

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation and if so, how much?
2. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on April 1, 2005 and ended on November 30, 2009. Rent was \$780.00 per month. The Tenant paid a security deposit of \$390.00 on March 11, 2005. The Parties participated in a move in and a move out condition inspection report although the Tenant disagreed with the move out report.

The Parties agree that during the tenancy the Tenant burned a countertop in the kitchen. The Landlords said the counter top was newly installed in October of 2004, that it could not be repaired and had to be replaced at a cost of \$780.00 plus GST. The Tenant argued that he should not be responsible for those damages because he accidentally placed a hot pot on the counter when he was startled by water leaking from the suite above him. The Tenant said there were a number of such floods in his rental unit which the Landlord failed or refused to do anything about.

The Landlords also sought to be reimbursed expenses for dry cleaning drapes and claimed that it was a term of the tenancy agreement that they be professionally cleaned at the end of the tenancy. The Tenant claimed that he had the drapes cleaned by a Laundromat because he was advised that they could not be dry cleaned and provided the Landlords with a receipt for the cleaning. The Landlord denied that the Tenant gave him a receipt however the Parties' move out condition inspection report indicates that the Tenant provided a receipt "for professional carpet and/or drapery cleaning."

Analysis

Section 32 of the Act says that during a tenancy, a Tenant must repair any damage caused by his act or neglect but is not responsible for reasonable wear and tear.

Section 37 of the Act says that at the end of the tenancy, the Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines “reasonable wear and tear” as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion.”

Sections 32 and 37 do not distinguish between damages caused deliberately or by accidentally. The only damages a Tenant is not responsible for are those that are the result of wear and tear. I find that the burn to the counter top is not the result of wear and tear and as a result, I find that the Tenant is responsible for the cost of replacing the counter top. However, I also find that the expected life time of a counter top is 25 years and that the damaged counter top was 5 years old at the end of the tenancy. Consequently, I find that the Landlord is entitled to recover the depreciated cost of the counter top or **\$655.20** (ie. 80% of \$780.00 + GST). If the Tenant believes that he is entitled to compensation for having to deal with constant flooding in the rental unit (which is noted on the move out condition inspection report), then he must file a separate application for that relief.

Clause 31 of the Parties’ tenancy agreement says that “if a window covering is new or professionally cleaned at the beginning of the tenancy, it must be professionally cleaned at the end of the tenancy.” The move in condition inspection report indicates that the drapes in the rental unit were in “satisfactory condition” at the beginning of the tenancy but it does not state if they were new or professionally cleaned. Consequently, I find that there is insufficient evidence to conclude that the Tenant was responsible for cleaning the drapes.

Furthermore, there is nothing in the Parties’ tenancy agreement that says professional cleaning means dry cleaning. Given that there is some indication on the move out report to corroborate the Tenant’s claim that he gave the Landlords a receipt for cleaning the window coverings, I also find that there is insufficient evidence to conclude that the Tenant did not comply with the tenancy agreement. For all of these reasons, I find that the Landlords have not made out a claim for drapery cleaning expenses and that part of their claim is dismissed without leave to reapply.

As the Landlords have been successful on part of their claim, I find that they are entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant’s security deposit plus accrued interest in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

Counter top replacement:	\$655.20
Filing fee:	\$50.00
Subtotal:	\$705.20
Less: Security deposit:	(\$390.00)
Accrued interest:	<u>(13.81)</u>
Balance Owing:	\$301.39

Conclusion

A monetary order in the amount of **\$301.39** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: May 05, 2010.

Dispute Resolution Officer