



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and the tenant.

The landlords submitted their original Application on April 13, 2016 seeking \$622.75 that included compensation for a replacement stove and cupboard repairs. On August 9, 2016 the landlord submitted an amendment to change the amount claimed to \$650.00 which included compensation for a replacement stove and cupboard repairs plus the filing fee.

In essence the landlords have reduced their claim but included the \$100.00 filing as part of their calculation in their amendment. The change in fact only included a reduction in the amount claimed for the cupboard repair from \$372.75 to \$300.00. The tenant had previously sought to recover the filing fee but had not included it in the total claim. As the total claim is actually reduced I accept the landlords' amendment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The parties agreed the tenancy began in January, 2015 as a month to month tenancy for a monthly rent of \$950.00 due on the 1st of each month with a security deposit of \$475.00 paid. The tenancy ended on March 31, 2016.

The landlord submitted that the tenant has caused damage to the stove and the cupboards directly above the stove. In support of this claim the landlord has submitted a Condition Inspection Report showing the condition of the rental unit at the start and end of the tenancy; several photographs of the stove and the cupboard doors; and invoices and receipts for costs incurred in replacing the damaged items in the amount of \$250.00 for the stove replacement and \$300.00 for cupboard door replacements.

The parties agreed the tenant had advised the landlords earlier in March 2016 that the stove/oven was not working. The tenant submitted that she had come home and found that she could not get the oven to work but that the burners stilled worked and she reported it to the landlords. The landlords stated that the burners were also not working.

The landlords indicated that they had the stove looked at and the electronic console was not working. Both parties submitted evidence regarding issues related to heat in the rental unit. The tenant found the unit cold and repeatedly asked the landlords to increase the heat. The parties agreed the tenant also had a space heater in the unit.

The landlords submit that the tenant may have been using the stove to heat the unit. The tenant submits that she did not use the stove as a heat source.

The landlords also stated that as a result of the tenant's overuse of the stove the cupboards above and around it were damaged. The landlords confirmed that the cupboards were covered in a laminated finish over a solid door. The landlords testified that they had had previous tenants and they had sustained no damage to the cupboard doors.

The tenant asserts that there wasn't an exhaust fan above the stove and as such no heat would dissipate when she used the stove. She attributes the damage to reasonable wear and tear. The tenant also questioned the landlord's photographic evidence. While she accepted that some of the photographs show the damage as she remembers it some appear to show the laminated and been peeled back even further.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those

circumstances, the party making the claim has the burden of providing additional evidence to support their position.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In the case before me, I find the parties agreed that both the cupboards and the stove were damaged by the end of the tenancy.

In regard to the landlord's claim for repairs to the laminated cupboards, I am not persuaded by the tenant's submissions that the damage was caused by reasonable wear and tear.

Despite her claim that the damage was caused because there was no exhaust fan above the stove, I am not satisfied that the normal use of a stove would generate sufficient heat to cause relatively new looking laminate to peel away from the structure of the cupboards. As such, I am satisfied, on a balance of probabilities the tenant is responsible for the damage to the cupboards.

I am also satisfied the landlords have established the value of the loss through the submission of their receipt from the contractor.

However, in regard to the landlords' claim to replace the stove, I find the landlords have provided insufficient evidence to establish that the damage to the stove was caused by the tenant or the tenant's use of it. That is to say, I find that in the absence of any documentation from an appliance technician as to what the cause of the malfunction of the stove was the landlords cannot say with any certainty what caused the malfunction.

For example, the malfunction may have been caused by misuse of the stove by the tenant but it could just have easily been as a result of a power surge that was not caused by the tenant. I am not satisfied, on a balance of probabilities, that the landlords have established the cost to replace the stove should be borne by the tenant.

As a result, I dismiss the landlords' claim to replace the stove.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$350.00** comprised of \$300.00 cupboard door replacement and \$50.00 of the \$100.00 fee paid by the landlords for this application as they are only partially successful in their Application. I order the landlord may deduct this amount from the the security deposit held in the amount of \$475.00 in satisfaction of this claim.

I grant a monetary order to the tenant in the amount of **\$125.00** for the balance of the security deposit held by the landlords. This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order 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 07, 2016

Residential Tenancy Branch

