



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MND, MNDC, MNSD, O, FF

Introduction

This hearing dealt with cross applications. The landlord applied for compensation for damage to the rental unit and damage or loss under the Act, regulations or tenancy agreement; as well as, authorization to retain the security deposit. The tenant applied for Orders for compliance; return of the security deposit; and, other issues. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

With respect to the tenant's application, I determined the tenancy has ended and that it was not necessary to consider the tenant's requests for Orders for compliance or issues other than return of the security deposit.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit and damage or loss under the Act, regulations or tenancy agreement?
2. Is the tenant entitled to return of the security deposit and should the security deposit be doubled?

Background and Evidence

The tenancy commenced August 15, 2011 and ended November 30, 2012. The tenant paid a security deposit of \$285.00 and was required to pay rent of \$470.00 per month. The rental unit is a condominium and the tenant resided in the unit with others who had separate agreements with the landlord, including the landlord's son.

The landlord did not prepare move-in or move-out inspection reports. The tenant provided the landlord with his forwarding address by way of text messages.

The landlord is seeking recovery of \$109.68 for damage to the kitchen faucet and \$244.16 for damage to the countertop.

The landlord's agent submitted the faucet was not working properly at the end of the tenancy but the agent did not have enough information to describe the damage or the likely cause of the damage. The tenant objected to being held responsible for replacement of the kitchen faucet. The tenant described how the faucet often became loose and that the bolt under the faucet required frequent tightening. The tenant also pointed out that he was not the only person residing in the unit and using the kitchen faucet.

The landlord's agent submitted that the tenant caused a burn in the countertop and that although the tenant attempted to have it patched the patch it was not satisfactory to the landlord. The landlord purchased a new section of countertop.

The tenant submitted that the repair to the countertop is sufficient and the landlord did not communicate dissatisfaction until mid-January 2013 when the tenant began asking for the return of his security deposit. The tenant pointed out that there is no evidence that purchased countertop was actually installed.

As evidence for this proceeding, I was provided with copies of: the tenancy agreement; numerous email and text messages exchanged between the parties; and, receipts for the purchase of a new faucet and section of countertop. I was also provided photographs of a kitchen faucet and the patched countertop.

Analysis

Having considered all of the evidence before me, I provide the following findings and reasons with respect to each application.

Landlord's Application

Under the Act, a tenant is required repair damage they caused by way of their actions or neglect. Under the Act, normal wear and tear is not considered damage.

Kitchen faucet --

I was provided disputed evidence as to whether the tenant was responsible for damaging the kitchen faucet. I find the landlord did not present any evidence that would refute the tenant's explanation that the faucet was loose due to a bolt that required frequent tightening. I find I am not satisfied that the loose bolt is a result of damage caused by the tenant as opposed to wear and tear, poor installation, or damage caused

by other tenants residing in the unit. Therefore, I find the landlord did not meet the burden to prove the tenant is responsible for damaging the kitchen faucet and I dismiss this portion of the landlord's claims against the tenant.

Countertop --

It was undisputed that the tenant was responsible for burning the countertop during the tenancy and that the tenant had the countertop patched. I accept that the landlord was not satisfied with the patch and that the visible patch either devalued the property or necessitated the purchase of a new section of countertop.

In light of the above, I grant the landlord's request to recover \$244.16 from the tenant for damage to the countertop. I have not made any deduction for depreciation as the landlord did not claim any amount for installation.

Tenant's Application

It was undisputed the landlord failed to complete condition inspection reports with the tenant and as provided by the Act, the landlord lost the right to make any claims against the security deposit for damage. Nor, did the landlord have any other claims against the security deposit. Therefore, the tenant is entitled to return of the \$285.00 security deposit.

A tenant is entitled to receive double the security deposit where the tenant can prove that the tenant gave his forwarding address to the landlord in writing and the landlord failed to return the security deposit or file against the security deposit within 15 days of receiving the forwarding address.

In this case, I was provided evidence that the tenant sent his forwarding address to the landlord by text message or email.

Where a document is to be given to the other party, section 88 of the Act provides for the ways the document must be given. Text messaging or email is not an acceptable method of giving the other party a document. Therefore, I find the tenant did not give the landlord his forwarding address, in writing, in a manner that complies with section 88 of the Act prior to filing to either party filing their Application for Dispute Resolution.

In light of the above, I find the tenant is not entitled to return of double the security deposit.

Filing fees and Monetary Order

As both applications had merit I make no award to either party for recovery of the filing fee paid for their respective applications.

Pursuant to section 72 of the Act, I offset the landlord's award against the tenant's award and provide the tenant with a Monetary Order for the net amount of \$40.84 [\$285.00 – \$244.16].

The landlord is ordered to pay the tenant \$40.84 without further delay. The tenant may serve and enforce the Monetary Order as necessary.

Conclusion

The landlord was awarded \$244.16 and the tenant was awarded \$285.00. The awards have been offset and the tenant has been provided a Monetary Order for the net amount of \$40.84 to serve upon the landlord and enforce as necessary.

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 08, 2013

Residential Tenancy Branch