Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Landlord filed an Application for dispute resolution on July 5, 2023, seeking compensation for damage in the rental unit, unpaid rent/utilities, monetary loss/other money owed, and recovery of the Application filing fee.

The Tenant filed an Application on July 21, 2023 for the return of their security deposit/pet damage deposit, and recovery of the Application filing fee. With the Landlord's Application already in place, the Tenant's Application was crossed to that of the Landlord.

The matter proceeded to a hearing as per s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 11, 2024. Both the Landlord and the Tenant attended the hearing. Each party acknowledged the service of the other's Notice of Dispute Resolution Proceeding, and prepared evidence.

Preliminary Matter – settled issues

At the outset of the hearing, the Landlord stated that the matter of utilities owing by the Tenant was settled. I dismiss this piece from the Landlord's Application, without leave to reapply.

The Landlord also provided on their Application that they were seeking compensation for monetary loss/other money owed. They specified the amount of $1,300, and referred to the amount for an oven as well as utilities. I find the Landlord provided this extra issue on the Application in error; this was made clear in the hearing from the parties' testimony and the Landlord's statement regarding the utilities. I sever this issue as unrelated to the main issue – in effect, this piece of the Landlord's Application is withdrawn.

Preliminary Matter – Tenant's issues

The Tenant provided a worksheet with their Application, setting out specific amounts:

- withheld security deposit amount $797.42
- withheld deposit amount accrued interest: $10
- financial hardship/emotional distress: $797.42
- defamation: $500

The Tenant's Application only indicated that they were seeking the return of the security deposit. The Tenant provided this amount of $2,205. I examine the particular amount of this part of the Tenant's claim in the decision below.

Otherwise, the Tenant did not indicate on their Application that they were making claims for other types of compensation. Moreover, the Tenant in their written submission provided to the Residential Tenancy Branch on January 3, 2024 listed damages for $1,000, and "$10,000 for severe emotional distress", as well as $500 to a witness for emotional distress.

A claim of defamation and "financial hardship/emotional distress" is something very specific, and the Tenant did not provide for this accurately on their Application. Moreover, they provided varying amounts throughout. The Tenant did not amend their Application to include this within the scope of their Application. Providing this information on the final page of a written submission provided 8 days prior to the scheduled hearing is not administratively fair to the Landlord as the Applicant/Respondent, nor to the Residential Tenancy Branch as the decision-maker in this matter. I find these extra pieces were not properly identified by the Tenant in their Application; therefore, I give these matters no consideration herein.

The Tenant applied on the issue of the security deposit; therefore, I am considering only the single issue of the security deposit return in this decision.

Issues to be Decided

- Is the Landlord entitled to compensation for damage in the rental unit?

- Is the Landlord entitled to recovery of the filing fee for their Application?

- Is the Tenant entitled to a return of the balance of their security deposit?

- Is the Tenant entitled to recovery of the filing fee for their Application?

Background and Evidence

The Landlord and the Tenant each provided a copy of the tenancy agreement that was in place. The Tenant paid a security deposit amount of $2,150 at the start of the tenancy, and $2,150 for a pet damage deposit.

The tenancy started, as indicated in the copy the Landlord provided, on June 10, 2022. The tenancy ended based on the Tenant's notice to end tenancy approximately two months in advance. The agreed-to end-of-tenancy date was June 30, 2023.

The agreement states that the "Stove and oven" was included in the rent.

An addendum signed by the Landlord and Tenant provides as follows:

- Any larger damage to the rental unit, please inform the landlords asap to inspect and see if any professional repair services are needed ie plumbers, electrician etc to avoid further property damages.

On their Application, to claim compensation for a specific amount of a replacement stove/oven/range, the Landlord provided the amount of $1,121.16. In the evidence, the Landlord provided an invoice for this purchase of a new stove/oven/range, dated July 1, 2023. On the description for this issue, the Landlord provided: "Stove replacement whirlpool brand [The Tenant] didn't tell us until day before inspection and new tenant moving in on first. Left to last minute to inform us."

This stemmed from the stove/oven/range that was in place at the start of the tenancy breaking, with the Tenant then replacing the stove/oven/range in the interim period until the end of the tenancy. This was unknown to the Landlord for the duration of the tenancy until the last few days. The Tenant then replaced the replacement very close to the end of the tenancy. The Landlord submits this was done without their knowledge or consent, and they did not accept the replaced oven purchased by the Tenant at the end of the tenancy.

The Landlord had new tenants moving in immediately at the beginning of July 2023. The Tenant left the replacement stove/oven/range in the rental unit. The Landlord moved the replacement to their own home's garage at some point and notified the Tenant of this via text message (Landlord's evidence, undated).

As stated in the hearing, the Landlord's position is that "when something breaks, we get to make the call" – this refers to this scenario where the Tenant replaced the stove/oven/range. The Landlord set out that the replacement stove/oven/range proffered by the Tenant at the end of the tenancy was not their choice of a name-brand appliance. This would entail difficulty with parts and repairs should they require that in the future.

The parties met on the final day of the tenancy and the Landlord chose to deal with the matter of the proffered stove/oven/range at that time. On the final section of the Condition Inspection Report, the Landlord indicated there was no amount deducted from the pet damage deposit. The Landlord subtracted the amount of $797.42 from the security deposit amount of $2,170.94, accounting for $20.94 added interest to the security deposit.

The Tenant did not sign the document to indicate they agreed to this deduction. The Landlord wrote their description of the issue from their perspective on the final page of the document: "Not discussed for replacement brand not wanted". The Tenant also set out their position on that document.

In the hearing, the Landlord stated they wished to be compensation for the cost of the replacement they purchased for the rental unit at the end of the tenancy. The Landlord provided a copy of the receipt, July 1, 2023, showing the purchase for which they paid $1,121.16, the compensation amount.

The Landlord stated they did not want the replacement range that the Tenant purchased at the end of the tenancy. This was not a name brand that would be easier to repair and find parts for if needed.

The Tenant, in their written submission, set out their position:

- in November 2022 the glass top on the range (the "original range") cracked
- the Tenant researched for a part replacement but found the cost prohibitive based on the value of the range itself
- the Tenant purchased a new range (*i.e.*, the "second range") on November 30, 2022 – this was for their own use until the end of the tenancy, and then "replace the broken and discarded Range with a new electric range when [the Tenant] moves out"

- toward the end of the tenancy, on June 23 2023 the Tenant purchased another range (*i.e.*, the "third range") for $797.42
- they informed the Landlord that the second range in place in the rental unit was replaced with the third range
- the Landlord visited to inspect the third range – in the Tenant's submission the Landlord emphasized the need to retain the manual, and then adjusted the range into its' designated space – the Landlord "did not say anything negative or reject the [third range]", and "[the Landlord] pushing the appliance further against the wall suggested to the Tenant that [the Landlord] had accepted the offered replacement"
- the Landlord visited on June 30, 2023 to conduct the final condition inspection with the Tenant
- the Landlord informed the Tenant that the Landlord would not accept the third range – it "was not one of their preferred brands"
- the Landlord also informed the Tenant that because of depreciation the original range had a value of approximately $1,800, making the third range "insufficient in terms of replacement cost"
- the Landlord said the third range paid amount ($797.42) would be deducted from the security deposit, and the Tenant would have to remove the third range from the rental unit
- the Tenant did not accept this, not knowing whether they could return the range for a refund
- the Tenant and Landlord agreed that the third range could remain at the rental unit so the Tenant could negotiate a return of the third range to the seller, after the summer long weekend
- the Landlord provided $1,374.42 return of the security deposit to the Tenant
- on July 1, the Landlord notified the Tenant that they purchased a new range (the "fourth range") and placed this in the rental unit – the third range was placed in the Landlord's own garage – the Tenant finds this to be a breach of the agreement they had with the Landlord on June 30 – this eliminated the possibility of a return of the third range to the seller, along with potential internal damage because of its move by the Landlord

On their own, the Tenant confirmed with the original range manufacturer that the original range model was made in 2010. This is set out in a message directly from the manufacturer to the Tenant dated December 27, 2023. That makes the original range "almost 13 years old when the glass top cracked", not approximately four years old as the Landlord stated at the final inspection meeting.

The Tenant emphasized that they went “above and beyond” by replacing the broken original range with the third range that was at least equal in value. The Tenant feels the Landlord accepted this proffered solution; moreover, there was an agreement for the storage of the replacement third range but the Landlord moved it and scuttled that agreement.

Analysis

The following sections of the *Act* apply to this situation:

- s. 32: a tenant must repair damage to the rental unit caused by their actions or neglect

- s. 7: if a party does not comply with the Act or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results

- s. 7: a landlord or tenant who claims compensation for damage or loss that results from the other’s non-compliance must do whatever is reasonable to minimize the damage or loss

- s. 62: an arbitrator has authority to determine any matters related to that dispute that arises under the *Act* or a tenancy agreement

- s. 62: an arbitrator may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*

- s. 62: an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord/tenant comply with the *Act* and/or the tenancy agreement

- s. 65: an arbitrator may order:

    - that any money owing by a tenant/landlord to the other must be paid

    - that any personal property seized/received by a landlord contrary to this *Act*/tenancy agreement must be returned

In general, the purpose of compensation as per the *Act* is to restore a landlord/tenant to a position as if the damage/loss had not occurred. A landlord, for example, may replace

damaged items with more expensive ones if they choose, but not at the expense of a tenant who is responsible for the damage. That tenant is responsible for compensating a landlord in an amount that covers the loss.

Specific to this unique fact scenario in this tenancy, I find as follows:

- The Tenant breached the tenancy agreement by not notifying the Landlord about damage to the range. The Tenant unilaterally determined that the range was damaged beyond repair or further use, and then replaced it without the Landlord's knowledge. This was not the property of the Tenant for them to make this decision.

- That entailed the Tenant disposing of the damaged/unusable range without the Landlord's knowledge. This was an egregious breach of the agreement regarding the Landlord's own property.

- It was the Landlord's right to replace the damaged/unusable range with a replacement item of their choice. This is the fundamental breach by the Tenant by which I apportion fair value of a replacement item owing to the Landlord, as well as a further solution set out below.

- I find it reasonable that the Landlord did not accept the third range put in place by the Tenant at the end of the tenancy.

- I find the Landlord's cursory inspection mere days before the end of the tenancy, and adjustment of the third range itself in its designated space, did not amount to acceptance thereof of the proffered replacement. It was perfectly reasonable for the Landlord to think about ownership of the third range that was not to their preference, and then advise the Tenant of that choice.

- I find at most there was an implied agreement for the Landlord to continue to hold the item at the rental unit over the long weekend, pending its return to the retailer by the Tenant. The Landlord moving the item in all likelihood did not cause damage to the third range that nullified any arrangement for the Landlord to hold the third range. I find the Tenant's assertion that the third range was likely damaged because of its move by the Landlord to be speculative, and an attempt at forcing a tacit agreement that the Landlord had accepted the item. I find the Landlord had new tenants in place and the third range was an odd burden for them to handle.

- I find the Landlord is rightfully owed compensation for the damaged original range that required replacement. Indeed, the Landlord was not even privy to the initial range's damage, not informed by the Tenant. Fair replacement value is NOT covered by the third range the Tenant brought to the rental unit near the end of the tenancy. As above, I find the Landlord did not accept that replacement, and it is perfectly valid for them to not accept that item.

As noted above, I find the Tenant breached the tenancy agreement section that I reproduced in the previous section above. Not notifying the Landlord did not cause further damage to the property; however, this caused a gross imposition to the Landlord in terms of their having to snap-arrange a solution at the end of the tenancy. The Tenant feels they replaced the item with a fair-value replacement; however, I find that was neither the Tenant's obligation, nor their right, to make the replacement, minus consultation or consent with the Landlord. Such a replacement – based on damage to the Landlord's property without the Landlord's knowledge – requires a strict agreement and that was not in place here.

By application of s. 65, I order the Tenant to retrieve the third range – still held by the Landlord at their home – within 30 days from the date of this decision. I expressly order that it is the Tenant who must retrieve the third range from the Landlord, in person. The Tenant may not, at this point, arrange for a third party to retrieve the item, either as a subsequent purchaser or as some form of proxy. A purchaser may accompany and assist the Tenant for this retrieval; however, the Tenant must be present for the retrieval to ensure there is no other miscommunication or imposition of other assumptions. This requires close correspondence with the Landlord to make this arrangement for the Tenant's own retrieval of the third range.

Should the Tenant not retrieve the third range within 30 days, the Landlord may sell the item for whatever price they may obtain. This includes the scenario where the Tenant sends another party to retrieve the item, which the Landlord may refuse. After the passing of 30 days from the date of this decision, I authorize the Landlord to consider the item to be abandoned. This entails the application of Part 5 of the *Residential Tenancy Regulation*. I authorize the Landlord to dispose of the third range after 30 days, and the Landlord may sell the third range. I find, as described by the Landlord, that they have exercised reasonable care for the third range.

Having decided on the disposition of the third range, I find the Landlord is rightfully owed compensation both for the original range that was removed by the Tenant from the rental unit, as well as compensation for the imposition of having to store the Tenant's personal property. Essentially, the Tenant removed the Landlord's right to do

anything in this situation. Most importantly, this was the Landlord's right to inspect damage and make required repairs.

I find the Tenant accurately provided data on the age of the original range. I note that the useful life of a building element (as per policy guideline) *may* inform my decision on damage caused by a tenant – this is not a strict requirement. Again, I find the Tenant removed the item without the Landlord's right to inspect and repair. I find this precluded the fair determination of whether damage was caused by the Tenant.

The Landlord withheld the amount of $797.42 from the total security deposit amount and returned the balance with interest added. I find the value of the original range is $500 with consideration of the evidence that the Tenant presented to establish the age thereof. The Tenant may cite my finding as inaccurate with respect to the item's value; however, I find the Tenant's removal of the item on their own was egregious in these circumstances, and they robbed the Landlord of certain of their rights involving their own property which is a serious breach.

With all of these considerations, I grant the amount of $500 to the Landlord for the value of the original range.

In addition to this, I grant the Landlord compensation of $200 for the value of their having to store/transport the third range over a timeframe of several months. Additionally, the Landlord had to engage in a process of difficult communication with the Tenant on this matter. I grant this amount as compensation to the Landlord to give effect to their rights under the *Act*, rights that were violated. For the record, I find there was no breach of the *Act* or the tenancy agreement by the Landlord in this tenancy.

I find the Landlord was successful in this Application; therefore, I grant the amount of $100 to them for recovery of the Application filing fee.

I find the amount the Landlord retained -- $797.42 in total -- is fair recompense to them for each item of compensation I have listed above. I authorize the Landlord to keep this amount in full, and there is nothing for the Landlord to reimburse to the Tenant.

As set out above, I find the Tenant's Application was not clear on the amount claimed. I pare their compensation claim back to only the amount of deposit retained by the Landlord: that is the amount of $797.42. I dismiss the other non-specific amounts not set out clearly by the Tenant in their Application, involving hardship and defamation. I have authorized the Landlord to retain this $797.42 amount; therefore, I dismiss the Tenant's Application in its entirety, including their claim for recovery of the Application filing fee.

Conclusion

I grant the Landlord compensation in the amount of $797.42 in total. The Landlord withheld this amount after the tenancy ended; therefore, I grant no monetary order to the Landlord. As specified above, this amount is for damage in the rental unit, other monetary loss (*i.e.* months of storage), and the Application filing fee.

I dismiss the Tenant's Application in full, without leave to reapply.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 15, 2024

Residential Tenancy Branch