



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”). The matter was set for a conference call hearing.

On May 15, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

On May 27, 2020, the Tenant submitted an Application for Dispute Resolution under the *Act* for the return of a security deposit; and to recover the cost of the filing fee.

The Landlord and Tenant attended the teleconference. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit towards her claims?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on February 1, 2015 and was on a month to month basis. Rent in the amount of \$1,900.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$950.00. The rental unit came furnished.

At the start of the hearing the Landlord withdrew the following claims:

- Painting Costs
- New Microwave Purchase

The Landlord is seeking compensation for damage to the rental unit for the following items:

- New Sofa and Delivery Cost \$345.00
- Headboard and Light Fixture Installation \$75.00
- Garburator \$400.00
- Light Fixture Purchase \$25.00

New Sofa

The Landlord testified that at the end of the tenancy she found the sofa to be cracked and torn. The Landlord testified that the couch had been purchased used off a local website and she could not recall how much she paid for it. She testified that it had been in good condition.

The Landlord testified that she purchased a used replacement sofa that she found on a local website. She testified that the sofa cost \$200.00 and an additional \$145.00 to have it delivered. The Landlord did not provide a copy of a receipt for the purchase and delivery of the replacement sofa.

In response to the Landlords claim, the Tenant testified that the couch was a low-quality used couch with a plasticky feel. The tenant testified that ha may have sat on it a total of 25 times. The Tenant testified that he used the couch over the five-year tenancy. The Tenant submitted that he is not responsible for any damage because the couch was very cheap, and it broke down with normal use.

Headboard and Light Installation

The Landlord testified that at the end of the tenancy she found the headboard was not attached to the bed frame. The Landlord also testified that a light fixture that attaches to

the headboard had a cracked globe and needed to be replaced. The Landlord testified that the new light fixture she purchased needed to be attached to the headboard.

The Landlord hired a person to reattach the headboard to the bedframe and to attach the light fixture to the headboard. The Landlord testified that she paid a person \$75.00 for reattaching the two items. The Landlord is seeking to recover the \$75.00 cost from the Tenant.

In response to the Landlord's claim, the Tenant testified that the headboard was connected to the bed frame at the start of the tenancy. The Tenant stated that he moved the bed to a different position and removed the headboard to make it work better in the room. The Tenant acknowledged that he did not reconnect the headboard at the end of the tenancy. The Tenant testified that the headboard attaches to the frame with four bolts and it is a five-minute job to reattach it.

The Tenant testified that when he was attempting replace the lightbulb within the light fixture the fixture / globe cracked/ broke. He testified that the Landlord could have purchased a replacement globe and did not need to purchase a new light fixture.

Garburator

The Landlord testified that at the end of the tenancy she found that the kitchen garburator did not work. The Landlord testified that the Tenant never reported to her that the garburator was not working. The Landlord testified that she does not have any evidence that the Tenant misused the garburator. The Landlord testified that she purchased a new garburator for \$289.00 including installation. The Landlord is seeking to recover the cost of the replacement garburator. The Landlord did not provide a receipt for the purchase and installation of a new garburator.

When the Landlord was asked how old the garburator was, she testified that it was present in the unit when she purchased the property in 2004.

In response to the Landlord's claim, the Tenant testified that he is not responsible for the cost to replace the garburator. He testified that the garburator never worked. He testified that he rarely used the kitchen and did not raise the issue with the Landlord. He testified that the garburator was very old, and it died.

Security Deposit

The Landlord is seeking to keep the security deposit of \$950.00 towards any successful claims. The Landlord applied against the security deposit within 15 days of the date the tenancy ended.

The Tenant testified that the Landlord never performed a move in inspection / move out inspection and provide him with a report. The Tenant testified that there was no written agreement that permitted the Landlord to keep an amount of the security deposit.

The Landlord confirmed that she never performed a move in or move out inspection of the rental unit with the Tenant.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Sections 23 and 35 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Each section also requires that the Landlord complete the condition inspection report; both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord does not perform an inspection and complete an inspection report in accordance with the regulations.

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that a Tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the Tenant or his or her guest. A Tenant is not responsible for reasonable wear and tear to the rental unit or site. The Landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the Tenant.

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications and determining damages. When applied to damage(s) caused by a Tenant, the arbitrator may consider the useful life of a building element and the age of the item. The Guideline provides that the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement.

Residential Tenancy Branch Policy Guideline #5 Duty to Minimize Loss provides the following information:

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. The landlord or tenant entitled to contract for repairs as a result of a breach by the other party, may choose to pay a service charge that exceeds what one would reasonably be required to pay for the service in the circumstances. In that case, the arbitrator may award a reduced claim based on the reasonable cost of the service.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I find that the Landlord failed to conduct a move in inspection in accordance with the Act. I find that due to the Landlord's failure to conduct a proper move in inspection and complete a report, the Landlord has extinguished the right to apply against the security deposit for damage.

The Tenant is awarded the return of the security deposit in the amount of \$950.00.

New Sofa and Delivery

I find that the Landlord provided insufficient evidence to prove the value of her loss. The Landlord could not recall how much the original couch cost and did not know the age of the couch. In addition, I am not satisfied that any damage present on the used couch after five years of use is attributable to anything more than normal wear and tear.

The Landlord's claim for the purchase cost of a used couch and the delivery cost is dismissed without leave to reapply.

Headboard and Light Fixture Install

I find that the evidence clearly establishes that the headboard simply needed to be reattached using four bolts. While I find that the Tenant left the headboard unattached at the end of the tenancy, I find that the Landlord is required to mitigate against the loss being claimed. I accept that reattaching the headboard and light is a simple process that would not take more than 15-20 minutes. I find that the Landlords claim of \$75.00 exceeds a reasonable amount to perform the work.

Accordingly, I have adjusted the Landlord's claim. I award the Landlord a lesser amount of \$20.00 for the installation costs.

Garburator

I find that the Garburator was at least 16 years old at the end of the tenancy. I find that the Garburator was beyond its useful life. In addition, there is insufficient evidence from the Landlord to establish that the Tenant damaged the Garburator deliberately or as a result of neglect.

The Landlords claim for the replacement cost of the Garburator is dismissed without leave to reapply.

Light Fixture Purchase

While the Tenant submitted that the Landlord could have purchased replacement globe rather than purchasing a new light fixture; the Tenant agreed to pay the Landlord amount being claimed of \$25.00.

I grant the Landlord the amount of \$25.00 for the replacement of a light fixture.

Security Deposit

While I have found that the Landlord extinguished her right to apply against the security deposit, the Landlords still retains the right to apply for compensation for damage. In accordance with section 72 of the Act, if an Arbitrator orders a party to a dispute resolution proceeding to pay any amount to the other party, the amount may be deducted from any security deposit due to the Tenant.

Section 72 of the Act also gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties had some success, I decline to award the recovery of the filing fees.

I find that the Landlord owes the Tenant the amount of \$950.00 from the security deposit.

I find that the Tenant owes the Landlord the amount of \$45.00 for light fixture and installation costs.

I authorize the Landlord to retain the amount of \$45.00 from the security deposit. I order the Landlord to repay to the Tenant, the balance of \$905.00 from the security deposit.

I grant the Tenant a monetary order in the amount of \$905.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenant was successful with his claim for the return of the security deposit

The Landlord was partially successful with her claim for damage.

I authorize the Landlord to retain the amount of \$45.00 from the security deposits of \$950.00 that she is holding.

I order the Landlord to repay the Tenant the balance of \$905.00 and I grant the Tenant a monetary order in the amount of \$905.00.

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: September 18, 2020

Residential Tenancy Branch