



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$1,377.19 for damages, retaining the security deposit to apply to the claim; and to recover the \$100.00 cost of his Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord explained that the rental unit is a one-bedroom apartment that is part of a resort that also has private ownership, like his. The Parties agreed that the fixed-term tenancy began on October 15, 2020, and ran to April 30, 2021, at which time the tenancy ended when the Tenant moved out.

The tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$1,200.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$600.00, and no pet damage deposit. The Landlord confirmed that he retained the full security deposit to apply to this claim.

The Parties agreed that they inspected the condition of the rental unit at the start of the tenancy. The Landlord said he did a move-out inspection of the rental unit, but he said that the Tenant was not in attendance when he did it. The Landlord said he gave the Tenant two opportunities to attend the move out inspection, but that she did not attend at either time. The Landlord uploaded a copy of the condition inspection report ("CIR") from these inspections.

#1 CABINETS/SHELF and TRIM → \$200.00

In his Application, the Landlord said the following about this claim:

Tenant damaged multiple kitchen cabinets and bathroom cabinet. Main door trim was ripped off where security chain attaches. Kitchen Cabinets and bathroom cabinets to be repainted, and door trim fixed.

In the hearing, the Landlord said:

When she moved in, the cabinets were in perfect condition. When she moved out, there was paint lacquer that was damaged. The cheapest way to fix it, is paint match and paint all the cabinets to get them back to the original condition.

The Tenant replied:

In my submissions, I said I used disinfectant wipes on the cupboards and shelves, and they were cleaned with a damp cloth, as needed during the tenancy. It was due to the Covid pandemic that I used the [disinfectant] wipes. I noticed that some of the paint did come off, but I had to clean, so I wasn't going to leave it unclean, so I disinfected, as well.

The Landlord submitted photographs of the damage he said was done to the cabinets. These photos included:

- a centimetre in size scrape of the paint on a kitchen cupboard drawer;
- a line of wear on the kitchen cupboard door;
- minimal wear on a closet shelf;
- a fire extinguisher in a photo labelled "holes in wall and trim ripped off"; and
- scratch marks around the handle of a bathroom drawer.

#2 STOVE REPLACEMENT → \$1,177.19

In his Application, the Landlord said the following about this claim:

Kitchen stove not working, no longer unlocks and elements won't turn on. [W.P. Appliances] figured it was a part that is no longer in production and therefore stove can not be repaired. A used 24" stove could not be found. \$1177.19 for Glass top stove.

The CIR indicates that the stove was "dirty" at the start of the tenancy, but when I asked the Landlord about the condition of the stove then, he said:

At the beginning of the tenancy, nothing was wrong with it. When I checked it out at the end, the oven part – the door didn't open - and it wouldn't turn on. It wasn't functional. We managed to get it open, but the elements didn't work. The top burners worked, but not the oven.

I asked the Landlord how old the stove was at the start of the tenancy, and he said it has a manufacturing date sticker of 2012 in the model number. He said he bought the rental unit in January 2020 and then renovated it, but the stove remained the same.

I asked the Landlord if he tried to have the oven fixed, and he said that there were no replacement parts for that unit; therefore, he said the only other option was to buy a new one.

In terms of the model he chose for the replacement, the Landlord said:

There were different models, but the cheapest comparable models had a glass top and were more expensive than the cheap white ones. We bought the cheapest option – a free-standing electric range. Prices went up from here.

The Tenant said:

I was unaware that anything was wrong with the stove. I used it two or three times. I brought my own convection oven to use, so that's why I didn't use it more than that.

When I used the self-cleaning mode before I moved out - the oven was dirty when I moved in - but wished to leave it clean. The oven door didn't open when it was finished the self-clean. I notified the Landlord upon moving out. But I wouldn't have used the self-cleaning mode, if I had known it would cause the door to lock. I was not notified that it wasn't working, and so that's why I used the self-cleaning mode.

I asked the Landlord if he had ever used the self-cleaning mode, and he said: "No. We had previous AirBnB guests for a year and never had a problem. It's never been an issue with the oven prior to that." I infer the Landlord did not clean the stove before this tenancy started.

The Landlord submitted photographs of the estimated cost of a new stove for the amount claimed. However, this is an estimate only, not a receipt for having purchased a new stove. Further, the Landlord did not direct me to a copy of a repair receipt indicating that he had retained someone to repair it, and that it could not be repaired.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16

sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

As set out in Policy Guideline #16 (“PG #16”), “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant’s pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also 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. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

#1 CABINETS/SHELF and TRIM → \$200.00

Based on the evidentiary submissions, including the testimony given in the hearing, I find that the damage claimed by the Landlord is no more than normal wear and tear. The minor damage could be sanded and repainted in spots, without all of the cupboards and shelves having to all be repainted. Accordingly, and pursuant to section 62 of the Act, I dismiss this claim without leave to reapply.

#2 STOVE REPLACEMENT → \$1,177.19

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, 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 of the replacement.

In PG #40, the useful life of a stove is 15 years. The evidence before me is that the stove was new in 2012, so it was approximately nine years old at the end of the tenancy and had six years or 40% of its useful life left. The CIR indicates that the stove was "dirty" at the start of the tenancy, but there were no comments as to its functionality. However, the Landlord said that the oven did not work at the end of the tenancy, once they were able to get the door open after the self-cleaning process was complete.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

When I consider the evidence before me overall on this matter, I find that the Landlord did not provide sufficient evidence that the stove cannot be repaired, or that the Landlord contacted different repairs shops to first have the oven repaired, before suggesting that it be replaced. The Landlord did not direct me to a repair receipt for evidence of his efforts in this regard.

Further, the Landlord provided an estimate only of the replacement stove, rather than an invoice evidencing his purchase of a stove. As such, I find that the Landlord has not proven the cost that he has incurred in this matter. Based on these considerations of the evidence before me, and I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

Given his lack of success in this Application, I decline to award the Landlord with recovery of the \$100.00 Application filing fee.

Accordingly, and pursuant to section 62 of the Act, I dismiss this Application wholly without leave to reapply, as I find the Landlord did not provide sufficient evidence to prove his case in these matters on a balance of probabilities.

I Order the Landlord to return the **\$600.00** security deposit to the Tenant immediately. I grant the Tenant a Monetary Order of **\$600.00** that she may serve on him and enforce, should the Landlord fail to return the security deposit promptly.

Conclusion

The Landlord is unsuccessful in his Application, as he failed to provide sufficient evidence to meet his burden of proof on a balance of probabilities.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$600.00** for the return of the Tenant's security deposit. If needed, this Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: November 30, 2021

Residential Tenancy Branch