



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit, for money owed or compensation for damages or loss and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave 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 at the hearing.

The landlord's evidence was provided through the party who was assisting and interpreting for her.

Preliminary Issues

At the outset of the hearing the tenant stated they were not served with the landlord's application for dispute resolution and that they found out about today's hearing when they attended the Residential Tenancy Branch (the "RTB") to file an application for dispute resolution.

The tenant stated the landlord is using an address for service other than the one they provided at the end of tenancy and they do not reside at that address that she has listed in the application.

The tenant stated he does not know who the applicant is as the tenancy agreement was listed with a property management company.

The landlord stated that she is the owner of the property and the property management company is no longer acting on her behalf.

The tenant stated that he is prepared in any event to proceed at today's hearing.

The landlord submitted evidence to the RTB on May 6, 2013, the landlord stated that she sent the package by registered mail to the tenants at the address in her application

and it was returned to her on May 7, 2013, as the recipient was not located at that address.

Under Residential Tenancy Branch Rules of Procedures states the parties must exchange all evidence at least five days before the hearing, when serving documents by registered mail, the party must allow a minimum of five days for the package to be received and then a minimum of five days for the party to have a fair opportunity to review the evidence. The package must also be sent to the service address provided or the address in which the party resides at the time of the mailing.

In this case, the landlord did not send the evidence package to the tenants service address and it was sent to an address where the tenants were not residing at the time it was mailed. Further, the package was sent on May 6, 2013 by registered mail, and the landlord did not taking into consideration that package sent this way is not deemed served until five days after it was sent. Therefore, if received would have only provided the tenant with two days to review the evidence, which is contrary to the rules of procedures. As a result, the landlord's documentary evidence was excluded.

Issues to be Decided

Is the landlord entitled to a monetary order for compensation for loss or damage rent?

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 April, 1, 2011. Rent in the amount of \$3,500.00 was payable on the first of each month. A security deposit of \$1,750.00 and a pet damage deposit of \$500.00 were paid by the tenants. The tenancy ended on December 21, 2012.

The tenant stated that a move-in condition inspection report was completed with the property management company. The parties agreed a move-out condition inspection report was not completed in accordance with the Act.

The landlord claims as follows:

a.	Cost of 5 missing cabinet doors	\$ 1, 383.00
b.	Cleaning and reinstalling of washer and dryer	\$ 224.00
c.	Cost of new washer and dryer	\$ 554.75
d.	One month loss of rental income	\$ 3,500.00
e.	Filing fee	\$ 50.00
	Total claimed	\$ 5,711.75

Cost of 5 missing cabinet doors

The landlord testified at the end of the tenancy there were five missing cabinet doors in the kitchen. The landlord stated due to the age of the cabinet doors, she was unable to find replacement doors and had to have the all the cabinets removed and new cabinets and doors installed. The landlord stated that she seeks to recover the cost of five of these cabinets and doors in the amount of \$1,383.00.

The tenant testified that when they moved into the rental unit the doors on the cabinets were falling off due to their age. The tenant stated the property manager took two of the doors to see if she could find new hardware, however, those doors were never returned. The tenant stated during their tenancy a few more doors fell off and they were stored in the storage area and were left there at the end of the tenancy.

When the landlord was questioned regarding the age of the kitchen cupboards the landlord testified they were approximately 50 years old.

Cleaning and reinstalling of old washer and dryer – cost of new washer and dryer

The landlord testified that the tenants left the washer and dryer dirty and they were not connected. The landlord seeks to recover the cost of \$224.00.

The landlord testified that these appliances were later discovered not to be working correctly and new appliances had to be purchased. The landlord seeks to recover the cost of new appliances in the amount of \$554.75.

The tenant testified that when they moved into the rental unit that the appliances were not in good condition and appeared to be approximately 20 years old. The tenant stated when they first tried to use the appliances they left rust marks on their clothing. The tenant stated as a result of the appliances being in poor condition they had their own appliances installed and the landlord's appliances were placed in the storage area. The tenant stated when they vacated the property they had the landlord's appliances moved back into their proper spots, but admit they were not reconnected.

When the landlord was questioned regarding the age of the appliances, the landlord was unable to provide an answer, except that they were there when she purchased the property.

One month loss of rental income

The landlord testified that she should be entitled to one month compensation for loss of revenue, due to having to renovate the kitchen cupboards as she would not have had to do this renovation if the doors were not missing. The landlord seeks to recover the amount of \$3,500.00.

The tenant testified the doors that came off were placed in the storage area and were there for the landlord to reinstall, however, the other two doors were with the landlord's property manager as she had attempted to find new hardware. The tenant stated the kitchen was 50 years old as stated by the landlord and he should not be responsible to pay for the landlord's renovation.

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, that is, a balance of probabilities.

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, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Cost of 5 missing cabinet doors

In this case, the landlord is claiming for the cost of replacing five cabinet doors that were 50 years old. The evidence of the tenant was when they moved into the unit the doors were already falling off the cabinets and that this was noted on the move-in condition

inspection report. The evidence of the tenant was the property manager had taken two of these doors to see if it was possible to find new hardware and those doors were never returned. The evidence of the tenant was several other door fell off the cabinets and they were in the storage area and left there at the end of the tenancy.

In this case neither party has submitted a copy of the move-in condition inspection report. However, I find it would reasonable to conclude that kitchen cupboards that are 50 years would be well worn due the natural deterioration of the product and under normal household use. Further, the Residential Tenancy Policy Guidelines state the useful life span of kitchen cupboards is 25 years and in this case the cupboards have far exceeded their useful life span. Therefore, I find the landlord has not suffered a loss and I dismiss this portion of their claim.

Cleaning and reinstalling of old washer and dryer – cost of new washer and dryer

The landlord seeks compensation for cleaning the appliances; the parties did not participate in a move-out condition inspection as required by the Act. A move-out condition inspection report is evidence of the condition of the unit at the end of the tenancy.

Even, if I accept the landlord's testimony that these appliances had dirt on the outside of them, there was no evidence to support that the unit in its entirety was not left reasonable cleaned as required by the Act. Therefore, I find the landlord has failed to prove the unit was not left reasonable cleaned.

In this case, the tenant acknowledged that they did not have the landlord's appliance reconnected when they had them removed from the storage area and placed back into position. As a result, I find the landlord is entitled to compensation for having the appliance reconnected, even if they were not functioning property. Therefore, the landlord is granted a nominal amount for the reconnection of the appliances in the amount of \$50.00.

Cost of new washer and dryer

The landlord seeks compensation for a new washer and dryer. The evidence was that the appliances were at least 20 years old and they were not functioning property at the start of the tenancy and that these appliances were removed and stored during the tenancy. The evidence of the tenant was that he used his own appliance during the tenancy. The evidence was at the end of the tenancy the landlord's appliances were returned to their original location and were in the same condition as they were received.

I find the landlord has failed to provide sufficient evidence to prove the tenant caused damage to the appliances by being neglectful. Rather, it is more likely that the appliances were not working due to normal wear and tear after 20 years of service as the Residential Tenancy Policy Guidelines state their useful life span is 15 years. Therefore, I dismiss this portion of the landlord's claim.

One month loss of rental income

In this case, the landlord is claiming loss of revenue due the condition the cupboards were left in. However, as I have previously found the cupboards were past their useful lifespan and the produce was deteriorated due to age, rather than neglect. I find the landlord is not entitled to compensation for loss of revenue. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$50.00**.

As the landlord has been largely unsuccessful, I find the landlord is not entitled to recover the filing fee from the tenant.

I order that the landlord to retain the amount of \$50.00 for the tenants security deposit in full satisfaction of the claim.

As a result, I order the landlord to return to the tenants the balance of their security deposit (\$1,700.00) and the pet damage deposit (\$500.00). I grant an order to the tenants under section 67 of the Act in the amount of **\$2,200.00**.

Should the landlord fail to comply with this order, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted permission to retain a portion of the security deposit in partial satisfaction of the claim. The tenants are granted a formal order for the balance due of their deposits.

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: May 17, 2013

Residential Tenancy Branch