



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call on November 17, 2011, having been adjourned from November 1, 2011 at the request of the landlord and with the consent of the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord was represented at the hearing by counsel, and the landlord and tenant both attended and gave affirmed testimony. The tenant also called a witness who gave affirmed testimony. The parties provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other and were given the opportunity to cross examine each other and the witness on the evidence and testimony provided. All evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The parties agree that this fixed term tenancy began on January 1, 2011, expired on June 30, 2011 and then reverted to a month-to-month tenancy. The tenancy ultimately ended on July 16, 2011. Rent in the amount of \$2,100.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of

the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1,050.00, which is still held in trust by the landlord.

The landlord testified that the move-out condition inspection was to be completed on July 14, 2011. The tenant was present and agreed to fix deficiencies and the rental unit would be re-inspected on July 16, 2011 at 2:00 p.m., but the tenant did not attend. The landlord completed the inspection in the absence of the tenant and upon returning home the landlord discovered an email from the tenant which was marked as being sent at 1:30 p.m. A copy of the email was provided in advance of the hearing and it states: "We have completed the additional cleaning as discussed on Thursday. Do you want to meet at the unit tomorrow to do a final walk-thru? Let me know what time works for you ... Early in the day works best for me." The landlord responded with an email stating that the condition inspection report had been completed in the absence of the tenant and the landlord would be providing estimates to the tenant for repairs to the fridge, stove and a missing light fixture. The email also states that the landlord needed to properly clean the unit so it would be ready for a new tenancy.

The landlord further testified that the door on the stainless steel fridge in the rental unit had been dented during the tenancy and the stainless steel range had been considerably scratched with what appears to be abrasive cleaners. Photographs and estimates were provided in advance of the hearing. The first estimate was provided by email and contains model numbers for both of the appliances. It states that the fridge door cannot be repaired or fixed and requires replacement for \$613.99 plus \$199.97 for labor, and the total with tax is \$911.64. The estimate also states the cost for replacing the console panel on the range would cost \$184.99, plus labor to install it is \$180.21, however if both appliances were repaired at the same time, the company would offer a 2nd appliance discount and the cost to install the console panel would be reduced to \$135.76. The total with tax would be \$359.24.

The second estimate provided is also in the form of an email from Sears Parts Dept., which states that dents and scratches in major appliances cannot be repaired, but must be replaced with new parts. The cost for the fridge door assembly is \$613.99 and \$175.99 for the console on the range. The trip fee for the technician is \$69.98, plus labor charges and GST.

The third estimate also contains model numbers and specifies as follows, for the fridge:

- Fridge door panel assembly \$626.75
- The door panel is a 1 piece foamed door panel assy, cannot be repaired or the dent removed
- Misc parts and shop supplies \$5.75

- Travel and Labor to install \$124.95
- Tax (HST) \$90.89

and for the range:

- Console panel \$188.45
- The scratches cannot be removed, the panel can only be replaced
- Misc parts and shop supplies \$5.75
- Travel and labor to install \$124.95
- Tax (HST) \$38.30

The estimate also states that if the landlord were to proceed with replacement of both panels at the same time and at the same address, the landlord would receive a \$50.00 reduction in the total labor charges.

Another estimate was also provided which specifies that the appliances are not fixable. The parts for the fridge door would cost \$613.75 and \$175.45 for the back panel on the range. It also warns that before ordering parts, a party must re-verify and order by model number because they cannot be returned. The quote does not include labor, since the company does not service that part of the city.

The appliances have not yet been repaired, although the rental unit has been re-rented for \$2,200.00 per month.

Also, a light fixture above the kitchen counter was missing, for which the landlord provided a receipt in the amount of \$44.35. The landlord also testified that the rental unit was not cleaned and completed that work and then prepared an invoice for the labor. A copy of the invoice was provided in the amount of \$112.50, and it states 4.5 hours to clean and supply all cleaning materials and to bring the unit to rentable condition.

The landlord claims the following damages:

- \$44.35 for a light fixture that was missing above the kitchen counter (receipt provided);
- \$112.50 for the landlord's time for cleaning the rental unit;
- \$1,152.70 for repairing the fridge and range;
- \$50.00 for recovery of the filing fee for the cost of this application.

The tenant testified that the parties did not mutually schedule the July 16, 2011 condition inspection. During the one that the parties met for on July 14, 2011, the

tenant became frustrated at the landlord pointing out minor issues, such as crumbs above the tenant's eye level, and the landlord pointed out that cleaning was needed on the fridge and range. The tenant cleaned on the 16th of July and then sent the landlord the email. The landlord didn't respond until the next day saying the landlord would be out of town on the weekend, and the tenant was to do the cleaning requested by the landlord and email the landlord when finished.

The tenant further testified that the estimates provided by the landlord are for stainless steel, but there is no evidence that the appliances were actually stainless steel, or plastic, or another faux steel. No one who provided an estimate ever looked at the appliances.

The tenant also testified that the rental unit was cleaned by the tenant and a friend on the 16th of July, when they returned to clean the fridge, stove, oven and bathroom. The tenant stated that the photographs taken by the landlord of those items were taken prior to the tenant cleaning on July 16.

The tenant does not dispute the missing light fixture in the kitchen.

The tenant's witness testified that the witness went through the rental unit with a white glove, but the landlord still wanted more cleaning done. The witness felt the landlord was using the witness as the landlord's cleaning person for the next tenant. The witness also testified that the landlord wanted the witness to re-clean the panel on the back of the stove, so the witness did. The witness further testified that the landlord did not arrange July 16, 2011 at 2:00 p.m. for the move-out condition inspection; the landlord was going away for the weekend. The witness wanted to do it right away, but the landlord said no. The landlord didn't have a telephone so the tenant and the witness could only contact the landlord by email.

When asked how the dent on the fridge was caused, the witness did not know, and stated that perhaps it was there prior to this tenancy.

The witness also testified that the range was a self-cleaning range and the landlord turned on the self-cleaning feature during the July 14, 2011 inspection. The photograph provided by the landlord is residue from the cleaner.

Analysis

The *Residential Tenancy Act* states that a landlord must provide a tenant with at least 2 opportunities to complete a move-out condition inspection report. In the circumstances, I find that the landlord has failed to establish that the tenant knew about the July 16, 2011 inspection. The *Act* further states that if the landlord fails to provide the tenant with at least 2 opportunities to complete the inspection, the landlord's right to claim against the security deposit for damages is extinguished, which I must find.

With respect to the landlord's claim for damages, I will firstly deal with the claim for cleaning. The tenant's responsibility under the *Act* is to leave a rental unit reasonably clean and undamaged except for normal wear and tear. The tenant is not responsible for leaving a rental unit in the pristine condition that a landlord may require in order to re-rent the unit, or show the rental unit to perspective renters or purchasers; that is the landlord's responsibility. I further find that the landlord has failed to establish the date that the photographs were taken. The landlord stated that the photographs were taken on the 16th of July and the tenant stated that the photographs were taken prior to the tenant and the tenant's friend attending at the rental unit and completing more cleaning on the 16th of July. Further, the move-out condition inspection report was completed by the landlord in the absence of the tenant. The onus is on the claiming party to establish the claim, and in the absence of any evidence, the disputed testimony of the landlord does not satisfy me that the landlord is entitled to a monetary order for cleaning.

With respect to the missing light fixture, the tenant does not deny that claim, and I find that the landlord has established a cost of \$44.35.

With respect to the fridge and range, I have reviewed the photographs and find that the dent in the fridge door is significant enough that it would have been noticed by the parties at the outset of the tenancy. I therefore find that the tenant is responsible for that cost. I also find that the scratches on the console of the range were caused by the tenant, perhaps in an effort to satisfy the landlord of its cleanliness. Nevertheless, I find that the landlord has established a claim for the lowest estimate, including installation, labor and HST for \$1,152.70. With respect to the tenant's testimony that the estimates were made without seeing the appliances, and that there is no evidence that the appliances are actually stainless steel, I find that the model numbers were used to prepare those estimates, and they should be relied upon.

In summary, I find that the landlord's right to claim against the security deposit for damages is extinguished; the landlord has established a claim in the amount of \$44.35 for the light fixture and \$1,152.70 for the fridge door and range.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The *Residential Tenancy Act* also states that where the director finds that the tenant owes the landlord an amount, the amount may be deducted from any security deposit owed to the tenant. In the circumstances, I find that the amount owed by the tenant to the landlord ought to be set off from the security deposit due to the tenant.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$1,050.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance of \$197.05. This order is final and binding on the parties and may be enforced.

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 28, 2011.

Residential Tenancy Branch