



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by registered mail by the landlord on August 13, 2011. The tenant also confirmed that he received the landlord's written evidence package including photographs. I am satisfied that the landlord served these documents in accordance with the *Act*. The tenant did not submit any written evidence.

At the commencement of the hearing, the landlord revised his request for a monetary award from \$1,539.00 to \$925.84, the actual amount of his losses arising out of this tenancy. I reduced the amount of his requested monetary award accordingly.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord 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, including photographs, miscellaneous letters and e-mails, estimates, invoices and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

The principal aspects of the landlord's claim and my findings around each are set out below.

This tenancy commenced as a one-year fixed term tenancy on July 1, 2010. After the expiration of the original term on June 30, 2011, the tenancy continued until the tenant vacated the rental unit on July 31, 2011 as a periodic tenancy. The tenant provided written notice to the landlord on June 30, 2011 of his intention to end this tenancy on July 31, 2011.

Monthly rent was set at \$1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$600.00 security deposit paid on July 1, 2010. The parties agreed that condition inspection reports were issued by the landlord for move-in and move-out inspections on June 28, 2010 and July 31, 2011.

The landlord's revised application for a monetary award of \$925.84 included the following.

Item	Amount
Cost to Disconnect and Reconnect Gas Stove for Repairs to Countertop	\$100.80
Resurfacing of Countertop	775.04
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$925.84

At the hearing, the landlord gave undisputed oral testimony that the gas stove needed to be disconnected and reconnected in order to conduct the refinishing because it was situated in the middle of the countertop. He submitted photographs of the burn damage to a small portion of the kitchen countertop (estimated at 2 inches in diameter in the joint move-out condition inspection report). The parties agreed that this damage resulted from the tenant's actions in leaving a hot pot on the countertop. The landlord testified that this damage was serious and could not be matched with existing countertop supplies because of colour changes that would have occurred over time and an inability to locate the same coloured countertop 13 years after the home was constructed.

The tenant testified that the burn mark was not as serious as the landlord was maintaining. He asked that reference be given to other decisions of the Residential Tenancy Branch on previous applications for dispute resolution in limiting the landlord's entitlement to a monetary award for this damage. He said that the landlord should not receive a monetary award in excess of \$100.00 to \$200.00 for this type of damage.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I first note that section 64(2) of the *Act* establishes that applications for dispute resolution before the Residential Tenancy Branch (RTB) are considered on their own merits and are not bound to follow other decisions issued by the RTB.

The parties are in fundamental agreement that the tenant is responsible for the damage to the kitchen countertop in the rental unit. The essential disagreement arises from the amount claimed by the landlord and the amount the tenant believes would represent a fair reimbursement for the damage he caused during this tenancy.

At the hearing, the tenant gave oral testimony regarding the timing and size of the damage. He said that he left a coffee pot on the countertop on the second last day of his tenancy and mentioned this to the landlord at the joint move-out condition inspection. He also questioned the magnification given to the burn mark in some of the landlord's photos.

At the hearing, I observed that the timing of the damage is of no relevance to my consideration of the landlord's application for a monetary award for damage caused during this tenancy. I also noted that the landlord included a tape measure in one of the photographs entered into evidence which gave a clear understanding of the size of the burn mark caused by the tenant. This tape measure indicates that the damage covered an area of approximately one inch by two inches. I also note that the tenant signed the joint move-out condition inspection report in which he agreed to the contents of that report, including the statement that the damage covered a 2 inch diameter.

Despite the concerns raised by the tenant about the magnification of some of the landlord's photographs of damage to the countertop, the fact remains that the countertop was damaged by the tenant. In considering this matter, I find that the

landlord is justified in refusing to accept some form of patchwork repair using potentially mismatched products. Given the age of the countertop, I agree that it would be difficult to obtain an exact match for a portion of the countertop. I also reject the tenant's assertion that the entire countertop did not need to be replaced to repair the damage he caused.

Based on my consideration of the oral, written and photographic evidence, I find that the tenant did cause significant damage to the landlord's kitchen countertop that entitles the landlord to compensation for losses. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord obtained two estimates from Home Depot and Rona to replace the kitchen countertop in its entirety. The lowest of these estimates was for \$1,539.00 including taxes and installation. Rather than installing a new countertop, the landlord contacted a company that resurfaces kitchen countertops. He entered into evidence a copy of the \$775.04 estimate for this work which he said was completed for that price on August 23, 2011. I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss by deciding to have his countertop resurfaced rather than replaced.

I have also given consideration to Residential Tenancy Policy Guideline 37 which establishes the useful life of work done or items purchased for rental housing. In this Guideline, the estimated useful life of a countertop is set at 25 years. The landlord entered undisputed written evidence that he and his wife moved into this housing in 1998 when the house was newly constructed. The house was 13 years old when the repairs to the countertop were conducted after this tenancy ended in mid-2011. As the countertop had not been replaced since the house was constructed, the restoration of the countertop occurred when the countertop still had 12 years left of its expected 25-year useful life. Using these calculations, the landlord had to undertake work to restore the countertop when 48% of that countertop's useful life remained. Based on the lowest of the estimates to fully replace the countertops submitted by the landlord, this would result in a replacement cost of the countertop at 48% of the \$1,539.00 Home Depot countertop or \$738.72. Since this amount is less than the \$775.04 that the landlord spent on resurfacing the countertop, I find that the landlord is entitled to a monetary award of \$738.72.

Based on the evidence presented, I also find that the landlord is entitled to a monetary award of \$100.80 to disconnect and reconnect the gas stove, a required cost for the work that was undertaken as a result of the damage caused by the tenant.

Since the landlord was successful in his application, I allow him to recover his \$50.00 filing fee from the tenant.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Conclusion

I issue a monetary award in the landlord's favour in the following terms which enables the landlord to recover damage and losses arising out of this tenancy, his filing fee for this application, and to retain the tenant's security deposit in partial satisfaction of the monetary award issued.

Item	Amount
Cost to Reconnect Gas Stove after Repairs to Countertop	\$100.80
Eligible Portion of Resurfacing of Kitchen Countertop	738.72
Recovery of Filing Fee for this application	50.00
Less Security Deposit	-600.00
Total Monetary Order	\$289.52

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders 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: November 15, 2011

Residential Tenancy Branch