



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant's agents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement for tenancy that began on April 15, 2007 as a 1 year fixed term tenancy that converted to a month to month tenancy on May 1, 2008 with a monthly rent at the end of the tenancy of \$1,300.00 and a security deposit of \$550.00 paid on March 2 2007. The tenancy ended on September 30, 2010.

The tenant was a company that provides fully furnished and equipped accommodations to guests for various periods of time. The tenant suggests that they license their guests and reserve the right to evict for any breach of terms. The landlord contends that he does not believe the tenants inspected the unit sufficiently after each guest to establish any damage, particularly to the fireplace and microwave.

The landlord testified that he completed a move out inspection with the tenant's agent on September 30, 2010 but the agent would not sign off on the report until she conferred with her management. The tenant's agent testified that the landlord had completed the inspection prior to her arrival and she completed the Condition Inspection Report.

During the hearing I had the landlord review the completed Condition Inspection Report and he concurred that it was a fair representation of the condition of the rental unit at

the end of the tenancy. He did note that he disagreed with the statement “No damage found that would be the responsibility of the... (tenants)”.

The landlord testified that he had previously been aware of a scratch on the microwave but that someone had tried to remove the scratch by using an abrasive substance which made the condition worse and the door requires replacement. The landlord acknowledges there is no notation in the move in Condition Inspection Report regarding the condition of the microwave door.

The landlord submitted several undated photographs of the microwave oven that he contends represent one taken at the start of the tenancy and some at the end of the tenancy. The landlord also submitted photographs of the fireplace control panel relating to a broken knob for the fireplace light.

In regards to the damage to the fireplace control panel knob the landlord contends that the knob was broken previously and glued back into place and broke again when he tried it during the move out inspection.

The landlord testified that he had instructed the tenant at the start of the tenancy not to use the fireplace at all. The tenant submits that the landlord had instructed her that he did not want tenants using the fireplace to heat the rental unit but that it could be used.

The tenants contend that when their last guest left on August 16, 2010 their agent inspected the unit with the guest and they have submitted their report that shows that the electric fireplace was working at move in and was tested and working on the date the guest vacate the unit.

The landlord seeks compensation based on estimates submitted for a microwave oven door replacement at 256.93; replacement fireplace knob at \$22.04 plus \$34.00 freight for total (with taxes) of \$65.90; and installation labour at \$80.00 per hour for 1 ½ hours for each item for a total of \$240.00.

The tenants suggest, despite their belief that they are not responsible, that the landlord could seek to have the microwave door refurbished at a potential cost of \$80.00. The tenants also suggest that the cost of \$80.00 per hour for the installation of the microwave door and the fireplace knob is excessive.

Analysis

In order to be successful in a claim for compensation for damage or loss the party making the claim must provide sufficient evidence to establish the following 4 points:

1. The a loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the loss; and

4. The steps taken by the party making the claim to mitigate any damage or loss.

I find the landlord has provided sufficient evidence to establish that there is damage to the microwave oven door and to the knob for the light on the fireplace.

In relation to the requirement to show that the damage resulted from a violation of the *Act*, regulation or tenancy agreement I note that in the move in Condition Inspection Report there is no mention at all of the condition of the microwave nor is there any mention of the condition of the door in the move out Condition Inspection Report.

Sections 23 and 35 speak to the obligations of both parties in a tenancy in relation to the completion of move in and move out Condition Inspection Reports. In both cases it is the landlord's responsibility to complete the reports and then provide the tenant with a copy of the report. From the testimony, I note the tenants completed both of the Condition Inspection Reports.

I accept the tenant's inspector's report completed on August 16, 2010 shows that the fireplace was fully tested and found to be functional and that there were no problems with the microwave door. As a result, I am not persuaded by the landlord's assertion that the tenants did not fully inspect the rental unit after each of their guests left.

In addition, as the landlord states he was aware of a scratch on the microwave oven door and yet there is no record of a scratch in either move in or move out Condition Inspection Report or in the tenant's inspector's report completed August 16, 2010, I find the landlord has failed to establish that the damage to the microwave door resulted from a violation of the *Act*, regulation or tenancy agreement.

I find that the understanding between the landlord and the tenants regarding the use of the fireplace is unclear. The landlord's assertion that he instructed the tenant not to use the fireplace at all and the tenant's assertion that it was not to be used as a sole heat source are very different.

In the case of verbal agreements, I find that where verbal terms are clear and both the parties agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Having said this, I find there were no specific instructions provided by the landlord in the tenancy agreement on the usage of the fireplace and as a result any damage that occurred is, based on the balance of probabilities, from regular wear and tear.

Conclusion

For the reasons noted above, I dismiss the landlord's application in its entirety. As I have dismissed the landlord's application I find the tenant is entitled to the return of the full security deposit.

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$565.25** comprised of \$550.00 security deposit and \$15.25 interest. This order must be served on the landlord 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: February 04, 2011.

Residential Tenancy Branch