



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL –S; MNDL –S; MNDCT; FFL; FFT

Introduction

This hearing dealt with monetary cross applications. The landlord had applied for a Monetary Order for compensation for unpaid rent and utilities, damage to the rental unit, and, cleaning; and, authorization to retain the tenant's security deposit. The tenant had applied for a Monetary Order for compensation related to loss of use and enjoyment of the rental unit.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over three dates and two Interim Decisions were issued. The Interim Decisions should be read in conjunction with this decision.

After several hours of testimony and oral submissions in addition to a significant amount of written submissions and evidence, as the allotted hearing time expired on the third hearing date, the parties turned their minds to reaching a settlement agreement. The parties were in agreement with respect to a partial settlement, as described below.

The parties were in agreement to withdraw and/or waive entitlement to receive compensation from the other with the exception of the following:

1. Whether the landlord established an entitlement to compensation from the tenant for damage to the rental unit that resulted from a fire in an amount equivalent to at least the amount of the security deposit.
2. If the landlord proves an entitlement as described above, the parties agree the landlord may retain the tenant's security deposit in full satisfaction of the

damages and if the landlord fails to prove such an entitlement the security deposit shall be refunded to the tenant.

Since the parties were in agreement to withdraw or waive entitlement to compensation from the other with the exception of the limited scope described above, for the remainder of this decision I have captured only the facts and evidence and provide an analysis necessary to resolve the limited scope of the parties' unsettled dispute.

Issue(s) to be Decided

1. Did the landlord establish that the tenant is responsible for damage to the rental unit that resulted from a fire in an amount equivalent to at least the amount of the security deposit?
2. Should the security deposit be retained by the landlord in satisfaction of the damages that resulted from the fire or should the security deposit be refunded to the tenant?

Background and Evidence

The tenancy started on July 15, 2018 and the landlord collected a security deposit of \$650.00. The landlord continues to hold the security deposit pending the outcome of this proceeding.

The parties provided consistent submissions that a small kitchen fire occurred in the rental unit on November 13, 2018; however, the parties were in dispute as to the cause of the fire.

The landlord is of the position that the fire was caused by the tenant's careless use of the stove while leaving combustible materials too close to the stove top. The fire damaged the pony wall adjacent to the stove and caused smoke damage to the walls, cupboards and ceiling. The landlord's handyman provided an estimate of \$1,200.00 for materials and labour to repair the damaged wall and cupboard and repaint the ceiling and walls in the kitchen.

The tenant testified that the pony wall adjacent to the stove had a shelf on top of it and the shelf was intended to place items. The tenant testified that she had the far burner on low and then went to the bathroom. When she came out of the bathroom the items on the shelf had caught fire. The tenant is of the position that the fire is not the result of her using the stove or having items on the pony wall but the result of faulty wiring.

Both parties provided consistent submissions that the fire department was not called to deal with the fire. Rather, the tenant had doused the fire with water. The smoke alarm was sounding and another tenant went to get the landlord who immediately entered the unit. The tenant was in the rental unit when the landlord entered the rental unit.

The landlord had the stove inspected on November 16, 2019 by an appliance technician. The technician found no fault with the stove, including the wiring in the stove. The technician found the stove top and the pony wall adjacent to the stove top was covered in burned flammable items that he had to clear away to inspect the stove.

The City's inspector inspected the wiring for the stove and the electrical panel on November 23, 2018. The City inspector noted that the stove's wire to the breaker was not the correct gauge; however, in a subsequent letter the inspector stated that the wire in the panel did not cause the fire. Both parties pointed to the City inspector's communication in support of their respective position.

The landlord also had her electrician prepare a letter interpreting the status of the electrical connection and pointed out that the wiring was installed in the 1960's and that it appears different than wires of modern day but that the exiting wire is of the correct gauge.

Both parties provided photographic and video evidence showing the condition of the stove and adjacent walls shortly after the fire. The photographs and video show blackened and burned materials that appear to be paper or box board on top of the stove top and burned papers and a binder on top of the pony wall. In addition, the wall and trim near the top of the pony wall is charred and burned.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the partial settlement agreement reached by the parties during the hearing. As part of their agreement, the parties waived and/or withdrew their claims against each other with the exception of the landlord's claim to recover damages related to the kitchen fire to an amount that does not exceed the security deposit.

Accordingly, by way of this decision, I find that both parties are now precluded from filing any other claim against the other with respect to the subject tenant.

As part of their settlement agreement, the parties request that I make a determination as to whether the tenant is responsible for the fire that occurred on November 13, 2018 and disposition of the security deposit. Accordingly, the remainder of this analysis provides findings with respect to the fire and disposition of the security deposit.

Under section 32 of the Act, a tenant is responsible for repairing damage they, or persons they permit on the property, cause by way of their actions or neglect. Section 37 of the Act provides that a tenant is required to leave a rental unit undamaged at the end of the tenancy. Where a tenant damages a rental unit due to their actions or neglect and does not have the damage repaired, the landlord may seek compensation from the tenant to recover losses that resulted from the tenant's actions or neglect. The landlord bears the burden to prove an entitlement to recover the amount from the tenant. The burden of proof is based on the balance of probabilities.

On November 13, 2018 a fire took place in the kitchen at or near the stove top. The landlord is of the position the fire was caused by the actions or negligence of the tenant in leaving flammable or combustible materials on top of or very near the stove element. The tenant is of the position that faulty wiring is the cause of the fire.

Upon consideration of everything before me, I find the preponderance of evidence provided to me satisfies me that the fire was the result of leaving flammable or combustible materials too close to a stove element and those materials ignited when the tenant turned the element on to cook food. I reject the tenant's assertion that faulty wiring is the cause of the fire. The reasons for my findings are outlined below:

- The photographs depict burned paper products on top of the stove top and on top of the pony wall and I find the damage to the wall and trim is the result of burning of combustible materials on top of the stove and pony wall.
- The landlord had the electrical connections in the stove and in the rental unit inspected by an appliance technician and an electrician and their findings indicate the wiring did not cause the fire.
- If faulty wiring in the stove or running in the wall to the breaker panel would likely result in damage to the wires such as melting or signs of charring near wires or electrical outlets or the electrical panel, yet there are no signs of such.

In light of the above, I find on a balance of probabilities that the tenant is responsible for causing the damage to the rental unit as a result of the fire that occurred on November 13, 2018.

The landlord provided an estimate showing the cost to repair the trim and walls and remove the smoke residue would cost \$1,200.00. As such, I find I am satisfied that the landlord is entitled to retain the tenant's \$650.00 security deposit in satisfaction of the damage caused by the tenant. Therefore, I authorize the landlord to retain the tenant's security deposit.

Conclusion

The parties reached a partial settlement during the hearing to withdraw and/or waive entitlement to compensation from the other with the exception of determining whether the tenant is responsible to compensate the landlord for fire damage and disposition of the security deposit.

I have determined the tenant is responsible for the fire damage and the landlord is entitled to compensation from the tenant in an amount that is at least the amount of the security deposit. I have authorized the landlord to retain the tenant's security deposit in full satisfaction of the fire damage.

The parties are now precluded from making any other claim against the other party with respect to this tenancy.

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: November 06, 2019

Residential Tenancy Branch