



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 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 order for compensation for damages?
Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

The parties entered into a one year fixed term tenancy which began on January 1, 2014 and expires on December 31, 2014. At the end of this fixed time the tenancy will continue on a month to month basis. Rent in the amount of \$975.00 was payable on the first of each month. A security deposit of \$487.50 was paid by the tenant.

The landlord claims as follows:

a.	Replacement cost of oven and installation costs	\$861.63
b.	Filing fee	\$ 50.00
	Total claimed	\$911.63

The landlord's agent testified that at the annual inspection of the rental unit the tenant left a note asking them to look at the oven door as it was not closing properly. The agent

stated that the repairperson attended and it was determined that the oven door hinges and hinge pockets required replacement. However, when the repairperson installed the door hinges they discovered that the frame was damaged and was likely caused by too much weight put on the door. The landlord's agent stated the oven needed to be replaced. The landlord seeks to recover the full amount of a new appliance in the amount of \$861.63. Filed in evidence is a copy of the appliance invoice. Filed in evidence is a copy of the note that the tenant left for the annual inspection.

The tenant testified that the annual inspection found the rental unit clean and in good order. The tenant stated that she informed the landlord that the oven door was not closing properly and needed to be adjusted. The tenant denied that she caused any damage to the door or placed any weight on the door. The tenant stated that when the first repairperson attended and inspected the oven he told her that all it needed was new hinges. The tenant stated that she was not at home when the second repairperson attended to install the new hinges; however, when she returned home there were pieces of glass on the kitchen floor and the oven door was sealed with technician's adhesive tape. The tenant stated she was unable to open the door but believes the inside of the glass oven door was broken during the repair making it unusable.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Section 32 of the Act states that a tenant of a rental unit must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In this case, the evidence of the landlord's agent was that the damage was likely caused by the tenant placing too much weight on the door. The tenant denied damaging the door or placing any weight on the door. The evidence of the tenant was that when she returned home after the second repairperson attended there was glass on the kitchen floor and the oven glass door was sealed with tape. The evidence of the tenant that she was unable to open the door but believed the inside of the glass oven door was broken during the repair making it unusable

Both parties have provided a different version of events, and both versions are probable. As the onus is on the landlord to prove the damage was caused by the action or neglect of the tenant, I find without further evidence from the landlord such as how the glass on interior oven door was broken, or photographs that they have failed to prove that the damage was caused by the action or neglect of the tenant. Therefore, I dismiss the landlord's application due to insufficient evidence.

As the landlord was not successful with their application, the landlord is not entitled to recover the filing fee from the tenant.

Conclusion

The landlord's application is dismissed.

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 15, 2014

Residential Tenancy Branch

