



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant filed an application for dispute resolution to recover the loss of four outdoor Adirondak cedar chairs. He testified that they were in his backyard, and that between July 17th and July 25th, 2011, the landlord decided to dispose of them without his knowledge or consent. The tenant described the chairs as weathered and old; he stated that they were approximately 12 years old and had a remaining useful life of approximately 5 years. The tenant said that there was also a table in good condition in the yard that the landlord did not remove.

The tenant made a monetary claim as follows:

- 2 Adirondak cedar chairs @ \$160.00 each:	\$ 320.00
- 2 folding Adirondak cedar chairs @ \$175.00 each:	\$ 350.00
- Delivery:	\$ 80.00
- Sub-total:	\$ 750.00
- 12% HST:	\$ 90.00
- Total:	\$ 840.00

The landlord testified he took over the property around October 2009 and that it needed significant clean up. He said that he spoke to the tenant about the chairs; he stated that they were in very poor condition, describing them as rotten, with pieces missing and screws sticking out through the wood. He agreed that he ought to have given the tenant prior notice before disposing of them and tried to resolve this dispute informally. He said that he apologized to the tenant and purchased two similar cedar chairs and provided photographs. The landlord said that he paid \$100.00.

The tenant argued that the chairs were in good condition; he said that he did not accept the landlord's chairs as settlement, partly because this was done after he filed for dispute resolution and described the landlord's attempt to reconcile as "too little too late".

Analysis

Section 7(1) of the Act provides in part that if a landlord does not comply with this Act, the Regulations or the tenancy agreement, the non-complying landlord must compensate the tenant for the damage or loss which results.

Section 7(2) of the Act states in part that a tenant who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss.

The evidence confirmed that the chairs were well worn and as such I should consider wear and tear when assessing the quantum of the claim. The tenant stated that the chairs had a useful life of approximately 5 years. For this reason I do not find that the landlord should bear the full replacement cost. The tenant assigned a replacement value that was not supported with material evidence such as quotes or sales receipts; accordingly I assign a replacement cost of \$600.00, out of which I subtract 60% for useful life and I find that the tenant is entitled to the balance of \$240.00.

The landlord spent \$100.00 to replace two of the missing four chairs. Although the tenant did not accept them, I find that the landlord complied with the Act and did mitigate the tenant's loss in part. The landlord felt that the chairs were no longer useful and I accept his point of view; this is supported by the fact that he did not dispose of the table because it was in good condition.

Accordingly I find that the tenant is entitled to recover the balance of \$140.00 for replacement of an additional two chairs.

Conclusion

The tenant established a claim of \$140.00. Since he was partially successful, the tenant is entitled to partial recovery of the filing fee for \$25.00 and pursuant to Section 67 of the Act, I grant the tenant a monetary order totalling \$165.00.

This Order may be registered 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*.

Dated: November 17, 2011.

Residential Tenancy Branch