



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matter

The application was amended to name the owner of the property as the landlord, and exclude the former property manager, by mutual consent.

Issue(s) to be Decided

Has the tenant established an entitlement to recover the amounts claimed against the landlord?

Background and Evidence

The tenancy commenced in 2009 and ended June 30, 2012. The tenant was required to pay rent of \$1,000.00 per month.

Below, I have summarized the tenant's claims against the landlord and the landlord's responses.

Washer and Dryer

The tenant submitted that his washing machine stopped working during the tenancy and he purchased a second-hand washer and dryer combination from a friend. The tenant took the landlord's washing machine to the dump. The tenant left the landlord's dryer in place and put the dryer he purchased in the shed on the property. The tenant claims

that he left the dryer in the shed at the end of the tenancy. The tenant is seeking \$200.00 from the landlord to compensate him the \$150.00 he paid to purchase the laundry machines and \$50.00 for his effort to deliver the machines to the property. The tenant stated that he verbally informed the landlord the washing machine stopped working but acknowledged that he could not recall what the landlord said in response.

The landlord stated she was unaware the washing machine had stopped working and would have had it taken care of if she had known. The landlord did not request that the tenant purchase replacement laundry machines or agree to repay him. The landlord was unaware of a dryer in the shed at the end of the tenancy. The laundry machines in the rental unit were replaced in the spring of 2013. Furthermore, the tenant did not produce any documentary evidence to support the amount he is claiming.

Garbage removal

The tenant claimed that on two occasions he took garbage left behind by contractors working on the residential property to the dump and he is seeking recovery of the \$5.00 dump fees and \$25.00 for his effort for each trip he made to the dump.

The tenant stated that the first trip to the dump was the result of a contractor hired to fix the railings leaving behind construction materials. The tenant stated that he talked to the landlord about the situation and told her he would take care of it but acknowledged there was no discussion of payment.

The second time the tenant went to the dump was after the kitchen fire. The contractor hired to remediate the property would not take away all of the debris as there was an issue with contamination. The tenant stated the landlord was aware of the debris left behind and acknowledged that the landlord did not ask the tenant to take the garbage away.

The tenant did not produce receipts for the dump fees, explaining that there was no charge for recyclables and the actual charge was minimal.

The landlord stated that she did not make an agreement with the tenant for him to take garbage to the dump or compensate him for doing so. The landlord was unaware of any agreement made between the former property manager and with the tenant with respect to garbage removal.

Loss of use of kitchen

The tenant submitted that he was without a kitchen for approximately three months due to a kitchen fire and the tenant seeks compensation from the landlord in the amount of

\$2,600.00 (calculated as 1/3 of the monthly rent, plus the cost of eating out that exceeds his typical grocery purchases for him and his children, multiplied by 3 months).

The tenant acknowledged that his actions were responsible for causing the kitchen fire and he did not carry tenant's insurance. The tenant had also been ordered under a previous dispute resolution decision to compensate the landlord \$1,000.00 for the insurance deductible paid by the landlord for remediation of the kitchen.

The landlord submitted that the fire occurred at the end of February 2012 and the repairs were completed in mid-May 2012. The repair took quite some time as there was extensive damage and the tenant made accessing the rental unit difficult. The landlord pointed out that carrying tenant's insurance would have covered the tenant's alternative living costs but since he did not have insurance he asked to remain in the rental unit and continued to pay the full amount of rent. Accordingly, the landlord did not suffer a loss of rent and did not claim for such under her insurance policy. The landlord also questioned the tenant's calculations for eating out as the tenant did not have both of his children in his care children every day.

The tenant acknowledged that he did not have anywhere else to live while the house was being remediated after the fire and he wanted to remain in the rental unit while the repairs were underway; however, the repairs took longer than expected. The tenant denied restricting access to the rental unit during the repair process.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything presented to me, I provide the following findings and reasons with respect of each of the tenant's claims.

Washer and Dryer

Where a tenant is in need of a repair to the rental unit or an appliance supplied under the tenancy agreement the tenant is expected to notify the landlord of the issue and allow the landlord sufficient time to investigate and make the necessary repair. If the landlord will not make necessary repairs, the tenant's remedy is to file an Application for Dispute Resolution seeking repair orders and/or compensation.

On occasion, a landlord will ask or authorize a tenant to make a repair and deduct the cost from rent and in such cases I will uphold that agreement. However, I was not provided evidence of such an agreement in this case.

Where a tenant does not notify the landlord of a repair issue and takes it upon himself to rectify the issue the tenant is not entitled to compensation for his costs as the tenant has deprived the landlord of the opportunity to make the repair as the landlord sees appropriate for his/her property.

Based upon the submission before me, I find the tenant took it upon himself to acquire second-hand laundry appliances and, as such, the machines remained his property to use, sell, or take with him when he moved out. The tenant's choice to leave his personal property at the residential property is not a basis to order the landlord to compensate him for those machines. Therefore, I make no award to the tenant for the cost of acquiring laundry machines during the tenancy.

Garbage removal

As provided above, I was not provided any evidence the landlord had asked or authorized the tenant to remove garbage in exchange for a reduction in rent. As such, I conclude the tenant chose to undertake these tasks on his own and is not entitled to seek compensation from the landlord after the fact.

It is also important to note that where a landlord and tenant enter into a contract for services, such a contract is not enforced under the *Residential Tenancy Act* unless the contract effects an obligation under the tenancy agreement, such as the payment of rent. Therefore, even if the parties had an agreement that the tenant perform certain services for the landlord in exchange for compensation, the parties would have to enforce that agreement in the appropriate forum, such as the Small Claims division of the Provincial Court.

In light of the above, I make no award to the tenant for garbage removal.

Loss of use of kitchen

It is undisputed that there was a loss of use of the kitchen for a considerable period of time. Often a tenant may be entitled to compensation from the landlord for loss of use under the law of breach of contract as the landlord has not provided the rental unit as bargained for under the tenancy agreement, even if it was no fault of the landlord. However, this case is distinct in that the tenant's actions caused the damage to the kitchen that lead to the loss of use of the kitchen.

The Act provides that where a rental unit is damaged by the tenant's actions, even if accidentally, the tenant is obligated to repair the damage or compensate the landlord for the landlord's losses associated to the damage.

In light of the above, if I were to award the tenant for loss of use of the kitchen due to breach of contract by the landlord, the tenant would, in turn, be liable to compensate the landlord for the landlord's loss as it was the tenant that damaged the unit. As such, I conclude that to make an award to the tenant would result in a circular and absurd outcome. Therefore, I make no award to the tenant for loss of use of the kitchen since the tenant is liable to compensate the landlord for losses associated to the damage to the kitchen.

In summary, I have dismissed all of the tenant's claims against the landlord.

Conclusion

The tenant's application is dismissed in its entirety.

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: November 19, 2013

Residential Tenancy Branch

