Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNSD MNDC

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- an order to keep all or part of the security deposit pursuant to section 38 of the *Act;*
- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the Filing Fee pursuant section 72 of the *Act*.

Both the tenants and landlord attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenants acknowledged receiving the landlord's application for dispute resolution and evidentiary package on December 16, 2016 by way of Canada Post Registered Mail. Pursuant to sections 88 and 89 of the *Act* the tenants are found to have been duly served with these documents on this day.

Issue(s) to be Decided

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to a Monetary Order?

Can the landlord recover the filing fee?

Background and Evidence

Testimony was provided by the landlord that this furnished tenancy began on June 30, 2016 and ended on November 30, 2016. Due to a change in travel plans, the tenants vacated the rental unit on November 28, 2016. Rent was $2,500.00 per month and a security deposit of $1,250.00 continues to be held by the landlord. As agreed to in their residential tenancy agreement and in the condition inspection report completed at the

conclusion of the tenancy, the tenants agreed to surrender $150.00 of their security deposit to the landlord. This amount was in reflection of cleaning, to which the parties agreed, following the conclusion of the tenancy.

The landlord has applied for an Order to retain the tenants' security deposit, as well as a Monetary Order of $1,343.90 in reflection of damage that the landlord explained resulted from the tenants' misuse of the rental unit.

Specifically, the landlord sought compensation for a stove burner and a washing machine that required repairs, along with the replacement of an office chair. The landlord's Monetary Order was broken down as follows:

Item	**Amount**
Chair replacement (approximate)	$280.00
Washing Machine repair	163.90
Stove repair (estimate)	800.00
Return of Filing Fee	100.00
Total =	$1,343.90

The tenants deny all aspects of the damage claim submitted by the landlord. The tenants testified that any repairs which were required or damage that resulted from the tenancy were the result of regular wear and tear to the apartment. The tenants explained that they took great care in ensuring that all aspects of the apartment were cared for during their stay, and that no damage resulted from their tenancy. The tenants noted that they never used the stove burner in question, as it was within reaching distance of their child and they wanted to ensure that their child was unharmed. In addition, they explained that it was they who alerted the landlord to the issue of the washing machine needing service. They said that the chair was not part of the condition inspection report, noting it was therefore impossible to determine the condition of the chair prior to their arrival in the rental unit.

On June 30, 2016 the parties, together, performed a condition inspection of the apartment upon move in. On November 28, 2016 the parties, again together, performed a condition inspection of the rental unit upon move out. On November 28, 2016 the landlord signed a copy of the condition inspection report, where the tenants had agreed

to forfeit $150.00 of their security deposit to cover the cost of a previously agreed upon cleaning fee.

During the hearing, the tenants questioned the jurisdiction of the *Residential Tenancy Act* in relation to this matter. They argued that this matter fell outside the scope of the *Act* and should be considered a vacation rental pursuant to section 4(e) of the *Act*. They explained that they were not residents of Canada and had rented the unit to accommodate them during their short-term visit. The tenants had originally signed a fixed-term tenancy agreement with the landlord for two months. This agreement was amended twice to cover a further three months of accommodation.

The tenants explained that if the landlord's was within the jurisdiction of the *Act*, the landlord's application should be dismissed pursuant to section 35(4) of the *Act* as the landlord failed to provide the tenants with a copy of the condition inspection report at the end of the tenancy. Testimony was provided by both parties that a condition inspection was performed by the parties on November 28, 2016 and the tenants provided the landlord with their forwarding address on November 30, 2016. The landlord acknowledged receiving this address on December 1, 2016. The landlord explained that she returned a signed copy of the inspection report to the tenants on November 28, 2016. The tenants dispute this and argued that a report was only received from the landlord on May 20, 2017.

The tenants presented further submissions concerning the veracity of the landlord's claim, arguing that the landlord had contracted outside of the *Strata Property Act*, failed to serve the hearing documents pursuant to Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure*, and failed to provide a copy of the Tenancy Agreement pursuant to section 13(3) of the *Act*.

Analysis

As the tenants have raised a jurisdictional issue, I will address this issue first. The tenants argued that the *Act* should not apply because the purpose of the agreement with the landlord was to accommodate a short-term visit for vacation purposes. I do not agree with this assessment. The landlord and the tenants entered into a contractual relationship for a residential tenancy. The tenants agreed to pay a monthly rent, paid a security deposit and maintained exclusive occupancy of the rental unit. These are all characteristics of a tenancy agreement. I find that this matter to fall within the parameters of the *Act*.

The landlord has applied for both a Monetary Order of $2,343.90, and an Order allowing her to retain the security deposit. This figure of $2,343.90 is confusing as it includes the security deposit ($1,100.00) as well as expenses of $1,243.90. Any monetary award issued to the landlord will be offset against the security deposit pursuant to section 72 of the *Act*. I will therefore first consider the landlord`s application to retain the security deposit, and then the landlord`s application for a Monetary Order of $1,243.90.

Following her inspection on November 28, 2016, the landlord applied for dispute resolution for an Order allowing the landlord to retain the security deposit. Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file a claim against a tenant's deposit within 15 days of the *later* of the end of the tenancy or the date a tenant's forwarding address is received in writing

Evidence was produced at the hearing that the landlord applied for dispute resolution on December 15, 2016. The landlord acknowledged receiving the tenants' forwarding address on December 1, 2016. She has therefore applied within 15 days of receiving a copy of the tenants' forwarding address.

The landlord has fulfilled the necessary criteria pursuant to section 38 of the *Act* and adequately performed a condition inspection of the rental unit as prescribed by section 35(5)(b). During this inspection of the rental unit, the landlord found damage to the washing machine, stove and an office chair. The landlord is basing a portion of her application to retain the security deposit based on the damage discovered during this inspection.

The condition inspection report produced for the hearing and signed by the parties demonstrates that the tenants agreed to surrender $150.00 from their security deposit. In the portion of the condition inspection report submitted as part of the landlord's evidentiary package titled, 'Damage to Rental Unit or Residential Property for Which the Tenant is Responsible' the area is blank.

I find that while the landlord has taken adequate steps to commence her application to retain the security deposit pursuant to the *Act*, little evidence was presented concerning her entitlement to the funds. The tenants have completed a signed condition inspection report that does not record any damage to the rental unit for which the tenants are responsible. The landlord has applied pursuant to section 67 for a monetary order for losses she has suffered. Below, I will address the landlord`s application concerning these damages.

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 landlord to prove her entitlement to her claim for a monetary award.

The landlord testified that a chair, the washing machine and the stove top were all damaged during the tenancy. As part of the landlord's evidentiary package, the landlord produced a receipt from an appliance and fridge repair business demonstrating that she paid $163.90 for repairs that were required to the washing machine to address a leak that had originated under the machine.

The invoice notes: "found and removed debris from drain pump trap causing improper drain." The invoice goes on to describe further inspections performed and instructions on the type of detergent that is to be used. This invoice fails to demonstrate that any actions taken by the tenants led directly to this leakage. The debris found in the drain pump cannot be directly attributed to the tenants. Section 32(3) & (4) of the *Act* notes that, "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant…(4) A tenant is not required to make repairs for reasonable wear and tear."

Residential Tenancy Policy Guideline #1 expands on this issue and notes, "The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant."

I find it unreasonable to conclude that any action or neglect on behalf of the tenants caused this washing machine to leak. The tenants were only in the rental unit for five months, and evidence was presented at the hearing that the property in question is a rental unit. It is therefore reasonable to conclude that any person who has previously rented the unit may have been responsible for this washing machine blockage. Furthermore, as Section 32(4) notes, "A tenant is not required to make repairs for reasonable wear and tear." *Residential Tenancy Policy Guideline #1* describes "reasonable wear and tear" as being the "natural deterioration that occurs due to ageing and other natural forces, where the tenant has used the premises in a reasonable fashion."

On the basis of the evidence before me, I find in this case that the washing machine which suffered a blockage and a stove top with an electrical fault fall into the category of reasonable wear and tear. Had the tenants broken a mirror, smashed a glass table or directly done damage to these items or to the property, these actions would be found to be beyond reasonable wear and tear; however, I find the washing machine to have suffered problems that cannot be directly attributed to the tenants, beyond normal wear and tear.

The landlord has also applied to for a monetary order in respect to a chair that is purported to have been damaged during the tenancy, as well as a stove top that required a burner to be replaced. As proof of her anticipated expenses, the landlord submitted a photo of an office chair for sale at an undisclosed store and an estimate from an appliance repair shop. The price tag displayed on the chair notes a retail price of $199.99, while the estimate for the stove notes anticipated costs of approximately $740.00 plus taxes.

I do not find a photo of a chair that has not been purchased to be an indication as verification of an actual loss. Furthermore, the price listed on the chair in the photograph of $199.99, differs from the price of $280.00 submitted to the hearing. In addition, the tenants noted in their testimony that the chair was not present in their initial condition inspection report, and they argued it should not be included in the condition inspection report submitted at the conclusion of the hearing. They stated that they did not recall ever damaging the chair.

The landlord provided testimony that a burner on the front of the stove did not work and required replacement. The tenants denied ever using the burner as they explained that it was within reaching distance of their child and they feared that he would be injured. During the hearing the landlord provided little evidence demonstrating that the tenants were responsible for the faulty stove top. The invoice estimate provided to the hearing states that the repairs required are switches and wire harnesses. These are parts associated with the inner workings of an element. I find it difficult to conceive of a reason that the tenants would have to break a stove’s wiring. Furthermore, I find it compelling that the stove is not reported to have suffered from any physical damage. I find all of the damage to be the result of normal wear and tear to the rental unit. The landlord’s application for a Monetary Order is therefore dismissed.

The landlord is directed to return the security deposit to the tenants.

As the landlord was unsuccessful in her application, she must bear the cost of her own filing fee.

Conclusion

Although the landlord is allowed to keep $150.00 from the original security deposit, I dismiss the landlord's application in its entirety without leave to reapply.

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: June 22, 2017

Residential Tenancy Branch