



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OBION HOLDINGS LTD.

and [tenant name suppressed to protect privacy]

DECISION

Code 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, an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee from the tenant.

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 at the hearing.

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.

Issues 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 October 2011. Rent in the amount of \$1,295.00 was payable on the first of each month. A security deposit of \$647.50 was paid by the tenants. The tenancy ended on August 29, 2013.

The landlord's agent testified that the stove in the rental unit was brand new at the start of the tenancy. The agent stated at the end of the tenancy the glass top was critically damaged. Filed in evidence are photographs of the glass top. Filed in evidence is a receipt for repair.

The tenant testified that the glass top was cracked when the back door of the building slammed causing the wall to shake, which caused a bottle of olive oil to fall off the

control panel and cracking the glass top. The tenant stated that the stove was fully functional and they should not be reasonable for the repair as they believe it is cosmetic. The tenant stated that if they are found to be responsible for the damage that they should only have to pay the depreciated value.

The landlord's agent argued that the back door of the building cannot slam as suggested by the tenant as the door has a closure mechanism that makes that story impossible.

The property caretaker testified that he checked the door mechanism after this story was told and it would be impossible for the door to slam even if you pushed on it. The property caretaker stated they have never received any complaints of the door slamming from the tenants, which would have been reasonable if the walls would shake as suggested.

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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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 undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage.

In this case, the evidence of the parties support the glass top was damaged. While the tenant claim it is merely cosmetic that position is unreasonable as the photographs depict the glass top was severely cracked.

The evidence of the tenants was that the damage was caused by the back door being slammed, which cause the wall to shake, however, I note in the tenants written submission they claimed the oven rolled when the back door slammed, which I find brings into question the tenants credibility as an oven rolling is significantly different than a wall shaking.

Even if I accept the tenants version, which I do not, that the back door slammed causing the wall to shake, I find it highly unlikely that an small item place on the vertical panel of the stove top would cause such damage, rather it appears by the photographs that an item was dropped as there are approximately eight large cracks travelling nearly the entire glass surface. Further, it would be neglectful to store any item on the vertical panel of the stove, as the vertical panel is not shelving.

I find in this case that the damage was caused by the tenants' neglect, either by improperly storing an item on the control panel or dropping an item which damaged the glass top. I find that the tenant has breached section 37 of the Act, when they failed to repair the glass top at the end of the tenancy and this caused losses to the landlord.

In this case the tenants argued that should they be found responsible for the damage, that they should only be responsible to pay the depreciated value of the stove. The landlord's agent argued that in this circumstance depreciated should not be considered as they mitigate the loss by replacing the part, rather than replacing the entire stove.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. However, in this case the stove was not replaced, rather a new glass top was purchased and place on the original item. I find that the depreciated value does not apply as this was a repair to the existing appliance. Therefore, I find the landlord is entitled recover the cost of replacing the glass top in the amount of **\$700.16**.

I find that the landlord has established a total monetary claim of **\$751.16** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$647.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$103.66**.

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 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: December 23, 2013

Residential Tenancy Branch

