



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL, OLC

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and 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 parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenant?
Is the tenant entitled to an order compelling the landlord to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The landlords gave the following testimony. CT testified that the tenancy began on December 15, 2010. CT testified that the tenant's negligence caused a fire in the unit and that the tenant should pay the full cost of the repairs despite the age of the items being replaced. CA testified that on April 19, 2019 she attended in the early morning hours to the subject unit. CA testified that she observed a metal tin inside the oven with wax in it with the stove on. CA testified that the wax caught fire and damaged the fridge, stove, hood fan and flooring in the unit requiring all items to be replaced. CA testified that the fire extinguisher and central fire hose had to be refilled, recharged and replaced as the tenant had used these items to put the fire out.

The landlord is applying for the following:

1.	Fire Hose and Extinguisher	\$521.69
2.	Fridge, Stove & Hood	\$1460.31
3.	Carpet and Vinyl flooring	2110.50
4.	Filing Fee	100.00
5.		
6.		
	Total	\$4192.50

The tenant gave the following testimony. The tenant testified that he had not used the stove for over a week. The tenant testified that the stove spontaneously caught fire. The tenant testified that the landlord should pay for these repairs as he isn't responsible for it. The tenant testified that his actions saved the building from being burned down.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

After reviewing the documentation and considering the parties testimony, I make the following findings. I find that the tenants' version of events was remote and highly unlikely. I find that the landlord provided documentation and photos to show the tin can of wax in the oven and CA's testimony very compelling. Based on the above, and on a balance of probabilities, I find that the tenant was negligent in his actions and caused the fire in the unit.

I address the landlords monetary claim as follows.

Fire Hose and Extinguisher - \$521.69

I find that the landlord incurred this cost as a result of the tenant's negligence, accordingly; I find that the landlord is entitled to \$521.69.

Fridge, stove & hood - \$1460.31

Residential Tenancy Policy Guideline 40 lists the useful life of these items at 15 years. CT testified that the appliances were ten years old at the time of the fire. I find that the landlord is entitled to a prorated amount of 33.3% replacement value of \$481.90.

Carpet and Vinyl Flooring - \$2110.50

Residential Tenancy Policy Guideline 40 lists the useful life of these items at 10 years. CT testified that the appliances were ten years old at the time of the fire. Although the item was near the end of the useful life according to the guideline, the landlord testified that the flooring was not in need of replacement at the time of the fire. I find that a nominal award is appropriate due to the tenant's negligence. Residential Tenancy Policy Guideline 16 addresses nominal awards as follows:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Based on the above, I find that a nominal award of \$200.00 is appropriate for this portion of the landlords claim.

The landlords are also entitled to the recovery of the \$100.00 filing fee.

Based on the above, I hereby dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

In summary, the landlord has been successful in the following claims:

1.	Fire Hose and Extinguisher	\$521.69
2.	Fridge, Stove & Hood	\$481.90
3.	Carpet and Vinyl flooring	200.00
4.	Filing Fee	100.00
5.		
6.		
	Total	\$1303.59

The landlord has established a claim for \$1303.59 I grant the landlord an order under section 67 for the balance due of \$1303.59. This order may be filed in the Small Claims Court 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 28, 2020

Residential Tenancy Branch