



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPC, CNC, MND, RP and FF

Introduction

These applications were brought by both the landlord and the tenant.

By application of March 10, 2009, the landlord sought an Order of Possession pursuant to a 30-day Notice to End Tenancy served on February 20, 2009 and a Monetary Order for the replacement of kitchen cupboards, counter top and flooring.

By application of February 5, 2009, the tenant seeks to have the same Notice to End Tenancy set aside and an Order for Repairs.

Issues to be Decided

These applications require a decision on whether the landlord has proven damages to the rental unit, whether the tenant is responsible for those damages, whether the amount claimed is the actual or appropriate cost, and whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

This tenancy began March 1, 2000. Rent is \$637 per month and the landlord holds a security deposit of \$255 paid on February 16, 2000.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served as a result of water damage in the kitchen of the rental unit, reported to her in October by the tenant. She said that the damage had resulted from a malfunction in a dishwasher the tenant had installed contrary to his rental agreement.

She stated, and presented documentary evidence from the tenant stating that he would pay for the damages to the kitchen cupboards, counter and floor. However, when he had been presented with costs of \$4,730, the tenant found it to be too high and recanted on his earlier offer to pay. The landlord stated that the claim did not include floor replacement which the landlord would absorb.

The landlord stated that the building was about 35 years old and the cupboards and counter were originals.

The tenant's advocate stated that their had been flooding in the unit directly above in 2005 and referred to photographic evidence showing where the ceiling had been repaired. He said that may well have been responsible for part of the damage as the leaking dishwasher could not have led to damage of the upper cupboards.

The building caretaker gave evidence that the leaking from the unit above had primarily been over another area of the apartment and he felt it was not a contributing factor to the break down of the cupboards in the subject rental unit.

Analysis

The tenant agreed that he should and would pay \$2,500 toward the replacement of the cupboards, counter top and flooring. Given the age of the cupboards, and the fact they were nearing the end of their useful service, I find the tenant's offer to be fair and reasonable.

The unauthorized dishwasher notwithstanding, in taking into consideration the length of this otherwise satisfactory tenancy, and the fact that the leaking dishwasher was an accident, I find that the Notice to End Tenancy should be set aside and that the tenancy should continue.

The landlord has agreed that the restoration work will begin within the next few days and the tenant has promised that he will cooperate fully in permitting access to the rental unit for that purpose. Therefore, I do not believe a Repair Order is necessary.

Conclusion

The Notice to End Tenancy is set aside and the tenancy continues.

The landlord's copy of this decision is accompanied by a Monetary Order for \$2,500. As both applications have succeeded partially, I make no award with respect to the filing fees for this proceeding.

March 23, 2009

Dispute Resolution Officer