



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 was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement 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 tenant pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties were in attendance I confirmed that there were no issues with service of the landlords’ application for dispute resolution (‘application’) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the landlords’ application and evidence.

Preliminary Issue - Service of Tenants’ Application and Documents

The tenants testified during the hearing that they had served the landlords with their application for dispute resolution by leaving the documents with the concierge. The landlord SH testified in the hearing that they had not received any portion of the tenant’s application or evidence.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

I find that the concierge is not an agent of the landlords. At the hearing, I advised both parties of my finding that I am not satisfied that the tenants had served the landlords with their application in a manner required by section 89(1) of the *Act*. For this reason, I cannot consider the tenant's application for a Monetary Order. I am not satisfied that the landlords were properly served with the tenants' application for dispute resolution.

As noted in the hearing, the landlords had applied for a monetary order, including the retention of the tenants' security deposit. Although the landlords dispute having received the tenants' application, the matter of the security deposit was dealt with as part of this decision in consideration of the landlords' monetary claim.

As the filing fee is normally awarded to the successful party after a hearing has taken place, and as I did not make any findings in regards to the tenants' application, the tenants' application to recover the filing fee is dismissed without leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to compensation for damage to the rental unit?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in satisfaction of their monetary claim?

Are the landlords entitled to recover the filing fee from the tenants for this application?

Background and Evidence

This tenancy began on December 24, 2016, with monthly rent set at \$3,600.00. The landlords collected a security deposit and pet damage deposit in the amounts of \$1,800.00 each. The landlords returned the pet damage deposit to the tenants, but still have the security deposit in their possession. The tenants moved out on June 30, 2016, and provided a forwarding address to the landlords on July 13, 2017. Both parties confirm that both move-in and move-out inspections were completed.

The landlords made a monetary claim for damages in the amount of \$1,382.07 for damage to the oven caused by the tenants. The tenants do not dispute that they had damaged the oven by leaving an aluminum drip pan in the oven, which melted and could not be removed. The landlord submits that the oven was brand new during this tenancy, purchased on February 10, 2017, and that the melted metal

posed as a health hazard due to its toxicity. The tenants dispute this claim, stating that the oven is still functional and did not require replacement.

The landlords submitted in evidence photographs, invoices, as well as a report from the service technician that states “aluminum foil has adhered to oven liner and is not removable without considerable damage occurring to enamel liner-there is not repair for this issue. Only replacement of appliance would resolve the issue”.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates 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. The tenants did not dispute that there was damage to the suite, but that this damage did not warrant the replacement of the oven. I find that the photographic and documentary evidence provided by the landlords support that the tenants did not take reasonable care and attention to leave the suite in undamaged condition.

I then must consider whether the landlords had sufficiently mitigated their loss. The landlords testified in the hearing that due to health concerns with the melted aluminum, the oven must be replaced. The tenants disputed this claim, stating that the oven was still functioning despite the melted foil liner, and there was no need for a replacement of the oven. The landlord submitted a report that stated that the liner could not be removed, and that there was no repair option “for this issue”. There is no mention of toxicity or health implications in this report, not did the landlord provide evidence or witness testimony to support that the melted foil posed a health or safety risk, and that this would necessitate a complete replacement of the oven. I am not satisfied that the landlords had provided sufficient evidence to support that a replacement of the oven is necessary, and as the landlord has a duty to mitigate the tenants’ exposure to the landlords’ monetary loss as is required by section 7(2) of the *Act*, I find that the landlord did not establish that they are entitled to a monetary claim for the replacement of the entire oven.

Residential Tenancy Branch (“RTB”) Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I find that the tenants failed to comply with section 37(2)(a) of the *Act* by damaging the oven. However, both parties agreed that the oven was still functional, and I am not satisfied that the evidence supports that the oven must be replaced for health reasons. Although I find that the landlords are entitled a

monetary claim for damages, I find that the landlords did not establish a complete loss equivalent to the replacement value of the oven. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlord nominal damages of \$691.04, which is half the value of their monetary claim.

The landlords continue to hold the tenants' security deposit of \$1,800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenants' security deposit in partial satisfaction of the monetary claim.

As the landlords were successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

The tenants' application for the return of their security deposit was addressed as part of the landlords' monetary claim. The tenants' application to recover the filing fee is dismissed without leave to reapply.

I find that the landlords are entitled to monetary compensation in the amount of \$691.04 in satisfaction for the damage left by the tenants. I find that the landlords are also entitled to the recovery of the \$100.00 filing fee for this application. I allow the landlords to retain \$791.04 of the tenant's security deposit in satisfaction of the monetary award.

I issue a Monetary Order in the amount of \$1,008.96 in the tenants' favour for the return of the remaining portion of their security deposit to the tenants.

The tenants are provided with this Order, and the landlords(s) must be served with a copy of this Order as soon as possible. Should the landlords(s) 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 26, 2018

Residential Tenancy Branch