Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S FFL

Introduction

The Landlords seek compensation under the *Residential Tenancy Act* (the "Act").

Issue

Are the Landlords entitled to compensation?

Background and Evidence

The tenancy began May 1, 2021, and ended on September 30, 2022. Monthly rent was $1,875.99 and the Tenant paid a $900.00 security deposit. There is a copy of the written tenancy agreement in evidence. The tenancy agreement included a term which required the Tenant to pay half of the utilities (hydro and gas),

The Landlords' Monetary Order Worksheet lists a total of $1,116.16 in losses (including the cost of the $100.00 application fee), but the Landlords advised that there should also be $376.62 for unpaid hydro as part of the overall application. The claims are therefore as follows:

Claim / Receipt	For	Amount
Brick – "DOC 1"	Delivery fee, enviro fee, removal fee	$139.45
IGA	Final food replacement	$142.77
Food estimate	Previous losses, lunches, and dinner	$100.00
Dollarama	Kitchen liners	$43.21
Home Hardware	Sawhorse replacement	$30.23
Driveway repair		$503.00
Coastwide restorations	Steam cleaning (estimate)	$157.50
Hydro		$376.62

The Landlord submitted copies of receipts for the above-listed amounts. The reason for the Landlords' seeking compensation is, as described in their application, as follows:

> Tenant damaged freezer gasket, leading to a food loss, and additional fees associated with new purchase. Tenant ignored caution tape, drove over sawhorse which had to be replaced and led to damage to new driveway extension which needed fixing. Tenant disposed of cupboard liners which needed replacing.

The Landlords gave affirmed testimony surrounding all these claims. The Tenant denied the entirety of the claims, except for admitting that they must have accidentally driven over and broken the sawhorse.

Analysis

In a dispute resolution proceeding, the applicants must prove their claim on a balance of probabilities ("more likely than not"). I have considered the parties' testimony and evidence but only refer to evidence that is relevant and necessary.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Regarding the freezer, is no evidence concerning the condition of the Landlords' freezer (upon with the Tenant and the TELUS technician stood) at the start of the tenancy.

In respect of the Landlords' claims related to the purported damage caused by the Tenant to the freezer, in the absence of any evidence such that the freezer was operational at the start of the tenancy, I am not persuaded that they have proven the claims related to the freezer, including the amounts claimed for lost food. What is more, that the Landlords permitted a modem or router to be affixed to a point requiring access over the freezer is not a reasonable decision given the likelihood of that equipment requiring to be accessed at some point.

Regarding the kitchen liners, the Tenant admitted to removing them, though she remarked that they were later returned to the Landlords. She disputed that the Landlords would need 14 rolls of liner, though the Landlords testified that the rolls do not cover very much area and that 14 rolls were necessary.

Taking into consideration all the evidence before me, it is my finding that the Tenant is liable for the cost of the kitchen liners in the amount of $43.21.

Regarding the sawhorse, the Tenant admitted to breaking this and as such this claim made by the Landlords is granted in the amount of $30.23.

Regarding the claim for the driveway repair, there is no direct, indirect, or circumstantial evidence that the Tenant negligently or wilfully caused the new driveway to crack. A photograph of the Tenant's vehicle parked to the right of the new driveway does not persuade me to find that she caused the crack. Based on the lack of any supporting evidence regarding this claim I decline to award compensation. This claim is thus dismissed.

In respect of the steam cleaning claim, this is an estimate only and the Landlords have not incurred any monetary loss. What is more, the Tenant submitted photographs of the carpets which appear to depict a cleaned carpet. Last, it should be noted that there is no requirement in the tenancy agreement that the Tenant steam clean the carpets at the end of the tenancy.

In the absence of any such requirement the Tenant was only required to comply with section 37(2)(a) of the Act requiring that they "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

Taking into consideration all of the evidence and testimony regarding this claim, I am not satisfied that the Landlords have proven this aspect of their application and the claim is dismissed.

Last, as for the claim for unpaid hydro, the tenancy agreement is clear: the Tenant was responsible for paying ½ of the utilities. The Tenant agreed to and signed their acceptance of this term of the tenancy agreement on April 16, 2023. Certainly, if circumstances changed that might necessitate a modification of the percentage, then both the Landlords and the Tenant would have been at liberty to make these changes, *if* such changes were made under section 14 of the Act. However, no such changes were ever made.

That the Tenant now believes that this one-half amount was unfair does not void the legal agreement that they pay for half. The Landlords' evidence persuades me to find that the Tenant owed an amount for utilities at the end of the tenancy, and that the Landlords are entitled to recover this unpaid amount. As such, the Landlords are awarded $376.62 in unpaid utilities.

The Landlords are awarded $100.00 under section 72 of the Act to compensation them for the cost of the application fee.

In total, the Landlords are awarded $550.66 in compensation. $43.21 for the kitchen liners, $30.23 for the sawhorse, $376.62 for utilities, and $100.00 for the application fee.

Pursuant to section 38(4)(b) of the Act the Landlords are authorized to retain $550.66 of the Tenants' security deposit in satisfaction of their claim. The balance of the security deposit ($349.34) must be repaid to the Tenant within 15 days of the Landlords receiving a copy of this Decision.

Conclusion

For the reasons set out above, the Landlords' application is granted, in part.

The Landlords are awarded $550.66 in compensation and may retain this amount from the Tenant's security deposit.

The Tenant is entitled to the return of $349.34 of their security deposit.

Dated: July 14, 2023

Residential Tenancy Branch