



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

At the hearing the Tenant and the Landlord agreed that this tenancy had been the subject of a previous dispute resolution hearing, at which time a Dispute Resolution Officer ordered that the Landlord must return double the security deposit to the Tenants. As a previous Dispute Resolution Officer has disposed of the security deposit, I have no authority to authorize the Landlord to retain the security deposit.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for damage to the rental unit.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2004 and ended on August 31, 2008. The parties agree that the Tenants were required to pay monthly rent of \$825.00 at the end of the tenancy.

The Landlord and the Tenant agree that the Tenants damaged the countertop when a hot pot was placed directly on the counter. The parties agree that the Tenants replaced the portion of the laminate that was damaged with a spare piece of laminate that the Landlord had in storage.

The Landlord argued that the repair that was completed by the Tenants is inadequate because the counter now has an unsightly seam and the laminate is lifting at the site of the repair. The Tenant argued that they made a reasonable repair with the piece of laminate that was available to them, that the countertop was sixteen years old, and that the countertop was in need of replacement. The Landlord stated that the countertop was approximately fifteen years old.

The Landlord is seeking compensation, in the amount of \$1,446.00, to replace all of the countertops in the kitchen. He stated that all of the countertops must be replaced as he is no longer able to find the same laminate and that the countertops will be mismatched if all of the countertops are not replaced. He submitted an estimate to show that it will cost \$1,446.00 to replace the countertops.

The Landlord is seeking compensation, in the amount of \$53.89, for the cost of repairing damage to the interior of the fridge. The Landlord stated that the Tenant damages three clips that hold the shelves in the fridge and one stud that holds the crisper. The Tenant denies damaging any part of the interior of the fridge. The Landlord submitted no evidence to corroborate his statement that the fridge was damaged.

Analysis

After viewing the photograph of the repairs to the countertop that were made by the Tenants, I find that the repairs were inadequate. In reaching this conclusion, I was strongly influenced by the photographs that show the laminate is lifting at the edge and that the counter top now has a seam in an unusual location.

I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to adequately repair the counter top that they damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*.

I accept that all of the countertops in the kitchen need to be replaced, as the laminate on all of the countertops in a kitchen generally match and it is unlikely that the Landlord will be able to match the existing laminate. Based on the estimate submitted by the Landlord, I find that it will cost \$1,446.00 to replace these countertops.

The Residential Tenancy Policy Guidelines show that the life expectancy of countertops is twenty-five years. The evidence shows that the countertop that was damaged was fifteen or sixteen years old. I therefore find that the countertops have depreciated by sixty-two percent, and that the Landlord is entitled to thirty-eight percent of the cost of repairing the countertops, which in these circumstances is \$549.48.

There is a general legal principle that requires the places the burden of providing that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the fridge was damaged. On this basis, I dismiss the Landlord's application for compensation for damage to the fridge.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$599.48, which is comprised on \$549.48 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount \$599.48. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: March 30, 2009
