



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the tenants' security deposit in satisfaction of the award. The hearing was conducted by conference call. The landlord's agent and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

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

Background and Evidence

The rental unit is an apartment in Victoria. The tenancy was for a six month fixed term with monthly rent of \$1,100.00. The tenants paid a \$550.00 security deposit at the commencement of the tenancy. The landlord testified that the rental unit was newly renovated before the tenancy commenced; it was freshly painted and new kitchen cabinets were installed, but the hardwood flooring was not refinished.

The tenants moved out of the rental unit before the end of the term with the consent of the landlord. They moved out at the end of March, but paid rent up to the end of April. They participated in a condition inspection of the rental unit with the landlord's caretaker after they moved out, but no condition inspection report was signed.

The landlord said that the tenants damaged the rental unit and acknowledged that they did so. He said that they stained the kitchen cabinets by spilling liquids on them. They stained a painted window sill by using candles. The dye from the candle wax stained the paint on the window sill. The landlord said the tenants also damaged the hardwood floor in a closet; this was caused by detergent that leaked onto the hardwood.

The landlord said that the hardwood floor has been refinished and the damage caused by the tenants was fixed without charge, but the landlord has claimed \$120.00 to sand and repaint the window sill and \$380.40 to refinish the kitchen cabinets. The landlord said that the \$120.00 charge was for his caretaker's time for four hours work at \$30.00 per hour. He said that the amount also included time that the caretaker spent cleaning the fridge and stove. The landlord said the fridge and stove were not properly cleaned although they were considered clean during the move out inspection. The landlord said that the staining on the cabinets was a coloured stain. He surmised that it might have been caused by wine that was not wiped up quickly. He also said that the finish of the cabinets was dulled on the stained areas due to harsh chemicals or abrasive cleaning products that the tenants may have used to try to remove the stains. The landlord did not submit any photographs of the damage and he did not submit any invoices for the repair work. The landlord deducted the sum of \$500.40 from the tenants' security deposit and sent them a cheque for the balance of \$49.60.

The tenant acknowledged that the window sill was stained by candle wax and this was damage for which the tenants are responsible, but he disputed the landlord's \$120.00 charge for the repair. The tenant said that the window sill repair should have taken at most, two hours. With respect to the cabinetry, the tenant said that the only spills were water spills from the sink and counter. The tenant said that the spills were wiped up without using abrasive cleaning agents. The tenant said that the staining should be considered normal wear and tear and suggested that the cabinet finish was of inferior quality or it would not have stained so easily. He noted that the cabinets were near the sink and directly under the counter top, so having some water fall on them was not unexpected.

The tenant noted as well that there was no condition inspection report and he was told by the landlord's caretaker during the move out inspection that the rental unit, including the fridge and stove were acceptably cleaned. The tenant said that the landlord did not provide him with any invoices for the deductions he made from the security deposit. At the hearing the landlord said that he could provide an invoice for the cabinet refinishing, but had neglected to do so.

Analysis

The onus of proving entitlement to a monetary award for damage or repair costs rests with the party asserting the claim. Based on the tenant's admission with respect to the damaged window sill, I find that the window sill was damaged by the tenants and it needed to be sanded and repainted. I find that the tenants are responsible for the reasonable cost of repairing the window sill. I find that the landlord's charge for four

hours work for this repair at \$30.00 per hour to be excessive and in the absence of a condition inspection report or any photographic evidence, I find that the landlord has not proved that the tenants should be responsible for a charge for cleaning the fridge and stove. I allow the landlord's claim for the window sill repair in the amount of \$60.00 only.

With respect to the charge for refinishing the cabinetry, I find that the landlord has failed to prove on a balance of probabilities that the alleged staining of the cabinets constitutes damage exceeding normal wear and tear for which the tenants should be responsible. The landlord did not provide any photographs showing the damage and without such evidence I am unable to determine whether the alleged damage justified the refinishing cost claimed. The landlord said that he had the cabinets refinished because they were new when this tenancy began, but it was not alleged that the cabinets were unserviceable or so unsightly that they had to be refinished. Also I note that no invoice was provided for the charge claimed. I find that the landlord has failed to prove, on a balance of probabilities, that the cabinetry was damaged beyond reasonable wear and tear and that the tenants should be responsible for refinishing them. The landlord's claim for refinishing the cabinets is denied.

I have allowed the landlord's claim in the amount of \$60.00 only. The landlord was largely unsuccessful on this application and, based on the outcome, the landlord's claim for recovery of the filing fee is denied.

Conclusion

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in satisfaction of his monetary claim. Because the claim has been allowed only in part and

the remainder dismissed without leave to reapply it is appropriate that I order the return of the balance of the tenants' security deposit; the landlord holds the sum of \$500.40. He has been awarded \$60.00 and the tenants are entitled to the return of the balance in the amount of \$440.40. I so order and I grant the tenants a monetary order in the said amount. This order may be registered in the Small Claims Court 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 05, 2013

Residential Tenancy Branch

