



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order 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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

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 January, 1, 2013. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenant. The tenancy ended on March 31, 2013.

The landlord claims as follows:

a.	Cost to replace furniture	\$510.00
b.	Filing fee	50.00
	Total claimed	\$560.00

The landlord testified at the start of the tenancy she provided the tenant with two bookshelves and an antique kitchen table with two chairs. The landlord stated that she told the tenant that at the end of the three month tenancy, that it was possible for her to keep the bookshelves if they could agree upon an amount.

The landlord testified at the end of the tenancy she discovered that the tenant had donated the bookcases and the table and chairs without her consent. The landlord stated she has provided an estimate of the cost of replacing the bookshelves. The landlord stated she also has provided an estimate for the cost of replacing the antique kitchen table and chairs, however, this estimate is at the lower end as it was possible that these items could have been worth significantly more but did not have an appraisal. Filed in evidence are estimates for replacing these items.

The witness for the landlord testified that there is no way the landlord would give the tenant the permission to donate these items as the kitchen table and chairs had been in the family for over 50 years.

The tenant testified that these items were in the rental unit at the start of the tenancy. The tenant stated that the message she received on December 20, 2012, from the landlord gave her permission to sell, gift, or get rid of these items. The tenant stated she chose to donate these items.

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.

The tenant acknowledged that when she took possession of the rental unit, that there were two bookcases and an antique kitchen table and two chairs in the unit. The evidence of the tenant was that the text message she received on December 20, 2012, authorized her to donate these items

The text message dated December 20, 2012, submitted as evidence reads in part,

“Hey, I’ve got some clothes and a pair of snowboard boots I was gonna drop to the thrift shop, but some of it’s pretty nice...want me to leave it in the storage so you can have a peak?”

“Anything not suitable can be sold/gifted/thrifted or whatever you like:)”

[Reproduced as written]

However, the text message stated, that it was clothing items that were going to be left behind in the storage area and these items the tenant could sell, gift or donate. There is no reference in the message relating to the furniture that was in the rental unit. I find it would have been reasonable for the tenant to seek clarification prior to donating the landlord’s furniture. Therefore, I find the tenant has breached section 37 of the Act, when they donated the furniture that was provided to her at the start of the tenancy and the landlord suffered a loss.

The landlord has provided estimates to replace the furniture. The tenant did not dispute the estimates that were filed in evidence, and upon my review of the estimates the amounts claimed are reasonable. Therefore, I granted the landlord compensation for the loss of furniture in the amount of **\$510.00**.

I find that the landlord has established a total monetary claim of **\$560.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$475.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$35.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: July 2, 2013

Residential Tenancy Branch