



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNSD FF

Introduction

This hearing dealt with the landlord's 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of evidence on file.

Issues

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The tenancy began on March 20, 2016 and ended on June 30, 2017. The tenants paid a security deposit of 800.00 at the start of the tenancy which the landlord continues to hold.

The landlord is claiming expenses to repair damaged surface elements on the stove. The landlord testified this was the second repair required to the stove since the beginning of the tenancy. After the first repair, the technician advised the tenants not to place tinfoil under the burners. The first repair expense was covered by the landlord. The landlord submitted an invoice for the repair work conducted in March 2017. The landlord submits the technician again noted on the invoice that he had to remove tinfoil from the burners and again advised the tenants not to use tinfoil. The landlord is also claiming the cost of replacing a stove element again at the end of the tenancy. The landlord testified the stove is 7 years old.

The landlord is claiming the cost to replace two toilet papers holders in the amount of \$50.38 a receipt for which was submitted. The landlord testified the spring loaded parts of the holders were missing at the end of the tenancy.

The landlord is also claiming the expense to repair a broken toilet flange which is the plastic piece underneath the toilet to which it bolts down to. The landlord testified a plumber had to be called to repair as the toilet was leaking from underneath. The landlord testified that the plumber advised them the part was likely broken as a result of impact as it does not break on its own.

The tenant testified that the stove was extremely old and that they had issues with the stove not working properly from the beginning of the tenancy. The tenant testified that at least 3 of the burners were working at the end of the tenancy.

The tenant did not dispute the landlords claim for replacement of toilet paper holders.

The tenant testified the toilet in question was not sturdy from the beginning of the tenancy and moved every time she tried to clean it and was leaking from underneath. The tenant testified the landlord was advised of this issue and the landlord even attended once to replace the wax seal.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Under section 32 of the Act, the landlord is responsible for routine maintenance and repair of the rental unit unless repairs are necessitated by the actions or neglect of the tenant. The tenant is not responsible for reasonable wear and tear.

I find that the landlord has failed to establish the repairs for both the stove and toilet were necessitated due to the actions or neglect of the tenants. The landlord provided insufficient evidence that the stove repairs were required as a result of the deliberate actions or neglect by the tenants. The landlord provided insufficient evidence that the repairs were required as a result of the tenants placing tinfoil under the burners. I find it is more likely the repairs were the result of reasonable wear and tear of a seven year old stove. The landlord's submission that the toilet flange broke due to heavy impact caused by the tenants is also not supported by any

evidence and is just mere speculation. I find the toilet repair was also likely the result of reasonable wear and tear. The landlord's application for loss relating to stove and toilet repairs is dismissed without leave to reapply.

The landlord is awarded \$50.38 for the replacement of toilet paper holders as agreed to by the tenant.

As the landlord was for the most part not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application from the tenants.

The landlord continues to hold a security deposit in the amount of \$800.00. The landlord is permitted to retain \$50.38 from this security deposit in full satisfaction of the monetary award and the balance of \$749.62 is to be returned to the tenants forthwith.

The tenants are granted a Monetary Order in the amount of \$749.62.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$749.62. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: January 09, 2018

Residential Tenancy Branch