



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLYWELL PROPERTIES
and [tenants name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MND FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for damage or loss pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:46 pm in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 pm. The landlord's agent ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that the Application for Dispute Resolution with notice of hearing was served to the tenants by registered mail to the forwarding address provided to the landlord on July 24, 2015. He provided a Canada Post receipt with a tracking number. I find that the landlord has sufficiently proved that the tenants was deemed served with the landlord's Application for Dispute Resolution on July 29, 2015, 5 days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or loss?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on February 1, 2014 with a 1 year fixed term. It continued on a month to month basis after the year expired. The rental amount of \$1600.00 was payable on the first of each month. The tenancy ended on June 30, 2015. The landlord testified that the \$800.00 security deposit paid by the tenants at the outset of the tenancy has now been applied towards a new residence. The landlord testified that condition inspections were conducted at the start and end of this tenancy. He testified that the tenants were present for both inspections. The

residential tenancy agreement and the condition inspection reports were submitted by the landlord for this hearing.

The landlord applied for a monetary order. He indicated in his testimony that he was unsure how to calculate the outstanding utility amount. The amount sought in his application sought was as follows;

Item	Amount
Outstanding, unpaid utilities	\$243.68
Replacement of glass in rental unit	694.54
Replacement of stove in rental unit	617.22
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Sought by landlord	\$1605.44

The landlord submitted the following documentary evidence;

- Copy of the last utility bill for the rental unit (\$232.13 bill + \$11.55 estimate);
- Copies of 2 invoices for glass replacement for (\$622.19 and \$72.35);
- Copy of the original receipt for the stove dated July 29, 2009 and indicating a payment amount of \$817.59;
- Copy of the receipt for purchase of a range for the stove dated June 26, 2015 for \$617.22; and
- Copy of the move-out condition inspection report including indication of “cracked stove top to be discussed with owner”.

The landlord did not submit photographic evidence of any of the damage claimed. He testified that the tenants now rent a different property from the landlord. He testified that the tenants disputed their responsibility for the costs listed above, indicating that the rental home was settling and that is why the windows were damaged. He testified that the tenants advised the stove was defective and they had not damaged it.

The landlord testified that the residential property, a detached home rented by the tenants is approximately 36 years old. He testified that he had no information to report as to whether the windows had been repaired in that time. He testified that, in accordance with the receipt provided the stove had been purchased for the residence in 2009, 6 years ago. He testified that he does not believe the tenants dispute the outstanding utility amount.

The condition inspection report submitted indicates that the stove top had a burn mark at the outset of the tenancy but that it was cracked at the end of tenancy. The condition inspection report indicates, with respect to the windows at the outset of the tenancy;

- The kitchen window was “old”;
- The sunroom window frame was “rotten?/breaking”;

- The bedroom windows had broken locks;
- Some rooms listed on the condition inspection report merely have a slash through the windows section, as does the kitchen window section where “old” is also written.

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 undisputed evidence of the landlord, in both his testimony and his supporting documentary evidence is that the windows and stove in the rental unit required replacement or repair at the end of this tenancy. He provided receipts that indicated the amount of cost for these repairs and replacement therefore proving that there was damage and that the landlord incurred a verifiable monetary amount. However, the landlord must also provide evidence to show that the tenants caused the damage or loss in contravention of the residential tenancy agreement or *Residential Tenancy Act*.

The landlord provided sworn undisputed testimony that certain features of the house needed repair. The landlord provided a condition inspection report that identified items in need of repair including cracked stove top. He provided the position of the tenants: that the residence was old and the window frames were degrading causing damage.

The landlord testified that the residential rental home is approximately 36 years old. I refer to the Residential Tenancy Policy Guideline No. 40 with respect to the “useful life” of windows in a residence. Windows and wood window framing are listed as having a lifetime of approximately 15 years. With no evidence that these windows have been repaired or replaced during the past 15 years, I find that the tenants are not responsible for the cost of windows that were cracked and in need of replacing.

The guideline provides that the useful life of a stove is approximately 15 years. Given that the landlord provided evidence that the stove in this unit was 6 years old, purchased in 2009, and that the stove top was cracked as well as undisputed sworn testimony that it was impossible to repair but had to be replaced, I find the landlord is entitled to recover a portion of the cost to replace the stove top. I find the landlord is entitled to recover 60% of the cost of the stove top (60% of \$617.22 = 370.33).

I find the landlord gave reasonable calculations of the amount owing by the tenants in utilities. He provided a utility bill to show the amount outstanding and to estimate the final 11 days of the tenancy. Given that the landlord has provided clear evidence of the move out date of the tenants and the utility bill includes dates that the tenants resided in the rental unit, I find the landlord is entitled to \$243.68, the amount that he has been able to prove with evidence.

Conclusion

I issue a monetary order in favour of the landlord as follows;

Item	Amount
Outstanding, unpaid utilities	\$243.68
Partial Replacement cost of stove top	370.33
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$664.01

The landlord is 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: January 22, 2016

Residential Tenancy Branch

