



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MND, MNDC, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for liquidated damages under the tenancy agreement, costs of repairs for damage to the unit caused by the tenant. The landlord was also seeking to retain the security deposit in satisfaction of the claim.

Despite being served by registered mail sent on January 15, 2013, as confirmed by the Canada Post tracking number, the tenants did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for liquidated damages and repairs?

Background and Evidence

The landlord testified that the fixed-term tenancy began September 30, 2012 and was to expire on May 31, 2014. The rent was \$900.00 per month and a security deposit of \$450.00 was paid. The tenant gave written notice on December 12, 2012, to end the tenancy with a move out date of January 1, 2013.

The landlord submitted into evidence a copy of the tenancy agreement, invoices, receipts and copies of the move-in and move-out condition inspection reports.

The landlord testified that, during the tenancy the hot water heater caught on fire due to the negligence of the tenants who had apparently left flammable material in close proximity to the gas-fired heater. The landlord made reference to an invoice from the heating contractor showing that the replacement of the heater cost \$901.60. The invoice contained a notation stating that the water heater caught fire due to clothing items and plastic material left on the floor under the unit. The landlord stated that the hot water tank was only 4 years old. The landlord is claiming compensation for the \$901.60 replacement cost.

The landlord testified that, during the tenancy, the tenant had attempted to install a fan in the bathroom, for which the landlord had supplied materials. However, the tenants did not install the fan properly and caused damage to the ceiling that needed to be repaired. The landlord is claiming a one-third portion of the \$218.15 repair cost in the amount of \$72.71.

According to the landlord, other repair costs were incurred due to the tenant's action in disposing of their aquarium gravel down the kitchen drain. However, this damage was not discovered until later on when the plumber removed the pipe trap to fix the slow drainage that had been reported by the new occupants.

In addition to the above, the landlord is claiming entitlement to liquidated damages payable under the tenancy agreement. The landlord testified that the tenant violated the agreement by ending the tenancy before the expiry of the fixed term. The landlord's evidence confirmed that the tenant had signed the tenancy agreement addendum agreeing to this liquidated damages term in the contract. The landlord is seeking compensation of \$300.00.

The total amount sought by the landlord in the application is \$1,273.71 plus the \$50.00 cost of filing.

Analysis

In regard to the enforcement of the tenancy agreement term dealing with liquidated damages, I find that section 58 of the Act provides that, a person may make an application for dispute resolution in relation to any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities. (my emphasis)

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

In this case, I find that the parties had both agreed that, if the tenant breached the fixed term agreement by ending the tenancy prior to the expiry date of May 31, 2014, the tenant would be required to pay the landlord \$300.00.

Accordingly, I find that the landlord is entitled to be compensated in this amount.

In regard to the landlord's damage claims, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the tenant of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

In this instance, the burden of proof is on the landlord, to prove the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to the damaged hot water heater, I find that repair and maintenance of this kind of equipment or appliance would normally fall under the landlord's responsibility.

However, as it is the landlord's position that the tenant caused the damage through negligence, I will consider this aspect in determining the monetary claim.

I find that section 32 of the Act imposes modest responsibilities on the tenant to maintain "*reasonable health, cleanliness and sanitary standards throughout the rental unit*". The tenant must repair damage to the rental unit or common areas that is caused by the *actions or neglect* of the tenant or a person permitted on the residential property by the tenant. I find that the above expectations would include an expectation that a tenant would ensure that they do not create a fire hazard by storing household debris and flammable items on the floor near the hot water heater.

In this instance, based on the evidence before me, I find that the tenant violated the Act by failing to ensure that the area around the gas-fired heater was clear of flammable materials. Therefore I find that the landlord's claim for the replacement cost of the water heater has met the test for damages and the landlord is entitled to be compensated.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Items and finishes have a limited useful life and this is recognized in Residential Tenancy Policy Guideline number 40 which lists the estimated useful life of interior and exterior finishes,

items and fixtures. I find that the average useful life of residential hot water tanks is shown as 10 years.

Accordingly, I find that the landlord is entitled to be reimbursed for 60% of the \$901.60 cost of the hot water heater in the amount of \$540.96. I find that the landlord is also entitled to \$72.71 for 1/3 of the cost of the fan installation as well.

I find the landlord is entitled to total monetary compensation of \$963.67, comprised of \$300.00 for liquidated damages, \$540.96 pro-rated value of the hot water heater, \$72.71 for the fan repairs and the \$50.00 cost of this application.

I order that the landlord retain the \$450.00 security deposit in partial satisfaction of the claim, leaving \$513.67 still owed to the landlord. I hereby grant a monetary order in favour of the landlord in the amount of \$513.67. This order must be served on the landlord and may be enforced in small claims court if necessary.

Conclusion

The landlord is partly successful in the application and is granted a Monetary Order for liquidated damages and repairs.

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: March 27, 2013

Residential Tenancy Branch