



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord 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 fee from the tenant for the cost of this application.

The landlord and tenant both appeared and gave affirmed testimony. The landlord was assisted by an interpreter who was affirmed to well and truly interpret the proceedings from the English language to the Cantonese language and from the Cantonese language to the English language to the best of the interpreter's knowledge, skill and ability. The landlord also provided evidentiary material prior to the hearing, and both parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues were raised with respect to service of documents.

Issue(s) to be Decided

Has the landlord established a monetary claim against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant moved into the rental unit in January, 2010 and the landlord bought the property in March, 2010. The tenancy ended on March 31, 2012, and the parties did not sign a written tenancy agreement. Rent in the amount of \$700.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. The \$350.00 security deposit was returned to the tenant on March 31, 2012. No move-in or move-out condition inspection reports were completed at the beginning or end of the tenancy.

The landlord testified that the parties did not have an agreement for the tenant's use of the garage on the rental property, but the tenant wanted to put a bicycle and some boxes on a shelf in the garage. The tenant then also put a freezer in the garage which remained there from July to August, 2011 without the landlord's permission. The landlord found the items in the garage upon returning from a vacation out of the country. The landlord asked her daughter to email the tenant asking to remove the items, which she did, but received no reply from the tenant. Another email was sent asking the tenant to return the garage key, and again no response was received.

In August, 2011 the landlord bought a freezer intending to put it in the garage, so unplugged the tenant's freezer. The tenant's freezer was locked so the landlord was not able to see if there was anything in it. The tenant sent the landlord an email stating that all the food in the freezer was destroyed. The landlord's daughter asked the tenant in a reply email about compensation but again the tenant didn't respond. The tenant mentioned compensation in an email in November, 2011 but didn't provide any details. In January, 2012 the parties spoke and the tenant asked for \$269.00, which was deducted from the rent received by the landlord for February, 2012. The landlord never did check to see if there was in fact any food in the freezer or that any was destroyed.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on January 16, 2012, and the tenant moved from the rental unit in accordance with the notice, but didn't clean before leaving. The landlord asked the tenant why no cleaning was done, and the tenant responded that cleaning wasn't necessary because the landlord hadn't given the tenant the equivalent of one month's rent. The landlord was subsequently ordered at dispute resolution to pay the tenant \$750.00 under file number 790910, which included the filing fee.

The landlord claims \$60.00 for carpet cleaning and \$200.00 for cleaning the rental unit and garage, and provided receipts to substantiate those amounts. The landlord also claims the \$269.00 as recovery of the deduction the tenant made from a previous rent cheque which was not consented to by the landlord.

The tenant testified that the rental unit wasn't clean when the tenant moved in, and items had been left behind by other tenants in the bathroom and kitchen cupboards as well as a large couch and 4 chairs. The rental unit included a kitchen/living room combined, a bedroom and a bathroom, as well as a portion of the garage for shared storage.

The tenant further testified that on September 18, 2011 the tenant went to the garage to put some chicken in the freezer and discovered that everything had melted due to the

freezer being unplugged. The tenant was quite upset and didn't talk to the landlord right away. The tenant threw the contents from the freezer into the garbage bin and the next morning took a video of it before the garbage was taken away. The tenant received the landlord's email but didn't want to talk to the landlord because the tenant was so upset. The tenant deducted the cost of a replacement freezer from the rent cheque for either January or February, 2012 and explained that the freezer could not be used after food had thawed in it. All the food was rotten; meat, berries, vegetables, fish, salmon and turkey.

Then the landlord served the notice to end tenancy without providing any compensation. The tenant also testified that it's been difficult to talk to the landlord and requires the interpreter, but told the landlord that cleaning wasn't necessary because the rental unit wasn't clean when the tenant moved in. On moving day, the parties discovered mice had been in the landlord's and the tenant's boxes in the garage. The tenant did not leave the rental unit a mess.

Analysis

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy. The *Act* requires the parties to complete the move-in and move-out condition inspection reports, but the consequences for not doing so are two-fold: the landlord cannot claim against the security deposit for damages, and the regulations specify that the reports are evidence of the condition of the rental unit. In this case, the security deposit has been returned so that consequence does not apply. Also, the evidence that would support either's claim of the condition of the rental unit isn't available. However, that doesn't remove the tenant's responsibility to leave a rental unit reasonably clean at the end of a tenancy.

In order to be successful in a claim for damages, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce the damage or loss suffered.

The landlord claims cleaning costs as against the tenant and the tenant has testified that the rental unit wasn't left a mess but that the tenant had told the landlord it wasn't

necessary to clean because it wasn't clean at the beginning of the tenancy. Therefore, I find that there is no dispute that the tenant did not clean the rental unit prior to vacating. The landlord has provided evidence of the cleaning required including the costs associated to cleaning. I have reviewed the evidentiary material provided by the landlord, and I find that the landlord has established a claim in the amount of \$260.00 for cleaning.

With respect to the landlord's claim for return of the portion of rent withheld from February's rent, neither party has provided me with sufficient evidence that the parties ever made an agreement that the landlord would compensate the tenant \$269.00 for the damaged freezer. The landlord testified to sending the tenant an email asking about compensation and then the parties spoke in January about it, but the landlord did not check to see if any food was destroyed. The tenant testified to taking a video of the food in the garbage bin but did not provide a copy of it for this hearing. Further, the tenant testified that the compensation was for the damaged freezer resulting from the rotted food, not for replacement of the food. The tenant did not provide any evidentiary material, and I have no evidence of what a new freezer cost the tenant or whether or not the tenant ever bought a new freezer. However, the issue before me is whether or not the landlord has provided sufficient evidence to satisfy me that the tenant had no right under the *Act* to deduct any portion of the rent. If the parties agreed, the tenant has not breached the *Act*. If the parties did not agree, then I must find that the tenant did not have a lawful right to deduct that amount from a month's rent.

In the circumstances, I find that the landlord's intention was to offer the tenant compensation after the landlord unplugged the tenant's freezer. Therefore, the landlord has not proven that the parties did not agree to the reduction in rent, and the landlord's application for recovery of \$269.00 is dismissed.

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.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$310.00.

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: October 4, 2012.

Residential Tenancy Branch