

DECISION

Dispute Codes MND, MNDC, FF

Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss and the recovery of the filing fee. The Tenant has also made an application for a monetary order for money owed or compensation for damage or loss and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing and evidence package filed by the other party, I am satisfied that both parties have been properly served.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (legal fees) are dismissed.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on September 1, 2011 on a fixed term tenancy ending on August 31, 2012 as shown by the submitted copy of the signed tenancy agreement. The Tenancy mutually ended on May 31, 2012. The monthly rent was \$1,400.00 payable on the 1st of each month which included utilities. A \$600.00 security deposit was paid on June 1, 2006. Both parties agreed that the Landlord returned the \$600.00 security deposit and the remaining portion of May 2012 rent after the fire.

The Landlord seeks a monetary order for \$17,863.97. This consists of \$6,509.03 for the kitchen repair/renovations based upon a quote from OnSide Restorations titled,

“Estimate Owner’s Extras” dated June 5, 2012, \$2,836.74 based upon a quote for floor repairs from GQ Flooring, \$1,227.00 for a cash amount paid to the Tenants under duress on May 22, 2012, \$1,400.00 for the loss of rental income for the time period May 15, 2012 to June 15, 2012, \$5,000.00 for claims in damages (non-pecuniary losses for physical inconvenience, discomfort and pain and suffering), \$219.20 for legal fees to consult a lawyer and \$500.00 for recovery of the insurance deductible.

The Tenants seek a monetary order for \$10,350.63. This consists of \$400.00 for an illegal rent increase for the period September 2011 to April 2012, \$500.00 for damage kitchen ware, \$300.00 furniture storage charges, \$600.00 for moving costs (twice), \$400.00 for an ambulance bill, \$2,079.84 for the family eating out costs for 49 days, \$241.97 for car gas charges, \$228.72 for 4 days at Happy Days Inn from June 15-19, 2012, \$500.00 for staying 11 days at a friend’s house from June 19-July 1, 2012 and \$5,000.00 for pain and suffering for the whole family.

Both parties agreed that the Tenancy ended because of the fire from the kitchen that started from the built in oven. Both parties have submitted a copy of the Burnaby Fire Department Incident Report, dated on or about June 18, 2012 and refer to the section that reads, “Fire appears to have started in air space around built-in oven. Rags towels and paper-towels appeared to have been stored in airspace around oven. **Burn patterns indicate fire started by arcing electrical service to oven**, igniting particle wood behind oven. Oven was in use at the time. Smoke was visible during cooking.” The Landlord claims that the fire was a result of the Tenant’s negligence because of the rags, towels and paper towels blocking the airspace around the oven and that the Tenant’s failed to comply with the warnings on the oven instruction manual. The Tenants dispute this stating that the fire was a result of a negligent installation of the oven provided by the Landlord.

Analysis

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim, in this case both parties are responsible as they have each made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Both parties have provided conflicting testimony and rely solely on the Burnaby Fire Department Incident Report dated June 18, 2012 for the incident that took place on May 10, 2012.

When a party makes a claim for damage or loss the burden of proof lies with the applicant 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.

I find based upon the relied upon Burnaby Fire Department Incident Report that the cause of the fire is undetermined. The report clearly states that the fire started by arcing electrical service to the oven. Neither party has provided any clear indication on what caused the arcing electricity or provided sufficient evidence of any negligence caused by the other party. On a balance of probabilities I find that both parties have failed to establish a claim. As neither party has been able to provide sufficient evidence to satisfy me who is negligent, the application of both parties have failed and are dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed without leave to reapply.

The Tenant's application is dismissed without leave to reapply.

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 14, 2012.

Residential Tenancy Branch