



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on March 1, 2009 and ended on May 14, 2013. Rent of \$1,750.00 was payable monthly and at the outset of the tenancy the Landlord collected \$875.00 as a security deposit. No move-in inspection was conducted and at move-out the Parties only conducted a verbal inspection.

The Landlord states that prior to the start of the tenancy there was no damage to the bathroom sink and that during the tenancy the Tenant reported a crack in the sink. The Landlord provides an email from the Tenant dated January 29, 2012 informing the Landlord that a crack appeared after hearing a pop. The Landlord also provided a letter

from the person who originally installed the sink and this person submits that he is “familiar with the accuracy of the installation, the equipment and fixtures installed.” This person further submits that it is extremely unlikely that the sink would crack on its own and that “the only possibility would be by a heavy weight on the countertop causing pressure to the sink or by dropping a very heavy object unto the sink itself.” The Landlord states that they have no idea what caused the sink to crack but that it must have been caused by the Tenant and perhaps the Tenant stood on the counter. The Landlord states that a temporary repair was investigated but that the plumber advised against this as it would only be a temporary solution and that, as set out in the plumber’s letter, “the sink would need to be replaced over time as it had been structurally weakened.” The Landlord states that a new sink has not been purchased and provided an invoice for the cost of the sink and the plumber’s estimate for the cost of installation. The Landlord claims \$600.00.

The Tenant states that they absolutely had no influence on the appearance of the crack and that it just appeared perhaps because of a flaw. The Tenant states that a second opinion would be appropriate and that the Landlord did not provide a legitimate invoice for an estimate of the labour costs to remove and install a new sink.

The Landlord states that the Tenant left approximately 8 patches on the walls of the unit and that the Landlord did not have the same colour paint for the walls so had to repaint the entire walls. The Landlord states that the patched areas required sanding prior to painting and the Landlord states that they are only claiming a portion of the costs in the amount of \$80.00.

The Tenant states that at move-in the walls had several holes and that they used existing nails in the walls to hang most of their pictures. The Tenant states that at move-out they thought they were being generous by patching all the holes for the Landlord. The Tenant states that the unit had not been painted during their tenancy and that about half of the patches were from pre-existing holes in the wall.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Although the Landlord provided a letter from the plumber that originally installed the sink, I find this person's evidence in relation to the accuracy of the installation of the sink to be self-serving and not an objective assessment of causation. Considering that the Tenant denies doing anything to cause the crack, and I found the Tenant's delivery of her evidence to be convincing, I find that the Landlord has not shown on a balance of probabilities that the Tenant caused the crack. I therefore dismiss this claim.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the lack of a move-in inspection and considering the Tenant's evidence of previous damage to the wall, I find that the Landlord has not substantiated that the Tenant left all the damage claimed. Based on the Tenant's evidence that only half of the 8 patches were from during the tenancy, I find that the Landlord only incurred costs in relation to 4 patches. Considering the undisputed evidence that the unit had not been painted during the tenancy and the Tenant's evidence of previous damage to the walls, I find it more likely that the Landlord painted the unit for other reasons than the Tenant's damage and that no extra cost would have been incurred to paint the few patches that were caused by the Tenant. I therefore find that the Landlord is entitled only to a nominal sum of **\$20.00** for the cost of sanding 4 patches.

As the Landlord's application has met with minimal success, I decline to award recovery of the filing fee. I order the Landlord to deduct \$20.00 from the security deposit of \$875.00 plus zero interest and to return the remaining **\$855.00** to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$875.00**. If necessary, this order may be filed 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: September 05, 2013

Residential Tenancy Branch

