



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order allowing retention of the security deposit in full or partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced July 1, 2011 and ended March 31, 2013. The monthly rent of \$1200.00 was due on the first day of the month. The rent included all basic utilities. The tenants had an enhanced cable and Internet package. This extra charge was included on the landlord's bill and he would collect that amount from the tenants.

The tenants paid a security deposit of \$600.00. A move-in condition inspection was conducted and a move-in condition inspection report completed.

The rental unit is a two bedroom, one bathroom suite in the lower level of a house. It is 900 to 100 square feet in size. The landlord lives on the upper level.

On May 29 the tenant was cleaning the unit. The landlord came in to remind her of things that needed to be done and to give her a list of what was required on move-out. The tenant became very upset by the landlord's suggestions, to the point where she cried. When her husband saw her crying he went to speak to the landlord. The husband suggested that the landlord just stay away and leave the tenant alone. The landlord complied with this request.

The tenant testified that when she finished cleaning mid-afternoon she went upstairs and told the landlord that her husband would be by the next day to pick up some final items.

The husband did attend the rental unit on March 30. The landlord says they walked through the unit. He showed the husband some deficiencies in cleaning and some burn marks on the kitchen counter.

The landlord says the husband said he would tell his wife would be back after work that day to clean the oven and the other missed spots. The tenants says her husband told her they were done; that the landlord would be calling with some estimates for the countertop and that she should leave the keys in the mailbox on her way home from work. The husband did not testify at the hearing nor did he file a written submission.

The landlord testified that they expected the tenant to return to the unit on March 30. The tenant testified that she left the keys in the mailbox as her husband had directed. She did not let the landlord know that she had been to the house. The landlord subsequently found the keys in the mailbox.

The landlord testified that they waited until noon on March 31 to see if anyone would come back for a move-out inspection. They did not. The landlord testified that he was not able to serve a Notice of Final Opportunity to Schedule a Condition Inspection because of the manner in which the tenant never let him know she was there when she dropped off the keys and no one came to the property on March 31.

There were new tenants moving in on April 1. The landlord testified that it took he and his wife all day to clean the unit. In particular, his wife had to clean the oven two or three times. The landlord claimed \$377.54 for labour and \$22.46 for cleaning supplies for a total of \$400.00. The tenant says she did her best and that the place was well cleaned for a rental unit. She also testified that she was very upset on March 29th and wanted to get out of there as soon as possible.

At the end of the tenancy there were some small burn marks on the kitchen countertop, near the sink. The landlord testified that it appeared that the tenant had tried to scrub the marks out because the surface shine and pebbled finish were worn away.

A letter from the company that installed the countertop in September of 2010 for \$1046.85 plus tax explained that the whole countertop had to be replaced for the following reasons:

- Once plastic laminate is burned there is no way to repair it.
- The marks were on the longer part of the L-shaped counter. This particular laminate is no longer available so they could not match the two parts of the counter exactly.

- Even if the exact match was available, the labour to cut and attach the new part was more than just manufacturing an entirely new counter.

The entire counter was replaced at a total cost of \$776.75.

The tenant testified that they did cause the burns but they were very small. She denied scrubbing out the finish. She argued that this was just wear and tear and that replacing the counters was excessive.

The landlord claimed \$27.67 for the last cable bill which the tenant agreed to.

The tenants gave the landlord their forwarding address in writing on April 7 and he filed this application for dispute resolution on April 9.

Analysis

I find that the landlord and the male tenant did do a condition inspection on March 30. As to what agreements were made on that occasion I have the sworn oral testimony of the landlord and the tenant's reporting of what her husband told her, which is hearsay evidence. I must give greater weight to sworn direct testimony than to hearsay evidence. Accordingly I find that the landlord and the male tenant did agree that the tenants would remedy the deficiencies and do a second inspection. Instead, the tenants gave up possession of the rental unit in a manner that made it impossible for the landlord and tenant to complete the move-out condition inspection report together or for the landlord to serve the tenants with the Notice of Final Opportunity to Schedule a Condition Inspection. I find that the landlord complied with section 36(2) and was entitled to claim against the security deposit, which he did within fifteen days of receiving the tenants' forwarding address in writing.

The standard to be applied to all claims for cleaning is set out in *Residential Tenancy Policy Guideline #1: Landlord & Tenant – Responsibility for Residential Premises*. After reviewing the photographs filed by the landlord I find that the tenants did not meet the standard required of tenants. I accept the landlord's evidence that it took sixteen hours to complete the cleaning and I allow the landlord \$20.00 per hour, for a total of \$340.00, for this labour. I also allow the landlord's claim for cleaning supplies in the amount of \$22.46.

With respect to the claim for the countertop, burns are not normal wear and tear. While the burn marks did not affect the functionality of the countertop they did diminish its' appearance. It is understandable that a landlord wants his unit to look its' best but, on the other hand, this is a rental unit and some proportionality must be applied to the

costs charges back to tenants. The expected useful life of a countertop, as set out in *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements*, is twenty-five years. By damaging the countertops the tenants basically sped up the depreciation of the countertop. I award the landlord \$155.35 – the equivalent of five years of depreciation – as compensation for the damage to the countertop.

Finally, as the landlord was largely successful on his application he is entitled to reimbursement from the tenant of the \$50.00 fee he paid to file it.

Conclusion

I find that the landlord has established a total monetary claim of \$567.81 comprised of cleaning costs of \$362.46; compensation for damage to the countertop in the amount of \$155.35; and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain this amount from the security deposit in full satisfaction of the claim. I order that the landlord return the balance of the security deposit, \$32.19 to the tenant as soon as possible and I grant the tenant a monetary order in that amount. If the balance of the security deposit is not returned to the tenant, the order may be filed in the Small Claims Courts 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: July 08, 2013

Residential Tenancy Branch