



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE OXFORD GORGE MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for the cost of repairs, painting and replacement of a damaged chair.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

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

Background

The landlord testified that the tenancy began on May 1, 2011 and the rent was \$895.00. A security deposit of \$440.00 was paid.

The landlord testified that the tenant vacated on May 1, 2013 and the tenant's security deposit was refunded on May 10, 2013.

The landlord testified that the tenant left damage to the walls of the suite, entailing costs of \$170.00 for patching and painting holes left by the removal of adhesive hooks. The landlord submitted photos of the damage, a copy of the invoice dated May 3, 2013 and a letter dated August 23, 2013 from the painter attesting that the unit had been freshly painted in April 2011, just prior to the tenant's move-in date.

The tenant testified that the holes in the wall predated her move-in date and actually had to be covered with wall hangings such as a calendar. The tenant pointed out that the landlord had not complied with the Act by conducting move-in and move-out condition inspections, nor did the tenant sign any reports about the condition of the rental unit upon her arrival and departure. The tenant disagrees with the monetary claim for \$170.00 for patching and painting.

The landlord testified that the tenant irreparably damaged a chair by permitting her cat to use it as a “scratching post” leaving gouges in the covering behind the back. The landlord submitted a photo of the reverse side of the chair confirming that there were visible marks in the leather surface. The landlord testified that the front of the chair was marred by small puncture holes as well. However, no photographic evidence was submitted of the front side of the chair. The landlord provided verbal testimony that, because the chair was beyond repair, it had to be discarded and replaced. The landlord submitted a copy of the original invoice showing that the chair was purchased for \$199.99 in November 2010, approximately 6 ½ months prior to the tenancy. The landlord is claiming compensation of \$200.00.

The tenant disputes this claim on the basis that the damage to the chair is relatively minor and does not affect its function. The tenant’s position is that there is no need to throw out the chair and replace it. The tenant does not agree that the landlord is entitled to the monetary claim for the cost of a new chair to replace the existing chair.

Analysis:

In regard to an Applicant’s right to claim damages from another party, Section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

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 Respondent in violation 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 that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

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 agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage and finally, the claimant must show that a reasonable attempt was made to mitigate the damage or losses incurred.

In regard to the repairs, I find that section 32 of the Act requires that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit 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, a tenant is not required to make repairs for reasonable wear and tear.

Section 37(2) of the Act also states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the evidence, I find that there is not sufficient evidence to show that this tenant did not comply with section 37 of the Act. The fact that there were no move-in or move-out condition inspection reports has made it impossible to compare the before-and-after states of the rental unit.

I find that the landlord, and the landlord's painter who appeared as a witness for the landlord, provided testimony that the walls were in pristine condition at the start of the tenancy and were left damaged by the tenant when she vacated two years later. However this testimony was contradicted by the tenant who gave conflicting testimony that the walls were not in pristine condition when she moved in. I find that the conflicting verbal testimony respecting the move-in condition remains unresolved.

I find it is important to note that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, the two parties and the testimony each puts forth, do not stand on equal ground.

The reason that this is true is because one party always carries the added burden of proof. This is always the applicant who has made the monetary claim. In other words, the landlord has the onus of proving during these proceedings, that the wall was damaged beyond normal wear and tear by this tenant during this tenancy.

In this instance I find that there is no doubt that the walls had incurred some damage as evidenced by photos taken at the end of the tenancy. But I find that the parties were completely at odds with respect to the pre-existing condition of the wall surface.

Nonetheless, I find it is not necessary to determine which side is more credible or which set of “facts” is more believable. The reason that this is so is because, in the case before me, I find that the party seeking compensation has not succeeded in sufficiently proving on a balance of probabilities that the tenant violated the Act by damaging the walls during the tenancy and failing to repair them.

In addition to the above, I find that the absence of the move-out condition inspection had effectively deprived the tenant of the opportunity to consent to repairing any deficiencies that would normally have been pointed out by the landlord during a the move-out condition inspection.

Given the above, I find that the landlord's claim for the cost of repairing the marred walls must be dismissed.

In regard to the landlord's claim for the damaged chair, I accept the tenant's testimony that the chair is still functional and that it need not be discarded solely because of being compromised esthetically.

I find that the damage to the rear side of the chair, would not likely be considered as unsightly because of the location of the damage. I find that the alleged punctures that the landlord claimed are visible on the front side of the chair's seat and back rest, could not be confirmed for this purpose as the landlord had only provided a photo of the reverse side of the chair.

I find that Residential Tenancy Policy Guideline number 40 recognizes that items and finishes in a rental unit have a limited useful life and it follows that there is an expectation of normal wear and tear on furnishings over time.

Section 32(4) of the Act specifically states:

“A tenant is not required to make repairs for reasonable wear and tear”

That being said, I find the damage to the chair may well have gone beyond normal wear and tear.

However, any claimant has a statutory obligation to minimize damage and loss under section 7(2) of the Act in order to meet element 4 of the test for damages.

I accept the tenant's testimony that the replacement of a used chair with a brand new chair would not be considered as reasonable mitigation of the loss.

In any case, I find that the landlord did not offer sufficient proof that they had actually spent \$200.00 to replace the chair in question. 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.

Accordingly, I find that the landlord's claim for compensation with respect to the chair, fails to satisfy element 3 of the test for damages.

Based on the evidence and testimony, I find that none of the landlord's claims has successfully met all of the elements to satisfy the test for damages and I find that the landlord's application must be dismissed.

In light of the above, I hereby dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

The landlord is not successful in the application and the monetary claims are dismissed without leave.

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: September 04, 2013

Residential Tenancy Branch

