



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for monetary compensation for damage to the rental unit; unpaid utilities; and, authorization to retain part of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed for damage to the rental unit and unpaid utilities?
2. Is the landlord authorized to retain any part of the security deposit?

Background and Evidence

The co-tenancy commenced August 15, 2011 and ended August 31, 2012. The tenants paid a security deposit of \$675.00. The landlord did not prepare a move-in or move-out inspection report although I heard that the parties participated in a move-out inspection together. The tenants provided a forwarding address to the landlord via email on November 8, 2012.

The landlord is seeking to recover \$41.25 from the tenants for their portion of gas and hydro bills that arrived after the tenancy ended. This part of the claim is undisputed.

The issue under dispute is the damaged kitchen light fixture which. The light fixture was a track light with four track heads.

The landlord submitted that she noticed one of the light bulbs burned out and another light bulb hanging out of the head during the move-out inspection but did not point it out to the tenants as she thought it would be a matter of replacing the light bulbs. The landlord described how she later determined that two clips holding the light bulbs in were missing. The landlord submitted that replacement clips could not be purchased.

The landlord requested her contractor replace the light fixture entirely at a cost of \$425.60. The landlord provided an invoice dated October 4, 2012 for removal of the old light fixture, supply and install of a "new light" in the kitchen. The landlord emailed the tenants November 7, 2012 to inform the tenants that she wished to deduct monies from their security deposit for the light fixture. The tenants did not agree with either of the landlord's two proposals for deductions for the light fixture. The landlord proceeded to file this Application for Dispute Resolution and seeks to recover that cost from the tenants.

The tenants submitted, through their agent, and by way of their documentary evidence that the light bulb was hanging during their entire tenancy and another bulb was burned out. The landlord did not point out any damage to the light fixture during the move-out inspection and they did not hear anything about a damaged light fixture until they enquired about their security deposit refund on November 7, 2012. The tenants are of the position the landlord has upgraded the light fixture and the landlord's claim is unreasonably high especially when replacement light heads can be purchased for \$16.39 plus tax. The tenant's agent pointed out that the landlord's photograph of the damaged light fixture was taken after the new tenants moved in on September 19, 2012. As an alternative position, the tenants' agent submitted that should the tenants be held responsible for damaging the light fixture the tenants' liability would be the cost of one replacement track head, which is \$16.39 at most.

The landlord responded by stating that replaced the track light with another track light. However, in any event, the tenants are at least responsible for two damaged light heads and labour to install them. The landlord stated that she obtained a verbal quote of \$80.00 per hour for a contractor to install new track heads.

In reaching this decision I have considered the documentary and photographs evidence presented by both parties, including: photographs of the damaged light; invoices and receipts provided by the landlord; utility bills; print-outs showing the replacement cost of track heads and light clips; and, numerous email exchanges between the parties.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the landlord bears the burden to prove her claims against the tenants.

The Act requires a landlord to prepare and provide tenants with a condition inspection report at the beginning and end of every tenancy. The purpose of a condition inspection

report is to establish the condition of the rental unit at the beginning and end of the tenancy. The Residential Tenancy Regulations also provide that a condition inspection report provides the best evidence as to the condition of a rental unit unless there is a preponderance of evidence to the contrary.

In this case, the parties are in dispute as to whether there was a missing light clip at the beginning of this tenancy and that one of the light bulbs was hanging the entire time. Surely, had a move-in inspection report been prepared there would be documentary evidence for me to review and consider. Unfortunately, I am left with disputed evidence based upon the recollections of each of the parties over a year later.

I note that once the tenants were informed by the landlord on November 7, 2012 that there was damage to the light fixture the tenants responded on November 8, 2012 stating "one of the clips was missing when Sarah and I moved in August 2011 and we replaced the burnt light bulbs and lived with the one hanging." I find the tenants have maintained their position that the light clip was missing from the beginning of their tenancy throughout this dispute.

I accept that the track light was relatively new prior to the tenancy; although I note there are discrepancies in the landlord's evidence with respect to its age. In her written submissions and evidence the landlord asserts the track light was newly installed in July 2011. However, in her email to the tenants on November 13, 2012 the landlord makes certain statements including "Fact: The kitchen lights were installed about 6 months prior to the start of your lease." Nevertheless, the landlord has maintained her position that the track lights were working at the beginning of the tenancy.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Although the track light was relatively new at the beginning of the tenancy it remains that there was a period of time of at least one month up to several months that the light was installed before the tenancy commenced. I also note that in January 2012 the tenant was forthcoming about possible damage she caused when using the dryer and her willingness to pay repair costs which indicate to me that the tenants would be reasonably likely to admit to damage they caused.

Considering all of the above, I find the different version of events presented to me to be equally probable in the absence of a move-in inspection report or other documentation, photographs, or witness testimony that would establish the condition of the light at the

beginning of the tenancy. Since the landlord bears the burden of proof I find that her claim against the tenants for the damaged light fixture fails.

As the claim for utilities was undisputed I award the landlord \$41.25, as claimed.

I make no award for recovery of the filing fee as I am satisfied the tenants were always in agreement to pay for the utilities based upon the email communication presented to me.

In light of the above, I authorize the landlord to retain \$41.25 of the security deposit and I order the landlord to pay the tenants the balance of \$633.75 without further delay. As provided in Residential Tenancy Policy Guideline 17: *Security Deposit and Set Off*, I provide the tenants with a Monetary Order for the remainder of the security deposit to ensure payment is made.

Conclusion

The landlord is authorized to deduct \$41.25 from the security deposit and must return the balance of \$633.75 to the tenants without further delay. The tenants are provided a Monetary Order in this amount to serve upon the landlord and enforce as necessary.

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: December 20, 2012.

Residential Tenancy Branch