



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 to the rental unit pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord, M.R. attended the hearing via conference call and provided affirmed testimony. The landlord, V.R. was unrepresented. The tenant, T.F. attended the hearing via conference call and provided affirmed testimony. The tenant, A.F. was unrepresented. Both parties present confirmed that both tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 27, 2018. The tenant confirmed that no documentary evidence was filed by either tenant. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, it was clarified with both parties that the landlords' monetary claim was filed without sufficient details of the monetary claim. The landlords stated that a finding of liability would be made first and that costs could be determined at a later time. Discussions with both parties was made explaining that in this circumstance that the landlords must provide details of their claim, evidence of their entitlement and justification for the cost(s) sought. As such, the landlord cancelled part of the claim for damaged walls and now seeks only \$677.04 for the replacement cost of a glass cooktop. The tenant confirmed his understanding and made no submissions.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2017 on a fixed term tenancy ending on July 31, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated July 5, 2017. The monthly rent was \$1,580.00 payable on the 1st day of each month. A security deposit of \$770.00 was paid on August 1, 2015.

The landlords seek a clarified monetary claim of \$677.04 to recovery costs due to a damaged glass cooktops. The landlords provided affirmed testimony that a new glasstop replacement is \$677.04 was required as the tenants caused damage to the cooktop during the tenancy.

The tenants disputed the landlords claim stating that at the beginning of the tenancy a crack/indentation was present prior to moving in.

The landlord argued that the damage was caused by the tenants, but was unable to provide sufficient evidence of when the damage was caused. The landlord stated in September approximately 1 month after the start of the tenancy, he had received an email from the tenant complaining of the cracked glass cooktop at the beginning of the tenancy.

Both parties confirmed in their direct testimony that no condition inspection report for the move-in or the move-out was completed by both parties.

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 onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the evidence of both parties and find on a balance of probabilities that the landlords have failed in establishing a claim for damages. It is clear based upon the 3 photographs that show a damaged glass cooktop, however, the landlords have claimed that the damage was caused by the tenants during the tenancy. The tenants have disputed this claim stating that damage was noted at the start of the tenancy as being present during the move-in. The landlords rely solely on direct testimony, but confirmed that an email was sent 1 month after the start of the tenancy noting the damaged cooktop by the tenants. I find that without a completed condition inspection report for the move-in and the move-out that a true comparison cannot be made determining the condition of the glass cooktop or that the damage was caused by the tenants. I also note that the landlord has referred to a receipt for the replacement cost of the glass cooktop, but that it was not submitted for consideration in their application and as such a true cost cannot be determined without this evidence that was available.

Conclusion

The landlord's application is dismissed 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: January 22, 2019

Residential Tenancy Branch