



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on May 8, 2014. The parties also confirmed that they received one another's written evidence packages from one another. I am satisfied that the above documents were served to one another in accordance with the *Act*.

Although the tenant received the landlords' evidence package, he gave sworn testimony that he was unable to open the landlords' digital evidence. I too had the same difficulty when I attempted to access the landlords' digital evidence. As neither the tenant nor I could access the landlords' digital evidence, I advised the parties that I would not be considering this portion of the landlords' evidence. However, I noted that I would consider sworn testimony from the landlord who attended the hearing (the landlord) regarding the contents of that evidence.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy?
Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence with the exception of the digital evidence as noted above, including miscellaneous documents, invoices and receipts, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

On August 28, 2013, the parties signed a Residential Tenancy Agreement (the Agreement) for a periodic tenancy commencing on September 1, 2013. Monthly rent was set at \$850.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$425.00 security deposit paid on or about August 26, 2013. The parties agreed that by March 15, 2014, the tenant had handed the landlord a written notice advising the landlords that he would be vacating the rental unit by April 30, 2014. The parties agreed that they both participated in and signed reports regarding their joint move-in condition inspection of September 1, 2013 and joint move-out condition inspection of April 27, 2014. The landlord entered into written evidence a copy of these reports. Although the tenant signed the joint move-out condition inspection report, he noted in that report that he did not agree that the report fairly represented the condition of the rental unit at the end of this tenancy.

The landlords' application for a monetary award of \$1,252.30 included the following items:

Item	Amount
Replacement of Stove Damaged during this Tenancy	\$728.00
Damage to Faucet and Sink & Replacement of Missing Halogen Light Bulbs	220.17
Damage to Skylight Opener	100.00
Damage to Wall in Suite below Tenant	200.00
Replacement of Hose	4.13
Total of Above Items	\$1,252.30

At the hearing, the landlord testified that he was able to repair the skylight opener himself. He withdrew his request for a monetary award of \$100.00 to compensate him for damage to the skylight opener, thus reducing the amount of the requested monetary award to \$1,152.30.

In his written evidence and sworn testimony, the landlord maintained that the self-cleaning mechanism on the self-clean stove installed in this rental unit was broken

during the course of this tenancy. When the landlord raised his concerns about this with the tenant, the landlord said that the tenant told him that he would repair the locking mechanism so that the oven and the locking mechanism would work properly. At the end of the tenancy, the landlord testified that he discovered the repair work conducted by the tenant was unable to restore the self-cleaning mechanism to its former functionality. He gave undisputed sworn testimony that the handle for opening and closing the oven was missing and a hook had been removed forcing the mechanism into place. Although he initially believed that the parts in the oven could be repaired or replaced at an approximate cost of \$300.00, the new tenant he had located needed a functioning oven and could not wait to have repairs undertaken. For this reason, the landlord testified that he replaced the existing four-year old oven in this rental unit with an oven he located in a "scratch and dent" sale for \$728.00.

The tenant testified that the landlord told him at the beginning of this tenancy that the self-cleaning mechanism in the oven was not working properly so he should not use it. During his tenancy, the tenant said that his female friend did not realize that she should not use the oven as the lock mechanism would engage. He testified that he forgot to tell his female friend about the warning provided by the landlord regarding use of the oven. He entered sworn oral testimony and written evidence that his repairs to the locking mechanism enabled the oven to be opened and closed without incident. He noted that the landlord had provided evidence that it was not until the landlord "wiggled" the lock mechanism that the oven closed again preventing access to the interior of the oven.

The landlord testified that when the parties conducted the joint move-out inspection, he believed that moisture flowing into his wall in the suite the landlord resided in below the tenant was stemming from the tenant's refusal to buy and use a proper shower curtain. While he noticed that the handle of the bathroom faucet was loose and wobbled, he did not realize that the faucet was leaking badly until he opened the faucet to obtain water. At that time, it became apparent that the water damage that was causing problems to the walls in his suite below the tenant resulted from the tenant's failure to notify him of the need for repairs to the leaking faucet. He testified that mould had grown on the wall which needed to be replaced in his suite below the tenant. The landlord applied for a monetary award for the work he had performed and the supplies he had to purchase to repair and repaint his damaged wall.

The tenant questioned the landlord as to why the damage to the faucet was not cited in the joint move-out condition inspection report. In response, the landlord noted that page 2 of the joint move-out condition report clearly stated that the faucet was damaged and

was “loose and wobbled.” The tenant appeared to have only taken note of the final page of that report in which a number of items were identified as damaged.

The landlord gave undisputed sworn testimony supported by written evidence that he replaced a total of three halogen light bulbs at the end of this tenancy. He testified that the cost for two of these bulbs was \$8.69.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Both parties gave different accounts of many issues in dispute at this hearing. When parties provide different accounts of what transpired often the most reliable information is the signed joint move-in and move-out condition inspection reports prepared by the landlords.

In this case, I find that the tenant signed the joint move-in condition inspection report in which there was no notation regarding any problems with the existing stove and oven. By the end of the tenancy, I find that the oven was not working properly, leading to the landlord's decision to purchase a replacement “scratch and dent” stove. I accept that the landlord acted reasonably in purchasing a new stove rather than waiting to have repairs that may not have been effective to be conducted. I also find that the landlord took measures to mitigate the tenant's exposure to losses by purchasing a scratch and dent stove rather than an undamaged and more expensive one. However, as the stove was four years old by the end of this tenancy, I find that the landlords are only entitled to recover the depreciated value of that stove. Residential Tenancy Branch Policy Guideline 40 outlines the useful life of different features of a tenancy. In the case of a stove, the useful life is estimated at 15 years. For this reason, I issue a monetary award in the landlords' favour in the amount of \$533.87 (i.e., $\$728.00 \times (15-4)/15 = \533.87) to compensate the landlords for the damage to the stove that arose during this tenancy.

I have also given careful consideration to the landlords' application for the costs associated with replacing the faucet in the tenant's bathroom. I find on a balance of probabilities that whether the tenant had advised the landlord promptly of the need for repairs or not, the faucet replacement would still have been an expense that the landlord would have needed to repair unless the damage was in some way directly attributable to the tenant's actions or were exacerbated by the tenant's negligence. As I am not satisfied that the landlords have demonstrated that this expense exceeded what would have been expected through reasonable wear and tear, I dismiss the landlords' application for a monetary award for this item and for the hose without leave to reapply.

I allow the landlords a monetary award of \$13.04 for the replacement of three halogen light bulbs based on the landlords' receipt showing \$8.69 for the cost of the replacement of two such light bulbs.

I have also considered the landlords' claim for the recovery of \$200.00 in damage caused to the wall in his suite as a result of water flowing from the tenant's rental unit. Based on a balance of probabilities, I find that the landlord did experience some damage arising out of the tenant's failure to notify him of the leaky faucet in the rental unit so as to limit the water damage to the landlord's suite. I allow the landlord \$150.00 of his estimated costs in this regard, as at least some of the expenses he incurred may have resulted from reasonable wear and tear and a need to repair and or repaint the damaged wall.

As the landlords have been partially successful in this application, I allow the landlords to recover their \$50.00 filing fee for this application. I also allow the landlords to retain the tenant's security deposit in partial satisfaction of the monetary award issued in this decision plus applicable interest. No interest is payable over this period.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover damage arising out of this tenancy and their filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Replacement of Stove Damaged during this Tenancy	\$553.87
Replacement of Missing Halogen Light Bulbs	13.04
Damage to Wall in Suite below Tenant	150.00
Less Security Deposit	-425.00

Filing Fee	50.00
Total Monetary Order	\$341.91

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 10, 2014

Residential Tenancy Branch

