



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on August 1, 2011. Rent in the amount of \$825.00 was payable on the first of each month. A security deposit of \$420.00 was paid by the tenant. The tenancy ended on October 31, 2012.

The landlord claims as follows:

a.	Glass top of stove and door	\$1,000.00
b.	Filing fee	\$ 50.00
	Total claimed	\$1,050.00

The landlord testified the tenant broke the glass top on the stove. The landlord stated it will cost him a \$1,000.00 to have it repaired. Filed in evidence is a photograph.

The tenant testified the stove was not new when it was provided on November 2, 2011 and the stove burners were stained and scratched. The tenant stated when her roommate was cooking on the stove and it made a loud sound and cracked. The tenant denies any neglect.

The landlord when question stated that the estimate to fix the stove was between \$500.00 and \$800.00. The landlord stated he has filed estimates into evidence to support his claim and these estimates were provided over the phone.

The landlord testified he fixed the broken door.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, landlord has the burden of proof to prove.

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.

In this case, even if I accept the landlord's version that the stove glass top was damaged by the tenant being neglectful, which I do not, the landlord has provided inconsistent testimony on the actual cost of the repair. The landlord first stated it was \$1,000.00 to repair the stove. The landlord later stated it was between \$500 and \$800.00 to repair the stove and further states the estimates he submitted into evidence are accurate, however, these estimates were provided over the phone and these estimate are between \$550 and \$700.00. The landlord did not have the appliance inspected by an appliance repair company. I find the landlord has not met the burden of proof as he has failed to prove the actual amount required for the repair.

The evidence of the landlord was that he fixed the door. The landlord has not proven a loss exists.

In light of the above, I find the landlord has not met the burden of proof. The landlord's application is dismissed. The landlord is not entitled to recover the cost of filing the application.

As a result, I order the landlord to return to the tenant the security deposit (\$420.00), that amount will be reduced by \$50.00 as the tenant had agreed to in writing to that amount for carpet cleaning.

The tenant is granted a monetary order in the amount of **\$370.00** should the landlord fail to comply with my order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed.

The tenant is granted a monetary order in the above balance, should the landlord fail to return to the tenant the balance of the security deposit.

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: February 01, 2013

Residential Tenancy Branch

