



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 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.

Preliminary Issue – August 22, 2013

At the outset of the hearing the parties agreed to an adjournment, to give both parties an opportunity to review and exchange evidence and to make an attempt to settle the matter.

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 recover the filing fee from the tenant?

Background and Evidence

Rent in the amount of \$650.00 was payable on the first of each month. A security deposit was not paid by the tenant. The estate of the tenant returned legal possession of the rent unit back to the landlord on April 30, 2013.

The landlords claim as follows:

a.	Painting, woodstove and other damage	\$ 8,803.15
b.	Linoleum	\$ 3,289.01
c.	Carpet	\$ 3,130.17
d.	Fireplace tile	\$ 736.90
e.	Front entrance tile	\$ 462.00
f.	Replace refrigerator	\$ 1,400.00
g.	Replace Stove	\$ 700.00
	Total damages	\$18,521.23
	Less 50% (tenant's responsible for balance)	\$ 9,260.61
h.	Replacement of range hood	\$ 176.16
i.	Cleaning all walls, and cabinets	\$ 400.00
j.	Filing fee	\$ 50.00
	TOTAL CLAIMED	\$ 9,886.77

Item a

During the hearing the executor of the tenant's estate agreed to pay \$1,700.00 towards the cost of painting the first coat of paint as the rental unit was heavily smoked in by the tenant, \$425.00 for the repair of the woodstove and \$44.00 for the smoke detector that was removed.

Items b, c, d, e

The landlord testified that the tenant caused considerable damage to the rental unit, by leaving the carpets heavily stained and the linoleum floor damaged. The landlord stated several tiles surrounding the woodstove were broken by the tenant chopping wood on the tiles. The landlord stated that the front entrance tiles were broken from the tenant dropping car parts on the tiles.

The executor of the tenant's estate testified that they do not disputed that the tenant caused the damage as alleged by the landlord. The executor of the tenant's estate disputed that the tenant is responsible to pay for half of the cost to repair the unit and suggests that the depreciated value should be based on the rental unit being nine years old.

The executor of the tenant's estate testified that he was told by his sister that the tenant had moved into the unit in 2006 and that there was a previous occupant that was there for almost two years, which would suggest the unit was built in the year of 2004.

The landlord argued that the rental unit was 7 years old as it was constructed in 2006. The landlord stated that he was certain of the year as he was the one that had the

construction completed in his unfinished basement. The landlord stated that the tenant also moved into the rental unit in September 2008 and that helped the tenant move his belongings.

Items f, g, h

The landlord testified that the tenant also damaged the stove and refrigerator and they are required to be replaced. Filed in evidence are photographs of the appliances.

The landlord testified that the tenant also damaged the range hood, as the screen was missing, the cover for the light was missing, and the two front knobs are missing. Filed in evidence is a photograph of the range hood.

The executor of the tenant's estate testified that they are not responsible to pay any amount towards the new appliances as they had replaced the ones in the rental unit with similar like models. The executor of the estate stated that the appliances they purchased were fully functional, however, the clock on the stove did not work. Filed in evidence are photographs of the new appliances and a receipt for the stove.

The executor of the tenant's estate testified that the range hood is missing the filter and is easy to be replaceable and the filter has a value of ten dollars. The executor of the estate stated suggests that the other parts could be purchased and the tenant should not be responsible for the cost of a new range hood.

The landlord argued that while the appliances were replaced by the estate, he does not want to use the appliances as he does not believe they are safe. The executor responded that the receipt provided a six month warranty for the stove.

Item i

The landlord testified that the walls and cabinets also need to be cleaned with TSP as the tenant was a heavy smoker.

The executor of the tenant's estate testified that they are not responsible to pay for any cleaning cost to have the walls washed as they had already washed the walls with TSP and no further preparation is required before painting.

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.

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 tenant is 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.

Item a

The executor of the tenant's estate had agreed to pay for the first coat of paint, the repair of the woodstove and the cost of the smoke detector. Therefore, I find the landlord is entitled to compensation for these items in the amount of **\$2,169.00**.

Items b, c, d, e

The estate of the tenant did not dispute that the tenant caused damage as alleged by the landlord. Therefore, I find the tenant has breached section 37 of the Act, when they failed to leave the rental unit undamaged.

In this case, the party's disagreed on the age of the rental unit. The age of an item at the time of replacement and the useful life of the item is considered when calculation the tenant's responsibility for the cost or replacement

The evidence of the landlord was that he had the rental unit built in 2006, and that he had one other occupant who resided in the unit for about eighteen month prior to the tenant moving in to the rental unit in 2008. The evidence of the estate was that they were told by their sister that the tenant moved in the unit in 2006, and if there was a previous occupant that would make the unit constructed in 2004, making the unit nine years old.

In this situation, I accept the landlord's evidence over the executor of the estate for the following reasons. The landlord had firsthand knowledge of when the rent unit was constructed, which was 2006. The landlord also provided first hand information as to when the tenant moved in, which was 2008. The executor of the estate provided second hand information, which was that the tenant moved into the rental unit in 2006, however, their sister did not attend the hearing to provide testimony and no written statement was provided as evidence to support this position. Therefore, I find on the balance of probability that the unit was built in 2006 and was 7 years old at the time the tenancy ended.

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. As, I have determined that the linoleum, carpet, and tiles had a useful life span of 10 years, and I have found these items to be 7 years old, I find the landlord is entitled to recover the depreciated value of 30 percent.

Therefore, I find the tenant is responsible for the depreciated value as follows:

Item		Replacement cost of the item	Depreciated value – owed by tenant
b.	Linoleum	\$ 3,289.01	\$ 986.70
c.	Carpet	\$ 3,130.17	\$ 939.05
d.	Fireplace tile	\$ 736.90	\$ 221.07
e.	Front entrance tile	\$ 462.00	\$ 138.60
	TOTAL	\$7,618.08	\$2,285.42

Items f, g, h

In this case, the parties did not dispute the original appliances were damaged by the tenant. However, the estate of the tenant had replaced the appliances with similar like models, and the stove had a six month warranty. The evidence of the landlord was that the appliance might be unsafe, however, there was no documentary evidence to support this position. As a result, I find the landlord has failed to prove a loss exists. Therefore, I dismiss the landlord's claim for compensation for the appliances.

The evidence of the landlord was that the tenant caused damage to the range hood as it was missing parts; this was not disputed by the estate. The evidence of the estate was that the landlord should be able to replace the parts. While I am satisfied that the tenant has breached the Act, I am not satisfied that the parts for the range hood are not available to minimize the loss. Therefore, I grant the landlord a nominal amount for the missing parts for the range hood, in the amount of **\$25.00**.

Item i

The evidence of the landlord was the walls must be washed prior to painting. However, the evidence of the estate was that they had cleaned all the wash and the walls are ready to be painted. The landlord did not dispute the wall were previously washed by the estate. As a result, I find the landlord failed to prove a loss exists. Therefore, I dismiss their claim for compensation for cleaning the walls.

I find that the landlord has established a total monetary claim of **\$4,529.42** comprised of the above described amounts and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 for above balance.

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 formal monetary order.

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: October 27, 2013

Residential Tenancy Branch

