Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for a monetary order for alleged damages to the rental unit, for an order to retain a portion of the security deposit in full satisfaction of the claim and to recover the filing fee for this Application and an earlier Application between the parties in a different matter.

The Tenant filed for a monetary order for compensation under the Act or tenancy agreement, for return of double the security deposit under section 38 of the Act and to recover the filing fee for the Application.

Both parties appeared and were affirmed, the hearing process was explained, the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Matters

The Landlord has applied for a filing fee for an application made earlier in which a hearing was conducted. I have reproduced the file number for that matter on the cover page of this decision. The Arbitrator in the earlier hearing dismissed the request for the filing fee for both parties Applications, and therefore, I dismiss this portion of the Landlord's claim as it has already been dealt with.

The Tenant argued that much of the Landlord's evidence was late and that portions of it were copied with photographs over the documents rendering them partially unreadable. The Tenant was asked if he wished to have an adjournment in order to review the Landlord's evidence and to obtain different copies. The Tenant did not want to adjourn the matter and wished to proceed. I allowed the Landlord's evidence and the hearing continued.

Issue(s) to be Decided

Has the Landlord proven the Tenant damaged the rental unit?

Is the Landlord entitled to retain a portion of the security deposit?

Is the Tenant entitled to monetary compensation from the Landlord?

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

This tenancy began on August 1, 2006. Apparently the Tenant took over the rental unit from the previous occupants; however, the Landlord and the Tenant entered into a new tenancy agreement signed August 1, 2006. The Tenant paid a security deposit of $975.00 and a pet damage deposit of $500.00, totalling $1,475.00, on August 1, 2006.

During the course of the earlier hearing, held on June 27, 2013 before a different Arbitrator, the parties came to a mutual agreement that the tenancy would end on July 31, 2013, and an order of possession was granted on those terms.

The parties agree that no incoming condition inspection report was performed by the Landlord. The Landlord and the Tenant did attend the rental unit for an outgoing condition inspection report at the end of the tenancy; however, the Tenant has signed this indicating he does not agree to the damages claimed by the Landlord.

The tenancy ended on July 31, 2013, and the Landlord filed their Application claiming against the deposit on July 29, 2013, having already received the forwarding address of the Tenant.

The Landlord's Claims

The Landlord claims the Tenant damaged the glass shower door in the rental unit bathroom. The door had shattered into many pieces. The Landlord claims $210.00 for this loss.

The Landlord claims the Tenant put a dent in the metal door to the balcony. The Landlord claims $525.00 for this.

The Landlord claims she had to replace the stainless steel fridge and alleges the Tenant caused several dents in the door of this fridge. The Landlord also claims the Tenant damaged the door to the microwave oven. The Landlord claims $1,973.00 to replace these two appliances. The Landlord testified that it would have cost more to have the doors repaired than just to replace them. The Landlord testified that these two appliances were approximately nine years old. In evidence the Landlord submitted an invoice from an appliance company that the microwave door was no longer available,

and that the parts would need to be special ordered and could take 3 to 5 months to arrive.

The Landlord claims the Tenant spilt an acid type substance on the bathtub and it needed to be repainted and buffed, and the Landlord claims $231.00 for this. The Landlord alleges that the paint on the tub had got stripped off somehow. The tub was nine years old according to the Landlord.

The Landlord further claims the Tenant damaged a portion of the hardwood floor and claims $1,200.00 for this. The floor was nine years old.

The Landlord argued that the Tenant would not have rented or accepted a rental unit with a damaged microwave door or fridge. The Landlord testified that the entire corner of the microwave door was snapped. A photograph was presented in evidence.

In reply to the Landlord's claims, the Tenant testified his biggest challenge was when he got the rental unit in 2006, he got a nine year old rental unit and he does not recall the condition of the microwave door at the outset. He testified he could not comment on how the door got damaged.

The Tenant testified that the scratches on the hardwood floor were there when he moved in. He testified the Landlord would have only have had to replace two boards, and he could not understand how that cost $1,200.00, but in any event he alleged the damages were there before he moved in.

The Tenant testified that the glass shower door exploded when he was in the living room and not the bathroom area. This occurred about a week before the tenancy ended. In evidence the Tenant has submitted articles from the Internet describing glass shower doors spontaneously shattering.

The Tenant acknowledged there were 4 or 5 dents in the fridge door that occurred while he was in the rental unit; however, he was not sure how these happened. He testified that the fridge still worked and it did not need to be replaced.

The Tenant was not sure how the bathtub got damaged, but denied responsibility.

The Tenant testified that he was not sure how the patio door got dented. He had never seen the dent before and had no idea how it occurred.

The Tenant alleged the Landlord is selling the rental unit and is just trying to recoup some money from him.

In reply, the Landlord testified that it was not likely the Tenant would have paid $1,950.00 a month if the rental unit had all these problems. The Landlord agreed that the rental unit has been sold since the Tenant moved out. The Landlord testified that the Tenant had not told him about any of these damages or problems during the tenancy.

The Tenant relied he tried to call the Landlord about the glass shower door, but she was not available.

The Tenant's Claims

The Tenant is claiming for loss of use of the patio and for loss of use of a second bedroom in the rental unit. The Tenant testified that building maintenance was being performed on the patio and he had to move his patio furniture into the second bedroom.

The Tenant claims for the loss of use of these areas from the middle of March 2013 to the end of the tenancy on July 31, 2013. The Tenant has calculated the square footage of the patio as 215 square feet of the 1,275 square feet of the unit, and claims that portion of the entire unit was lost for his use. The Tenant claims $1,325.48 for 4.5 months loss of use for the patio, at $294.55 per month.

The Tenant further claims he had to move the patio furniture into the second bedroom of the rental unit. He calculates that this was 120 square feet of the 1,275 square feet of the unit and requests $164.40 for 4 ½ months of mid March to the end of July as $739.80. The Tenant testified that his daughter had been using the second bedroom, but had moved out.

The Tenant further claims the Landlord illegally increased the rent for July 2013 by $50.00. He testified he had not received a notice of rent increase from the Landlord.

In reply to the Tenant's claims, the Landlord testified that all the occupants of the building had been informed by the Strata Council for the building, that there was going to be work done on the patios. The Landlord testified that the Strata had informed all the occupants, including the Tenant, that there was temporary storage space available to them at no extra charge.

The Landlord testified that the Tenant had been given a letter dated April 15, 2013, informing him three months in advance that the rent would be increasing by $50.00 in July of 2013.

In reply, the Tenant claimed the temporary storage space provided was too small for what he had to store.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the other party. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party claiming for a loss did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Results for the Landlord's Claims

I find the Landlord had insufficient evidence to prove the Tenant damaged the hardwood floors, the metal door to the balcony, or the bathtub. The Landlord has failed to provide sufficient evidence that the Tenant caused these alleged problems and therefore, has failed to prove the Tenant breached the Act. For example, based on the photograph provided it is just as likely the bathtub surface wore out, through reasonable wear and tear or frequent cleaning.

Section 37(2)(a) of the Act required the Tenant to return the rental unit to the Landlord reasonably clean and undamaged, except for reasonable wear and tear.

I do find the Landlord has established that the Tenant damaged the glass shower door, as I find it is very unusual for this type of damage to occur. I find it is more likely that the Tenant may have accidently slammed the door causing it to shatter into many pieces.

I also accept that the Tenant damaged the fridge door, based on his own testimony. I further find the Tenant must have damaged the door to the microwave. The picture in evidence shows the door to be bent back at an unusual angle, to the extent that the microwave would be unusable. If the appliance had broken of its own accord through normal wear and tear I expect the Tenant would have notified the Landlord of such. However, the picture indicates quite a bit of damage to the door and I find it is more than likely the Tenant caused this.

I allow the Landlord's claims for the glass shower door and to replace the fridge and microwave; however, Policy Guideline #40 to the Act sets out the useful life expectancy of various items including these. The useful life expectancy for a microwave is 10 years, for a fridge is 15 years and for the glass shower door 20 years. Therefore I allow these claims as follows:

I allow $94.50 for the shower door ($210.00 glass shower door used 9 of 20 years useful), $33.12 for the microwave ($368.00 microwave used 9 of 10 years useful), and $706.80 for the fridge ($1,178.00 fridge used for 9 of the 15 years useful), plus I allow the Landlord the delivery and installation charges of $230.00, and the filing fee for the Application totalling **$1,114.42,** *subject to any set off with the Tenant claim below and reconciliation of the deposits.*

Results for the Landlord's Claims

I dismiss the Tenant's claim for return of double the security deposit, as I find the Landlord did file their Application in accordance with the time limits imposed under section 38 of the Act. Under section 38 of the Act, the Landlord had 15 days from the later of the end of the tenancy or receipt of the Tenant's forwarding address in writing, to either return the deposit or file a claim against it. I find the Landlord acted in accordance with this.

I dismiss the Tenant's claims for loss of use of the second bedroom as I find the Tenant failed to mitigate his losses. I find the Tenant had insufficient evidence to prove that he could not have stored his property in the temporary space provided by the Strata. Furthermore, the Tenant might have stored some of his belongings there and then would have had more space in the bedroom. Therefore, I dismiss this claim as the Tenant failed to mitigate the loss.

I do not allow the Tenant loss of use of the patio for the entire 4 ½ months of the last portion of the tenancy. The Tenant has failed to prove how much he used the patio prior to the work being done in March, and how many days he was unable to use the patio when he actually wanted to use it. I further note that the building operators where the rental unit is located are entitled to, and in some cases, must do certain maintenance work. The Tenant had no evidence this work was not required.

Nevertheless, I do find the Tenant likely lost use of the patio for a portion of the usual months when a patio is used. I award him a nominal amount of $100.00 in total, for loss of use of the patio.

I find the Landlord breached the Act by increasing the rent without using the approved form, as required under section 42(3). I award the Tenant $50.00 for this.

I find the Tenant has established a claim of **$175.00**, comprised of the above amounts and $25.00 as a portion of the filing fee for the Application, reflecting the Tenant's limited success in his claims.

Set off

Pursuant to section 72 of the Act, I set off the parties claims as follows:

Landlord award **$1,114.42 –** Tenant award **$175.00 = $939.42**

I order the Landlord may retain **$939.42** from the **$1,522.82** ($1,475.00 deposits and $47.82 interest due) held from the deposits and interest in full satisfaction of the claim, and order the Landlord to pay the Tenant the balance due of **$583.40**. The Tenant is issued a monetary order in this amount.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 23, 2013

Residential Tenancy Branch