



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

The tenant advised that she was at work and had limited time to participate in the hearing. The tenant asked for an adjournment. The landlord stated that he wished to proceed as he spent considerable time traveling and had arranged his travel plans around the hearing. I denied the adjournment as the tenant had been given ample notice of the hearing and had time to rearrange her work schedule to permit her to participate and as an adjournment would inconvenience the landlord.

The tenant remained in the conference call until the hearing was complete, although she was briefly disconnected during the hearing. The tenant was able to reconnect after only a few minutes and did not miss any testimony while disconnected.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in September 2011 at which time the tenant paid a \$847.50 security deposit. The landlord testified that when the tenant moved out of the rental unit, he discovered a significant amount of damage. The landlord entered into evidence some 21 photographs showing that holes had been gouged into most walls and doors, some holes more than 12" wide. Screen doors, the deck railing and the refrigerator door were damaged and several screens were missing. The landlord presented further evidence that lamps, curtains and a mirror were missing at the end of the tenancy. The landlord made a list of the damages and beside each entry wrote the value of repair as it had been quoted to him at the time he made his application.

At the hearing, the landlord testified that he had hired contractors to perform all the repairs. The landlord did not enter the contractor invoices into evidence and testified that he could not recall how much the repairs had cost. The landlord asked if he could send me the invoices, but I advised that as he had been given more than 2 months to prepare for the hearing and as he had been given very clear instructions when he made his application that he was to submit all evidence in advance of the hearing, I would not permit submission of evidence after the hearing.

The tenant argued that she should not be held responsible for the damage because the landlord had not performed a condition inspection at the beginning of the tenancy and because she believed he had breached his obligations as a landlord during the tenancy by permitting construction in the basement of the house. She further testified that she is a single mother and cannot afford to pay for repairs. The tenant specifically stated that the damage had occurred during the tenancy and acknowledged that the landlord's photographs accurately depicted the rental unit.

Analysis

The Residential Tenancy Act requires landlords to perform condition inspections of a rental unit at the beginning and end of a tenancy and to generate a written report and provides that if a landlord fails to do so, his right to claim against the security deposit is extinguished. However, there is no provision in the Act whereby the landlord is prevented from making a claim for damages.

The landlord bears the burden of proving not only that the tenant caused the damage in question, but he must also prove the amount of his loss. The landlord did not provide professional quotations for the cost of repairs, but merely typed a list, presumably using figures that he'd been verbally quoted by contractors. The landlord has had repairs completed, but has provided no evidence as to the actual cost of repairs and could not even recall how much those repairs cost.

Under normal circumstances, I would find that the landlord had failed to prove his claim and I would dismiss the claim. However, the tenant acknowledged that the damage was not present in the rental unit at the start of the tenancy and that it had occurred during the tenancy.

Given the tenant's admission that the damage occurred during her tenancy, I find that she must be held liable for the damage. I find that most of the damage was deliberate and malicious and I find that in the absence of proof of how much the repairs actually cost the landlord, it is appropriate for me to award the landlord a conservative sum which is likely less than what he paid for repairs.

As the damage to the walls and doors was significant and would require extensive patching and in some cases replacement of doors and sections of drywall as well as requiring repainting of the unit, I find that an award of \$3,500.00 will adequately compensate the landlord and I award him that sum. I further find that as the landlord has been partially successful in his application, he should recover one half of the filing fee paid to bring his claim and I award him a further \$50.00.

Conclusion

The landlord is awarded \$3,550.00. Although the landlord did not make a claim against the security deposit, section 72 of the Act states that when making an award in favour of the landlord, I may apply the security deposit to the award. I find it appropriate to do so in these circumstances. I order the landlord to retain the \$847.50 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$2,702.50. This order may be filed in the Small Claims Division of the Provincial 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: October 24, 2012

Residential Tenancy Branch