



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order under the Act and the tenancy agreement for damage to the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began December 1, 2007, with the parties agreeing to rent of \$1,300.00 per month, and the Tenants paying the Landlord a security deposit of \$650.00 and a pet damage deposit of \$650.00.

The Tenants vacated the rental unit on or about October 24, 2011, and an outgoing condition inspection report was performed on October 31, 2011.

In an addendum to the outgoing condition inspection report, the Tenants agreed in writing to pay the Landlord \$410.00 out of the security deposit, for damages to the rental unit.

The Tenants have also agreed that they had damaged the granite countertop in the kitchen. This dispute is over what amount the Tenants should pay for this damage and how it should be repaired.

Both parties agreed that the Tenants had tried to remove the stain in the counter top three times, by applying a poultice. The Tenants testified that the stain appeared to lessen after each application of the poultice.

The Tenants testify and submit that they should only have to pay \$300.00 for another application of a different poultice by a professional in the business of cleaning countertops. They believe that one further application of a poultice by the technician will remove the stain completely.

The Landlord submits that having a technician come out to attempt another cleaning with a poultice might not remove the stain and that each time the technician comes out it costs \$300.00. The Landlord argued that there is no guarantee that the stain could be removed with one or more applications of the poultice.

The Landlord submitted two estimates to replace the granite countertop. One estimate for replacement is \$1,211.84, however, this estimate does not include the cost of removing and re-installing the plumbing. The estimate that includes the plumbing is \$1,999.20.

The Tenants argued that the Landlord had failed to provide them with a copy of the condition inspection report until the Landlord provided them with the evidence for the hearing. The Landlord testified she delivered a copy of the condition inspection report to Tenants within the required timeframe.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenants have breached section 37 of the Act by failing to return the rental unit to the Landlord in an undamaged state.

The Tenants were responsible to ensure the granite countertop was repaired prior to vacating the rental unit. They admit they damaged the top and it was not fully repaired when they vacated the rental unit. The Tenants tried to mitigate their losses by doing the repair, however, the evidence indicates that the stain has not been removed completely.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breach of the Act by the Tenants have caused the Landlord to suffer a loss.

I accept the evidence of the Landlord that the countertop must be replaced and that plumbing will have to be removed and reinstalled. I do not accept that another application of a poultice will remove the stain completely as the Tenants themselves attempted this, and the stain was not completely removed after three attempts.

Therefore, I find that the Landlord has established a total monetary claim of \$2,459.20 comprised of \$1,999.20 to replace the countertop including the plumbing cost, \$410.00 that the Tenants agreed to pay the Landlord for other damages and the \$50.00 fee paid for this application.

I will allow the Landlord to offset this claim against the deposits held, however, an adjustment must be made to the amount of the pet damage deposit.

I find that while the Landlord has claimed against the pet deposit, there is no claim or evidence that damage was done to the rental unit by a pet. The Landlord should have returned the pet damage deposit to the Tenants within 15 days of the end of the tenancy. Therefore, under section 38 of the Act I must award the Tenants double the pet damage deposit.

I order that the Landlord retain the security deposit of \$650.00, the doubled pet damage deposit of \$1,300.00, and interest of \$21.19 on the original amounts held, in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$488.01**

This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided by the Act, and 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 07, 2012.

Residential Tenancy Branch