



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and acknowledged receipt of evidence submitted by the other. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Were the Tenants co-tenants?
2. Have the Landlords previously received payment for the damages being claimed in this application?
3. Does the respondent Tenant agree to any of the items being claim in this dispute?
4. Have the Landlords met the burden of proof to be issued a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed they entered into a written tenancy agreement, which listed both Tenants as co-tenants that began on May 1, 2010 and ended October 31, 2011. Rent was payable on the first of each month in the amount of \$1500.00 and on May 1, 2010 the Tenants paid \$715.00 (\$357.50 each) as the security deposit. No move in and no move out inspection reports were completed. The respondent Tenant provided his forwarding address to the Landlords, via e-mail, on November 13, 2011 and his co-tenant provided his forwarding address after that by text message.

At the outset of the hearing the Tenant stated that he agreed with the Landlords' claim for light bulbs at \$33.41 and the washing machine repair of \$253.12. The Landlords confirmed they agreed with these amounts.

The Landlords referenced their evidence which included, among other things, photographs of the counter top, and a written statement from the co-tenant acknowledging that the damage to the counter occurred during their tenancy.

The Landlords affirmed they have owned this townhouse since October 2009 and that it was built in 2000. The counter top in question was original from 2000 and has not yet been replaced. The Landlords confirmed they have re-rented this unit effective November 1, 2011, the day after the Tenants' tenancy ended.

The Landlords made reference to the quote they provided in their evidence to support their claim that the counter will cost \$1,199.52 to be replaced. They state they sought various quotes and this was the least expensive. They argued that the quote provided by the Tenant is not for the same type of countertop as their counter has rounded edges and not flat edges. They also looked into having the laminate repaired however that would not work given the existing counter has rounded edges.

The Tenant stated that he feels the damage is average wear and tear considering he is used to granite counter tops which is why he placed a hot pot on the counter and it bubbled up. He argued that the Landlords had inspected the unit four or five times during his tenancy and therefore they should have said something about the counter if they thought it was more than wear and tear.

The Tenant stated that he feels the amount the Landlords are claiming against him is too high as they already have permission to keep his roommate's security deposit of \$357.50. He stated that they were co-tenants and therefore should share the costs of the damages and the amount the Landlord's have collected from his roommate should more than cover the damages.

The Tenant noted that the Landlords refused to allow his friends, who work in the industry, to conduct the repairs at a lower cost. He believes the amount the Landlords are seeking is about \$500.00 too high.

The Landlords argued that they do not allow people to work in their unit who are not bonded or licensed to conduct the repairs. They confirmed the quote provided in their evidence was obtained without the contractor coming into the unit to see and measure the existing countertop and was based on the Landlords' measurements and description

of the product, which they argue is no longer available so cannot be matched for a smaller repair.

The Tenant clarified that his friends work for a respectable company and are bonded and insured.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a statement signed by the co-tenant, copies of invoices provided by the Landlords, and an invoice provided by the Tenant.

The Tenant accepts responsibility for the cost of light bulbs in the amount of \$33.41 plus \$253.12 for the cost to repair the washing machine. The parties agreed on these amounts.

Part 3 Section 21 of the *Regulation* stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the absence of a move-in or a move-out inspection report form I accept the Landlords' photographic evidence and the co-tenant's statement as evidence of the condition of the rental unit at the end of the tenancy and damages which occurred during the tenancy.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an

item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 37*.

The evidence supports this countertop was eleven years old. Therefore, this counter should have had fourteen more years of use based on the *Residential Tenancy Policy Guideline 37* which stipulates a counter's normal useful life extends to twenty five years.

The Landlords have not yet replaced this counter, have re-rented the unit to other tenants who are currently using that counter, and are basing their claim on a quote that was generated without having the existing countertop inspected or measured to determine if the counter top could be matched with another product or to ensure it would be replaced with the same quality of counter. Therefore I find they have not met the burden of proof of the actual value of their loss.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages". Nominal damages may be awarded where there is insufficient proof that there has been a significant loss as an affirmation that there has been an infraction of a legal right. In this case I find that the Landlords have proven that damage was caused to the countertop during this tenancy and therefore I award them nominal damages in the amount of **\$200.00**.

The Landlords have been partially successful with their claim; therefore I award partial recovery of the filing fee in the amount of **\$20.00**.

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy.

The evidence supports this Tenant was a co-tenant to the tenancy agreement and that the Landlords have previously collected the co-tenant's security deposit of \$357.50 as payment towards the above mentioned damages. Therefore, the \$357.50 must be considered payment as partial satisfaction of the total claim.

Section 24 of the Act provides that if a landlord fails to complete a move in inspection report then the right of the landlord to claim against the security or pet damage deposit is extinguished. However, this does not preclude offsetting the deposits under section 72 of the *Residential Tenancy Act*.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Light bulbs	\$ 33.41
Washing Machine Repair	253.12
Counter Top Damage	200.00
Filing Fee	<u>20.00</u>
SUBTOTAL	\$ 506.53
LESS: Co-Tenant's Security Deposit	-357.50
LESS: Balance of Security Deposit \$357.50	-357.50
LESS: Deposit Interest 0.00	<u>- 0.00</u>
Offset amount due to the TENANT	<u>(\$ 208.47)</u>

The Landlords are HEREBY ORDERED to return the balance of the security deposit of **\$208.47** to the respondent Tenant forthwith.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$208.47**. This Order is legally binding and must be served upon the Landlords.

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: February 13, 2012.

Residential Tenancy Branch