



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, FF

Introduction

This was an application by the landlord for a monetary order for damage to the rental unit and to retain the security deposit in partial satisfaction of any monetary claim. The application was orally amended by the landlord in the hearing to exclude the request for loss of revenue.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed for damages to the unit?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started December 01, 2011 and ended June 01, 2012 when the tenant vacated. The landlord currently holds the security deposit in trust – in the amount of \$250.00. I have benefit of a tenancy agreement document signed by both parties subsequent to the start of the tenancy.

Neither party provided evidence that at the start and end of the tenancy the parties conducted and recorded mutually conducted inspections.

The landlord claims that the tenant caused damage to the rental unit *toaster oven, cook top, and crockery* purportedly belonging to the rental unit. The landlord provided a list of the claimed replacement costs and an e-mail narrative between the parties, as well as

what is described as the tenant's acknowledged damage to a microwave oven, which was reportedly subsequently replaced and not part of this claim.

The tenant testified that they disagreed with the landlord's claim and assessment of damages.

Analysis

Section 7 of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable or extravagant.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then

provide evidence that can verify the actual monetary amount of the damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage incurred.

The landlord relies on their determination that the tenant caused the purported damage. The tenant relies on their argument that they did not cause the damage.

The landlord bears the burden of proof. On the face of the evidence, and in the absence of receipts for the claimed damaged items, verifying the actual amount required to compensate for the claimed damage, I find the landlord has not met the test for damages. The landlord has not provided sufficient evidence to support their claim that the tenant in this matter caused damage to the rental unit. As a result, **I dismiss** the landlord's application in its entirety, without leave to reapply.

It must be noted that Residential Tenancy Policy Guideline #17, in part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for Arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has been dismissed in its entirety without leave to reapply it is appropriate that I Order the return of the tenant's security deposit.

Conclusion

The landlord's claim **is dismissed**, without leave to reapply.

I Order the landlord to return the security deposit to the tenant. The landlord must use a service method described in Section 88 (c), (d) or (f) of the Act [*service of documents*] or give the deposit personally to the tenant.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$250.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 10, 2012

Residential Tenancy Branch