evidence of a tape recording of the kitchen refrigerator purported "motor noise" as the same was not provided to the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed for damages to the unit, loss of revenue, and the filing fee?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started December 29, 2008 and ended on or about April 15, 2010. At the start of the tenancy the parties did not conduct a move in inspection. At the end of the tenancy the parties conducted a cursory inspection between them but the landlord did not record the results of that inspection. Several days after the cursory inspection the landlord claims she sent the

tenant a 2 letters purporting to additional damage than previously determined by the landlord. I do not have benefit of a second letter. However, the tenant provided a copy of a letter dated April 24, 2010 in which the landlord claims \$250 to paint the living room walls, \$50 for bedroom carpet, \$30 for oven cleaning, \$50 for carpet cleaning, and \$80 for fixing a door hinge twice. The letter ends with the landlord stating the tenant is *"not to step foot on (her) property anything you have to do you do by mail or email only. This is now private property"*. None the less, the landlord stated they tenant was free to attend the unit for a re-inspection.

The landlord provided a series of photographs of the claimed damages to the unit – received by the tenant.

The landlord is claiming that the tenant caused damage to the rental unit refrigerator, purchased new in October 2009. The refrigerator was found to have a small toy car inserted into a vent to the refrigerator, which the landlord claims is now causing a louder than normal "motor noise" – despite the removal of the said toy car. The landlord has not provided any proof as to the cost of a repair to the refrigerator. The refrigerator is also claimed to have a small dent on its side. The refrigerator is otherwise functional and typical of a 2 year old refrigerator. The landlord is claiming the full cost of the refrigerator in the amount of \$638.38. The tenant did not dispute the landlord's claim, but thinks the landlord's claim for the full cost of the refrigerator is excessive.

The landlord also claims the tenant caused carpet stains to the bedroom carpet which cannot be resolved by cleaning. The landlord provided photographs of some small pink stains to the carpet. The landlord claims the carpet must be replaced, but has not provided any proof as to the cost of replacement. The landlord is claiming \$350. The tenant disputes the landlord's claim as not reasonable.

The landlord claims painting costs of \$700 for a quantum of crayon and pen marks on several walls in the unit and a door, for which the landlord provided photographs, but has not provided any proof or evidence for paint or painting work. The tenant disputes the landlord's claim as excessive and unreasonable given the length of time of the tenancy – claiming it should be considered reasonable wear and tear.

The landlord claims that because of her inability to afford the above noted repairs, she was unable to re-rent the unit and thus is claiming loss of revenue equivalent to six (6) month's rent in the total of \$5400.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss. The claimant must establish:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for such items as loss of rent or loss of occupation during the repair, depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord relies on their determination that the tenant caused the purported damage supported by the photographs into evidence. The tenant relies on their argument that the landlord cannot establish that she caused the damages, and that the damages and that her claims are not reasonable.

On the face of the evidence and testimony by the parties, I find the landlord has only partially met the test for damages and loss. The landlord has not provided sufficient evidence to support the majority of her claims. However, on the face of the evidence provided, I accept that the refrigerator is no longer the same as when it was new, but do not accept the landlord's claim that it requires replacement. I grant the landlord a nominal amount for the damage to the refrigerator in the amount of **\$100**, without leave to reapply.

I accept that the bedroom carpet is no longer the same as before the tenancy and that the small stains are beyond normal wear and tear. However, I do not accept the landlord's claim that it requires replacement. I grant the landlord a nominal amount for the damage to the bedroom carpet in the amount of **\$100**, without leave to reapply.

In the absence of an inspection report at the outset of the tenancy and in light of the landlord's photographic evidence, I accept that the damage to walls requires remediation in excess of normal wear and tear. However, in the absence of actual proof for the cost of the remediation, I grant the landlord a nominal amount for the damage to the walls in the amount of **\$100**, without leave to reapply.

In respect to the landlord's claim for \$5400 in loss of revenue, I find that the landlord is in the business of renting the rental unit and is responsible to avoid foregoing rental income if at all possible. I find that the landlord's claim is not reasonable and far exceeds the amount it required to fully remediate the issues in dispute (\$1688) and again make the unit available at market rent. Therefore, **I dismiss** the landlord's claim for loss of revenue, without leave to reapply.

As the landlord was partially successful in her claim, I grant the landlord partial recovery of the filing fee in the amount of **\$25**. The landlord's total entitlement is for **\$325**.

Conclusion

I grant the landlord an Order under Section 67 of the Act for the amount of **\$325**. If necessary, this order may be filed in the Small Claims 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*.
