Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNDCT, MNSD, FFT

Introduction

This was a cross application hearing that dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

The landlord testified that she served the tenant with her application for dispute resolution via registered mail on December 20, 2018. The landlord provided the Canada Post tracking number to confirm this registered mailing. The landlord testified that the package was undelivered. The tenant testified that she received a notification from Canada Post to pick something up but by the time she attended at the post office, the package had been returned to the sender. The tenant testified that she learned of the details of the landlord's claim against her when the filed her own application for dispute

resolution against the landlord. The tenant testified that she received the landlord's evidence package but could not recall on what date.

Section 89 (1)(c)of the *Act* states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways: 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;

Section 90(a) of the *Act* states that a document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]*, unless earlier received, is deemed to be received if given or served by mail, on the 5th day after it is mailed.

I find that the landlord is entitled to rely on the deeming provision of section 90(a) of the *Act*. I find that the tenant was deemed served with the landlord's application on December 25, 2018, five days after service of the landlord's application for dispute resolution.

The tenant testified that she served the landlord with her application for dispute resolution via registered mail sometime in January 2019 but could not recall on what date. The landlord testified that she received the tenant's application in mid January 2019 but could not recall on what date. I find that the tenant's application was served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?
4. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
5. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

6. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and ended by way of a One Month Notice to End Tenancy for Cause on December 1, 2018. Monthly rent in the amount of $1,800.00 was payable on the first day of each month. A security deposit of $900.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. The parties completed a move in inspection and inspection report on June 24, 2017. The parties completed a move out inspection and inspection report on December 1, 2018. The tenant provided the landlord with her forwarding address on the move out condition inspection report.

The landlord filed her application for dispute resolution on December 12, 2018. The tenant filed her application for dispute resolution on January 8, 2019.

Both parties agree to the following facts. In August of 2017 the tenant dropped a bowl on the ceramic glass cook stop at the subject rental property which cracked the cook top. Photographs of the cracked cook top were entered into evidence.

The landlord testified that the crack worsened as time passed. This was not disputed by the tenant.

The landlord testified that when she originally spoke to an appliance store they informed her that to replace the entire cooktop would cost between $1,200.00 and $2,000.00 depending on the cooktop chosen. The landlord testified that this information was relayed to the tenant. The landlord testified that since the cost was so high, she informed the tenant that she would pay for half of the replacement. Both parties agree that the tenant declined to repair the cook top.

Both parties agree that in September of 2018 the landlord sent the tenant a letter dated September 7, 2018 which states in part:

> Please accept this letter as my formal request for the following repair(s):
> Cracked cooktop due to bowl being dropped on it by tenant. Cooktop needs to be replaced as crack has expanded since initial damage occurred during August 2017.
>
> Section 32(3) of the *Residential Tenancy Act* states 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.

The letter dated September 7, 2018 was entered into evidence.

Both parties agree that on October 20, 2018 the tenant e-mailed the landlord. The October 20, 2018 e-mail was entered into evidence and states in part:

> A tenant is not required to make repairs for reasonable wear and tear.
>
> I will not be paying for stovetop repair as it is considered reasonable wear and tear.

The landlord testified that on October 26, 2018 she served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of December 1, 2018 (the "One Month Notice") via registered mail. The tenant confirmed receipt of the One Month Notice but did not recall the specific date. The One Month Notice was entered into evidence.

The One Month Notice stated the following reason for ending the tenancy:

- Tenant has not done required repairs of damage to the unit/site.

The tenant testified that she decided not to dispute the One Month Notice because she was concerned for her safety. The tenant testified that she asked the landlord to repair the cooktop and that the landlord refused. The tenant testified that it was dangerous to use the cooktop in its cracked state.

The landlord testified that after the tenant moved out she spoke with an appliance repair store again and they informed her that she could just replace the glass and not the

elements beneath which would be cheaper than replacing the entire cooktop. The landlord testified that after the tenant moved out she replaced the glass on the cooktop which cost $740.69. A receipt for same was entered into evidence. The landlord is seeking to recover $740.69 from the tenant. The landlord testified that the subject rental property and the cooktop were brand new when she took possession of the subject rental property in March of 2015.

The tenant testified that she does not believe she is responsible for replacing the stovetop as the damage resulted from reasonable wear and tear.

The tenant testified that she is seeking the equivalent of 12 months rent in the amount of $21,600.00 for wrongful eviction. The tenant testified that it was unreasonable for the landlord to evict her for dropping a dish.

The tenant testified that she is also seeking double her deposit in the amount of $1,800.00.

Analysis

Section 32(3) of the *Act* states 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.

Section 32(4) of the *Act* states that a tenant is not required to make repairs for reasonable wear and tear.

Residential Tenancy Policy Guideline #1 states that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Based on the testimony of both parties, I find that the stovetop was damaged when the tenant dropped a bowl on it. I find that the action of dropping the bowl on the stovetop was a negligent action which caused the damage to the stovetop. I find that the stovetop was not damaged due to natural deterioration, also known as reasonable wear and tear.

Pursuant to section 32(3) of the *Act*, I find that the tenant was required to repair the stovetop and the landlord is entitled to recover damages for that repair.

Policy Guideline #40 states that the useful life for a stove is 15 years (180 months). Therefore, at the time the tenant moved out, there was approximately 135 months of useful life that should have been left for the stovetop of this unit. I find that since the stovetop required replacing after only 45 months, the tenant is required to pay according to the following calculations:

$740.69 (cost of new stovetop) / 180 months (useful life of stovetop) = $4.11 (monthly cost)

$4.11 (monthly cost) * 135 months (expected useful life of stovetop after tenant moved out) = $554.85

The tenant is seeking the value of 12 month's rent for wrongful eviction. I find that there is no such remedy available to the tenant under the *Act*. Had the tenant wished to dispute the One Month Notice to End Tenancy for Cause, she may have done so, but no remedy under the *Act* exists for wrongful eviction under section 47 of the *Act.* Section 47 of the *Act* is the section which pertains to One Month Notices to End Tenancy for Cause. I therefore dismiss the tenant's claim for $21,600.00.

The tenant may have been under the misapprehension that she was entitled to the 12 months rent remedy under section 51 of the *Act.* However, section 51 only applies to Notices to End Tenancy issued under section 49 of the *Act.* Section 49 of the *Act* pertains to Two Month Notices to End Tenancy for Landlord's Use of Property and Four Month Notices to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

(a)the date the tenancy ends, and

(b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38 of the *Act.* Since the landlord property retained the tenant's security deposit, the tenant is not entitled to receive double her security deposit.

As the landlord was the successful party in this dispute, I find that the landlord is entitled to recover the $100.00 filing fee from the tenant, pursuant to section 72 of the *Act.* I find that the tenant is not entitled to recover her filing fee from the landlord, pursuant to section 72 of the *Act.*

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain $654.85 from the tenant's security deposit in satisfaction of her monetary claim against the tenant. I find that the landlord is obligated to return $245.15 of the security deposit, to the tenant.

Conclusion

The landlord is entitled to retain $654.85 of the tenant's security deposit.

I issue a Monetary Order to the tenant in the amount of $245.15.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. 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: April 03, 2019

Residential Tenancy Branch