



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ESI MARKETING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP, MNDC, MND, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the unit;
2. For a monetary order for compensation for damages under the Act; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return of tenants' personal belongings;
2. For a monetary order for compensation for damages under the Act; and
3. To recover the cost of filing the application.

Both parties appeared, gave 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.

On September 24, 2014, an interim decision was made which should be read in conjunction with this decision.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under the Act?

Are the tenants entitled to the return of their personal belongings?

Is the landlord entitled to a monetary order for damages to the unit?

Background and Evidence

The tenancy began on August 15, 2013. Rent in the amount of \$1,100.00 was payable on the first of each month.

On July 14, 2014, the parties attended a dispute resolution which granted the landlord an order of possession for unpaid rent, and monetary order for unpaid rent.

Tenants' application – November 13, 2014

On September 23, 2014, the parties agreed that the landlord had the tenants' personal property, although the landlord's agent did not agree with the list of items provided by the tenants. The agent stated there was no vacuum, the window blinds were the property of the landlord, there was no jewellery and as the female tenant had not lived in the rental property since March 2014, and there were only male clothes, and shoes left behind.

On September 23, 2014, the parties agreed that the tenants were to attend at the rental building on September 29, 2014, at 12:00 (noon) and retrieve their belongings.

The tenants testified that when they attended on the agreed upon date that they discovered that the landlord had placed all their belonging out in the garage area the day prior and when they arrived all that was left of their belonging was a box spring, a chair and a box of personal belongings.

The landlord's agent testified that she was told by the owner to put the tenants' belongings out in the garage. The agent stated the garage is somewhat secure as only other tenants have access and there was a note on the belongings not to remove. The agent stated she was not there when the tenants attended and is not sure what items were there when they arrived.

Landlord's application - November 13, 2014 and continuing on December 19, 2014 –

The landlord claims as follows:

a.	Stolen appliances	\$1,319.36
b.	Damage to rental unit	\$2,782.00
c.	Filing fee	\$ 50.00
	Total claimed	\$4,151.36

The landlord's agent testified that when they served the tenants with the order of possession, the tenant were attempting to steal the all appliance from the rental unit as the video footage shows the tenants removing the stove and dishwasher into their vehicle. Filed in evidence are photographs of the tenants removing a stove and dishwasher and placing the said items into their vehicle.

The landlord's agent stated that they attended the rental unit and the other appliance such as the refrigerator and washer and dryer were already pulled out and ready to be transported. The agent stated as a result they had no option but to change the locks to mitigate any further loss or damage to the property. However, they left a note for the tenants that they could attend the office and they would be given access to the rental unit. Filed in evidence is a copy of the note left for the tenants which supports the landlord's testimony.

The tenants testified that when they moved into the rental unit, they removed the landlord's appliance and replaced them with their own appliances. The tenants stated they returned the landlord's stove, however, as they were locked out they did not return the dishwasher or clean the rental unit.

The landlord's agent argued that the rental unit was new and all appliances were new at the start of the tenancy and they were included in the rent. The agent stated that the appliances shown in the video are the landlord's property and there was no stove returned to the premises.

The landlord's agent testified that the tenants caused damage to the drywall and ceiling of the rental unit by shooting bullets from a pellet gun and there were also holes which appeared to be from someone punching the wall. Filed in evidence are photo of the gun, bullets and holes in the drywall and ceiling.

The landlord's agent testified the tenants caused damage to a bi-fold door, to a kitchen draw, the balcony door blind was destroyed, the door on the stainless steel refrigerator was dented, a light fixture was removed and the tile in the bathroom was cracked and the bathtub faucet was damaged. The agent stated that these items had to be either replaced or repaired. Filed in evidence are photographs which support the landlord's testimony.

The landlord's agent testified that the tenants also failed to return all keys and devices that gave access to the rental building, mail box and they were required to be changed and replaced.

The landlord's agent testified that the tenants also left a large amount of garbage and the entire rental unit needed to be cleaned, including the carpets.

The landlord's agent testified that they hired a general contractor and they had all the above items completed. Filed in evidence is a receipt for work completed.

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 both parties have the burden of proof to prove their respective claims.

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.

Tenants' application

In this case, the parties agreed that the tenants would attend the rental premises on September 29, 2014, to retrieve their personal belongings. However, on September 28, 2014, the landlord placed the tenants' personal property in the garage which is a common area for the building and when the tenants attended on the agreed upon date the majority of their personal belongings were gone.

Under Section 30 of the Residential Tenancy Act Residential Tenancy Regulations, when dealing with a tenant's personal property, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

I find the landlord has breached section 30 of the regulation when they placed the tenants' belongings in the garage area as this area was not suitable for storage and the items were stolen.

When determining damages for a breach the normal measure is the market value of the lost articles at the time of its loss. The market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, such as age and condition.

Although I have found the landlord has breached the Act by failing to place the tenants' belongings in a suitable area, I accept the landlord's agent evidence over the tenants regarding the items claimed as the tenants are claiming for blinds and window coverings. Those items were provided to the tenants at the start of tenancy and are listed in the tenancy agreement, which I have reviewed.

Further, for the agreed items, the tenants have provided no evidence of the age, or the condition or the market value of the each item at the time of its loss, and as a result, I am unable to determine what the actual loss is. Therefore, I grant the tenants a nominal award in the amount of **\$250.00**.

I find that the tenants have established a total monetary claim of **\$300.00** comprised of the above described amount and the \$50.00 fee paid for this application.

Landlord's application - November 13, 2014 and continuing on December 19, 2014

Under section 37 of the Act, the tenants are 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.

In this case, I accept the landlord's agent testimony over the tenants that the tenants were attempting to steal the landlord's property when they were served with an order of possession as it would not be reasonable to remove appliance that were new when the tenancy commenced and were included in the rent. Further, the tenants have not provided any evidence that they had purchase any such appliances. I find the tenants have breached the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover the cost of the appliances that were taken by the tenants in the total amount of **\$1,319.36**.

Further, I accept the undisputed testimony of the landlord's agent that the tenants caused damage as described in their testimony. That damage was not normal wear and tear; rather it was from their actions and neglect of the tenants, such as shooting bullets into the drywall with

a pellet gun. I find the tenants have breached the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to compensation for making the repairs in the amount of **\$2,782.00**.

I find that the landlord has established a total monetary claim of **\$4,151.36** comprised of the above described amount and the \$50.00 fee paid for this application.

As both parties have been successful with their application, I find it appropriate to offset the tenants' monetary award of **\$300.00** from the landlord's monetary award of **\$4,151.36**, which leaves a balance due to the landlord of **\$3,851.36**. The landlord is granted a formal order for the balance due pursuant to section 67 of the Act.

Conclusion

The tenants' were granted a monetary order. The landlord was granted a monetary order. The respective monetary orders were offset, leaving a balance due to the landlord. The landlord was granted a formal order pursuant to section 67 of the Act.

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: January 6, 2015

Residential Tenancy Branch

