

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, to keep all or part of the security deposit, and to recover the filing fee.

Two tenants and an agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenants confirmed that they received evidence from the landlord prior to the hearing and had the opportunity to review it prior to the hearing. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matters

The agent did not have a copy of the CD submitted in evidence which contained many photos. As a result of the agent not having their evidence to refer to during the hearing, the CD submitted in evidence was excluded from the hearing.

By consent of the parties, the surname of tenant “AS” was corrected as the first name and surnames were reversed in the application. In addition, the surname of tenant “SZ” was also corrected as the spelling of the surname was not correct in the application. The cover page of this decision reflects the correct spelling of the names of the tenants.

The agent testified that her husband was unavailable for the hearing and as a result, she would be representing her husband, the landlord, as agent during the hearing. The tenants were advised that the agent was representing her husband, the landlord.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act* for damages?
- What should happen to the tenants’ security deposit?

Background and Evidence

A month to month tenancy began on August 1, 2011. Monthly rent in the amount of \$750.00 was due on the first day of each month. A security deposit of \$375.00 was paid by the tenants at the start of the tenancy.

The tenants vacated the rental unit on September 30, 2012. The tenants signed over their security deposit to the landlord according to the condition inspection report submitted as evidence.

The landlord is seeking a monetary order in the amount of \$882.29 comprised of the following

Item 1. Stove - partial amount of replacement	\$200.00
Item 2. Carpet cleaning and cleaning of suite	\$123.20
Item 3. Carpet repair	\$70.00
Item 4. Labour for repairs	\$160.00
Item 5. Supplies	\$329.09
TOTAL	\$882.29

Item 1

The agent testified that the stove is five years old. The agent stated that a photo shows a broken element on the stove, however, as the photos were excluded from the hearing there is no documentary evidence to support the broken stove element. The tenants dispute that the stove was broken when they vacated the rental unit. The landlord did not submit any evidence regarding the value of the damage being claimed in the amount of \$200.00.

Items 2 and 3

The landlord has claimed \$123.20 for carpet cleaning and suite cleaning and \$70.00 for carpet repair. The agent testified that the tenants damaged the carpets and left the rental unit dirty. The tenants deny that they damaged the carpets. The condition inspection report indicates that the carpets were damaged at the start of the tenancy.

Item 4

The landlord has claimed \$160.00 for labour to repair walls damaged by the tenants. The tenants deny that they damaged the walls during the tenancy. An invoice was submitted by the landlord in the amount of \$160.00.

Item 5

The landlord has claimed \$329.09 for supplies and provided a receipt with various items listed. The landlord did not provide an itemized breakdown of which item on the receipt was for.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

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.

Item 1

This portion of the landlord's claim relates to a five year old stove which the landlord claims the tenants damaged. The tenants deny that they damaged the stove. The landlord has failed to provide any evidence to support the amount being claimed of \$200.00.

I find the landlord has failed to meet the burden of proof to prove that the tenants violated the *Act*, regulation or tenancy agreement and have failed to prove the value of this portion of their claim. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Items 2 and 3

The landlord has claimed \$123.20 for carpet cleaning and suite cleaning and \$70.00 for carpet repair. The agent testified that the tenants damaged the carpets and left the rental unit dirty. The tenants deny that they damaged the carpets. The condition inspection report indicates that the carpets were damaged at the start of the tenancy.

Due to the condition inspection report indicating that the carpets were damaged at the start of the tenancy, I find the landlord has failed to prove that the tenants caused damage and on the balance of probabilities, find it more likely that the damage existed at the start of the tenancy.

Furthermore, the tenants have already signed over their security deposit in the amount of \$375.00 which would more than cover the cost of suite cleaning. I find the landlord has failed to meet the burden of proof to prove that the tenants violated the *Act*, regulation or tenancy agreement and have already been compensated for the suite cleaning through the authorization by the tenants to surrender their full security deposit to the landlord. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 4

The landlord has claimed \$160.00 for labour to repair walls damaged by the tenants. The tenants deny that they damaged the walls during the tenancy. Without further evidence to support the landlord's claim such as photos or witness testimony, I find the landlord has failed to meet the burden of proof to prove that the tenants violated the *Act*, regulation or tenancy agreement. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

I note that as the tenants have already signed over their security deposit in the amount of \$375.00, that amount would more than cover this cost being claimed for labour to

repair walls. Without further evidence to support the landlord's claim such as photos or witness testimony, I find the landlord has failed to meet the burden of proof to prove that the tenants violated the *Act*, regulation or tenancy agreement. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 5

The landlord has claimed \$329.09 for supplies and provided a receipt with various items listed. The landlord did not provide an itemized breakdown of which item on the receipt was for.

As the landlord has failed to provide an itemized breakdown of the items listed on the receipt and what they were for, the receipt in itself does not support the claim being made. Without further evidence to support the landlord's claim such as photos relating to why the items were purchased or witness testimony to support why the items were needed and for what purpose(s), I find the landlord has failed to meet the burden of proof to prove that the tenants violated the *Act*, regulation or tenancy agreement. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

As the landlord's application did not have merit, **I do not grant** the landlord the recovery of the filing fee.

The tenants have already surrendered their full security deposit in the amount of \$375.00 to the landlord based on the condition inspection report.

Conclusion

I dismiss the application of the landlord in full due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 10, 2013