Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid utilities and for damage to the residential property pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

This application was originally set to be heard last year, but, at the tenant's request, was adjourned to this date with the landlords' consent.

The tenant and the landlord PB (the landlord) attended the hearing. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant appeared and did not dispute service of the dispute resolution package. On the basis of this, I find that the tenant was served with the dispute resolution package, including all evidence before me, pursuant to section 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid utilities and damage to the rental unit? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began on or about 1 October 2012. Monthly rent of $1,450.00 was due on the first. The tenancy agreement set out that the tenant was responsible for 50% of the utilities. The landlords collected and continue to hold a security deposit in the amount of $725.00. The tenancy concluded on 1 July 2014.

The landlords' claim sets out that they seek $725.00 in damages—an amount determined by reference to the tenant's security deposit. At the hearing, the landlord asked to recover the full amount of the damages, that is, $1,141.83:

Item	**Amount**
Unpaid Utilities	$141.83
Damage to Driveway	1,000.00
Total Monetary Order Sought	**$1,141.83**

The landlord testified that the landlords had the asphalt driveway newly installed approximately four years ago. The landlord testified that the tenant's partner's truck dripped oil onto the driveway. The landlord testified that the tenant's partner caused damage to the driveway. The tenant testified that the oil drips were caused by a faulty part and testified that the damage was not caused intentionally. Both parties testified that the oil drips were a point of contention between the tenant and the landlords: the landlords repeatedly made requests of the tenant to remedy the damage. The landlords provided a letter from a next-door neighbour. The neighbour set out in her letter that she saw the tenant's partner attempting to clean the oil drops from the driveway by spraying it with water.

The landlords provided me with photographs of the damage to the driveway. The oil stains appear to cover approximately one-car length of the driveway.

The landlords provided me with an estimate from the paving company that installed the driveway. The tradesperson noted in his email that the damage was very likely caused by the oil drops eroding the asphalt. The tradesperson estimated that the repairs would cost over $1,000.00. The landlords provided me with an email from their insurance advisor that set out that the landlords would be responsible for a $1,000.00 deductible should the landlords decide to make a claim against their insurance for the damage.

The tenant stated that she objected to the landlords' claim because the damage was not yet fixed and she questioned whether the landlords would ever fix the driveway. The landlord testified that it was the landlords' intent to fix the driveway if they could afford to, but that it was dependant on the outcome of this application.

The landlords provided a hydro bill for the period of 14 May 2014 to 12 June 2014. The bill is for $135.00 over a 30-day period. The landlords seek $110.25 from the tenant for hydro costs. This amounts to 49 days of hydro service (from 14 May 2014 to 1 July 2014) at a per diem cost of $2.25.

The landlords provided a gas bill. The gas bill is in relation to the billing period 9 May 2014 to 10 June 2014 and is for $78.33. The landlords calculated that the tenant's portion of the gas bill was $31.58.

Analysis

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of the damages or losses and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. I find that that the tenant's partner caused the damage to the landlords' driveway. As the tenant's partner was permitted on the landlords' property by the tenant, she is responsible for damage he caused. It is irrelevant that the tenant's partner did not intend to cause the damage.

The landlords have provided me with a quote for the repair from a tradesperson. I accept that this quote accurately reflects the cost of repair. The photograph evidence shows extensive staining—the tradesperson's email indicates the mechanism and severity of damage. I find that the damage to the driveway caused $1,000.00 in damages to the landlords. It is not necessary for the landlords to have undertaken the repairs for the purpose of making this claim. I find that the landlords have provided

sufficient proof of the amount of damage caused to the driveway. I find that the landlords have intent to repair the driveway after the determination of this matter. The landlords attempted to mitigate the damage by making requests of the tenant to clean the oil spills.

Residential Tenancy Policy Guideline "40. Useful Life of Building Elements" provides me with guidance in determining damage to capital property. The useful life of an asphalt driveway is fifteen years. The landlord testified that the driveway was approximately four-years old. The purpose of damage is to return the claimant to his or her original position. As the value of the driveway had depreciated by four fifteenths, the tenant is responsible for eleven fifteenths of the cost of repair, that is, $733.33.

I find that the tenancy agreement established that the tenant was responsible for 50% of the utilities. I find that the landlords have proven that they are entitled to recover the full amount claimed for those utilities, that is, $141.83.

As the total award exceeds the amount claimed by the landlords on their application, I must then consider whether or not to allow the landlords to receive an order in excess of the amount claimed in their application.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In this case, the landlords have set out all the particulars of their claim, that is, they have indicated that they are seeking compensation for the cost of the driveway repairs and payment of the outstanding utilities amounts. The landlords have also indicated the independent amount of each of these claims. As the tenant had sufficient notice of total amount of damages caused to the landlords, I allow the landlords' request to amend the application. Accordingly, I award the landlords the full amount of their claim: $875.16.

The landlord testified that she continued to hold the tenant's $725.00 security deposit, plus interest, paid in 2012. Over that period, no interest is payable. Although the landlords' application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlords to retain the security deposit in partial satisfaction of the monetary award.

As the landlords were successful in this application, I find that the landlords are entitled to recover the $50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of $200.16 under the following terms:

Item	Amount
Unpaid Utilities	$141.83
Damage to driveway	733.33
Offset Security Deposit Amount	-725.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$200.16**

The landlords are provided with these orders in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: January 14, 2015

Residential Tenancy Branch