Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUCCESS REALTY & INSURANCE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND, MNSD, FF

Introduction

This was an application by the landlord for a monetary order for damage to the rental unit and to retain the security deposit in partial satisfaction of any monetary claim. The application was orally amended by the landlord in the hearing to solely seeking retention of the security deposit.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided proof of registered mail service.

The landlord provided that they had previously made attempt to reschedule the hearing by attempting to obtain consent from the tenant, but failed to do so. In this hearing the landlord confirmed they wanted to proceed on this matter as scheduled. The landlord was given full opportunity to be heard, to present evidence and to make submissions. Prior to concluding the hearing the landlord acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started August 01, 2011 and ended February 28, 2014 when the tenant vacated. The landlord currently holds the security deposit in trust – in the amount of $800.00. I have benefit of the

tenancy agreement document signed by both parties prior to the start of the tenancy. As well, the landlord provided a copy of the *move in* condition inspection report (CIR) completed by both parties and the *move CIR* completed solely by the landlord on March 04, 2014 - 4 days after the tenant vacated and end of the tenancy. The landlord could not provide particulars of the timing or nature of the *move out* condition inspection, or the CIR.

The landlord claims that the tenant caused damage to the rental unit: solely to the *glass stove top/ cook top*. The landlord provided several photographs of the glass top of the stove clearly depicting several cracks in the glass stove top. The landlord claims that the only remedy to the damage was replacement of the glass stove top in the receipt amount of $1289.22. The landlord testified that they had made several attempts to have the tenant come to their office and settle the purported damage amount, without success.

The landlord was asked why the move out condition inspection report of March 04, 2014 – completed solely by the landlord, to their satisfaction – made no reference to a cracked or damaged stove/ stove top; however, clearly indicated in the report that the oven was dirty, as was the microwave. The only other item noted in the report was that the floors of the unit were dirty. The landlord suggested that perhaps the tenant had their cookware on the stove top which may have shielded the damage from view, or that the agent conducting the inspection did not see the cracks in the glass stove top.

Analysis

Section 7 of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

> **7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,

2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.

4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for depreciation or wear and tear), whichever is less.

The landlord relies on their determination that the tenant caused the purported damage during the tenancy period.

The landlord bears the burden of proof. On the face of the evidence, I accept the landlord's condition inspection reports as proof they inspected the unit before and after the tenancy. I further accept that the landlord inspected the kitchen of the unit as indicated by their comments and ratings for the *kitchen.* I additionally accept that the landlord conducted their inspection several days after the tenant had vacated and removed their belongings from the unit. In this later respect, I find it unlikely that the tenant left behind their cookware, on top of the stove, hiding the cook top from the landlord's view. I further find it unlikely that the agent inspecting the unit would not have noted the cracked stove top during their inspection – solely finding deficiencies in nearby items. I do not find the landlord's account respecting the damaged stove top / cook top credible. Moreover, I find the landlord has not made a credible link to the conduct, actions or neglect of the tenant in respect to the claimed damage. In the result, I find the landlord has not met the above test for damage or loss. The landlord has not provided sufficient evidence to support their claim that the tenant in this matter caused damage to the rental unit. As a result, **I dismiss** the landlord's application in its entirety, without leave to reapply.

It must be noted that Residential Tenancy Policy Guideline #17, in part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

> The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
>
> - a landlord's application to retain all or part of the security deposit, or

- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for Arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has been dismissed in its entirety without leave to reapply it is appropriate that I Order the return of the security deposit back to the tenant.

Conclusion

The landlord's claim **is dismissed**, without leave to reapply.

I Order the landlord to return the security deposit to the tenant. The landlord must use a service method described in Section 88 (c), (d) or (f) of the Act *[service of documents]* or give the deposit personally to the tenant.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **$800.00**. If the landlord does not return the security deposit, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: July 08, 2014

Residential Tenancy Branch