



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

Issue(s) to be Decided

1. Should the Landlords be granted a Monetary Order?

Background and Evidence

The Tenants confirmed receipt of the Landlords' evidence which included, among other things, copies of: an amended detailed calculation of the amounts claimed, a list of evidence, invoices for a window and new fridge, pictures which were taken shortly after the tenancy ended in July 2012, and a video.

The Landlord confirmed that he acts as Agent for his father who owns this apartment building. He noted that his father's address is listed as the service address on their application for dispute resolution and he has no knowledge of evidence being received from the Tenants.

The Tenants argued that they sent their evidence to the Landlord via registered mail and that they had the tracking number at their home location. I advised the parties that I would accept copies of the Canada Post tracking number and tracking information via fax no later than 1:30 p.m. today, October 19, 2012, and I would explain in my analysis

below if I found service of the Tenants' evidence to be completed in accordance with the rules of procedure.

The Tenants' submitted evidence which included, among other things, copies of: USB drive, a written statement outlining the evidence, a previous decision, the application for tenancy, letters to the Landlords from the Tenants, notices received from the Landlords, information relating to a police file, and a request for the return of their security deposit.

Upon review of the application the Landlord advised that he wished to withdraw his claim for \$3,931.44 for physical and mental distress and assault as he recognized that it does not fall under the *Residential Tenancy Act*. They wished to proceed with the remainder of their claim for damages.

Neither party disputed the following facts:

- The Tenants completed an application for tenancy and upon acceptance of their application they entered into a verbal tenancy that began on March 1, 2012;
- Rent was payable on the first of each month in the amount of \$950.00 and on January 31, 2012 the Tenants paid \$475.00 as the security deposit;
- No condition inspection report forms were completed at move in or when the Tenants vacated the property
- The Tenants vacated the property and gave the Landlord the keys and their forwarding address in writing on July 11, 2012.

The Landlord advised they are seeking costs to repair the damages as follows:

\$212.80	repairs to a broken window which they argue was broken by the Tenants during the tenancy
\$40.00	cost to replace the bathroom mirror which they paid the Tenants for with laundry tokens and which the Tenants took when they moved out
\$445.76	cost to replace the fridge which the Tenants purposely damaged by cutting the freon gas lines as shown in their photos – the Landlord did not know the exact age of the fridge but noted that they provided a receipt which proves they had to purchase a new fridge
\$320.00	Labour to clean the rental unit, the oven and stove top, patch the holes and paint the suite as supported by his photos which were taken near the end of July 2012.

The Tenants argued that the window broke because the Landlord failed to repair the broken latches/hinges of the window as supported by their evidence which included two written requests to have repairs completed and which lists the window requiring repair.

The Tenants confirmed they purchased a mirror for the bathroom however they were never reimbursed for the cost of that mirror so it was their possession to take with them when they moved. They deny receiving laundry tokens as payment for the mirror.

The Tenants deny causing damage to the fridge and confirmed that they had no problems with the fridge during their tenancy. They stated that they wiped out the top of the stove but did not take it apart to clean it nor did they spray the oven with cleaner. During the course of this hearing the male Tenant B.G. became very upset and was yelling and screaming. He took the phone away from H.F. and began screaming at me saying how dirty the rental unit was at the beginning of the tenancy. I told the Tenants that if there was one more outburst like that I would disconnect them from the hearing. At that point the male Tenant, B.G. left the area where the other Tenant, H.F. was located and we finished the hearing in his absence.

Analysis

The Tenants were instructed to provide me with the Canada Post receipts and tracking information no later than October 19, 2012 at 1:30 p.m. by fax; however I was not aware that during this hearing the fax machine was jammed and was awaiting a repair person. The fax machine was subsequently repaired and a fax was immediately received from the Tenants and was stamped as being received at 2:01 pm (14:01 hrs) on October 19, 2012. In the interest of the principals of natural justice I have attached a copy of the Tenants' fax to this decision so all parties may see the information provided by the Tenants.

Based on the foregoing I accept that the Tenants evidence was sufficiently served to the Landlord, in accordance with section 88 of the *Act* and #4 of the *Residential Tenancy Branch Rules of Procedure*. Accordingly I have considered both the Landlords' and the Tenants' evidence and testimony, and on a balance of probabilities I find as follows:

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Notwithstanding the Tenants' testimony denying responsibility for causing damage to the fridge, given the circumstances presented to me during the hearing, I find that the damage to the fridge was caused during the tenancy either by the Tenants or by someone who was allowed into the rental unit by the Tenants. I make this finding in part after considering how acrimonious the relationship was between the parties at the end of this tenancy and after considering the male Tenant's temper which was displayed during this hearing. It would be unreasonable to think that the Landlords caused the damage to the fridge as this would have caused them to have to suffer a financial loss to have to replace it before they could re-rent the unit.

The Tenants acknowledged that they did not spray the oven and did not remove the burners to clean the stove top. Furthermore the Tenants did not deny that they did not patch the holes in the walls at the end of the tenancy. Therefore, I find they did not properly clean or repair the unit as required.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit stove and oven unclean, the fridge damaged, and with some damage to the walls at the end of the tenancy.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

In determining the amount of loss suffered by the Landlord, I find there to be insufficient evidence to prove the actual age of the fridge and I find amounts claimed for the cost of labor and supplies to clean the oven/stove and repair the holes in the walls to be excessive.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded as an affirmation that there has been an infraction of a legal right. In this case I find that the Landlords are entitled to nominal damages to replace the fridge, clean the oven/stove, and repair the holes in the walls in the amount of **\$475.00** which is comprised of \$225.00 towards the cost of the fridge and \$250.00 for labour to clean the oven/stove and repair the walls.

Upon review of the remaining items claimed by the Landlords, I find there to be insufficient evidence to prove the Tenants were responsible for the window being broken or that the Landlord provided compensation to the Tenants as payment for the bathroom mirror. Accordingly, the Landlords claims for the aforementioned items are hereby dismissed.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the Landlords in this case did not carry out move-in or move-out inspections or complete condition inspection reports, they lost her right to claim the security deposit for damage to the property.

The Landlords were therefore required to return the security deposit to the Tenants within 15 days of the later of the two of the tenancy ending and having received the Tenant's forwarding address in writing. The Landlord received the tenant's forwarding address on July 11, 2012 but did not return the security deposit within 15 days of that date.

Because the Landlords' right to claim against the security deposit for damage to the property was extinguished, and they failed to return the Tenants' security deposit within 15 days of having received their forwarding address, section 38 of the Act requires that the Landlord pay the tenant double the amount of the deposit.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest that is still held in trust by the Landlords as follows:

Nominal Damages (Fridge, oven and walls)	\$ 475.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 525.00
LESS: 2 x Security Deposit \$475.00 + Interest 0.00	<u>-950.00</u>
Offset amount due to the <u>Tenants</u>	<u>\$ 425.00</u>

The Landlords are hereby Ordered to return the **\$425.00** balance due to the Tenants forthwith.

Conclusion

The Tenants have been issued a Monetary Order in the amount of \$425.00 for the balance owed of their security deposit. This Order is legally binding and must be served upon the Landlords.

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 22, 2012.

Residential Tenancy Branch