



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Glenayre Realty Chilliwack Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:47 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent copies of the landlord's dispute resolution hearing package to all three tenants by registered mail on December 17, 2014. She entered into written evidence copies of the Canada Post Tracking Numbers and Customer Receipts to confirm these registered mailings and the landlord's subsequent registered mailings of copies of the landlord's written evidence packages to the tenants. In accordance with sections 88, 89 and 90 of the *Act*, I find that the three tenants were deemed served with these documents on the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

On March 9, 2012, Tenants JD and PD signed a one- year fixed term Residential Tenancy Agreement (the Agreement) which commenced on April 1, 2012. According to the terms of the Agreement entered into written evidence by the landlord, those signing

the Agreement as the tenants were to pay \$1,500.00 in monthly rent in advance on the first of each month, plus heat and hydro. The landlord continues to hold the \$750.00 security deposit for this tenancy paid on April 1, 2012. This tenancy ended on November 29, 2013, when the tenants surrendered vacant possession of this rental home to the landlord. The landlord testified that the owner of this home has not attempted to re-rent the premises, but has moved back into the building herself.

The landlord entered into written evidence copies of reports of the joint move-in and joint move-out condition inspections which occurred on March 19, 2012 and November 29, 2013. While the landlord testified that these inspections were conducted with Tenant KD, whose initials are on each page of the reports, the only signature on either report is that of the landlord.

The landlord's application for a monetary award of \$1,792.94 included a Monetary Order Worksheet seeking compensation for the following items damaged during this tenancy:

Item	Amount
Replace Damaged Door (\$100.00) and Counter Top (\$1,000.00)	\$1,100.00
Professional Carpet Cleaning	192.94
General Cleaning of Rental Home	500.00
Total of Above Items	\$1,792.94

The landlord entered into written evidence, in the form of the move-in and move-out inspection reports, statements from the owner of the property as to the condition of the premises at the end of the tenancy, various estimates, and five photographs taken at the end of this tenancy. The landlord's written evidence maintained that there was considerable damage from smoking throughout this rental home. Documents supplied by the owner of the property gave a detailed breakdown of the time that she spent in cleaning the rental property, which she described as being in a "disgusting state" at the end of this tenancy. The owner of the property stated that by December 14, 2013, she had spent over 30 hours cleaning the rental home and had not yet begun cleaning the lower level of this home. A September 31, 2013 quote issued by a lawn and property maintenance firm estimated that the cost of replacing a damaged kitchen counter top would be \$500.00 if a colour match could be found, and \$1,100.00 if no such match could be obtained.

Analysis

Although all three Respondents in the landlord's application signed an Addendum to the Agreement, I find that the third Respondent, TD, the adult daughter of the other two tenants, did not sign the Agreement. While it may have been the intention of the landlord to include all three tenants on the Agreement, I find that the third Respondent, TD, is not an actual signatory to the Agreement, and as such any monetary claim made by the landlord can only be successfully directed towards Tenants JD and PD, hereafter referred to in this decision as the tenants.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 25 of the Addendum to the Agreement that the tenants signed when they commenced this tenancy required professional carpet cleaning at the end of this tenancy. As the landlord has provided evidence that the tenants did not undertake this cleaning at the end of their tenancy and the landlord incurred \$192.44 in costs to have this work done by a professional carpet cleaning company on November 30, 2013, I allow the landlord's claim to recover these costs.

When disputes arise as to the condition of a rental unit at the end of a tenancy, it is very helpful to be in a position to compare signed joint move-in and move-out condition inspection reports. In this case, the landlord gave undisputed sworn testimony that Tenant KD attended both the move-in and move-out inspections. I also find that there is at least some written evidence in the form of KD's initials on each page of these reports to confirm that she did participate in these inspections. While it would have been preferable to have obtained signatures from Tenant KD at the time of both inspections, the landlord testified Tenant KD refused to sign the joint move-out condition inspection report, although she did initial each page of that report.

Under the circumstances and after having given considerable weight to the detailed breakdown of the extent of the cleaning that was required by the owner of this property

at the end of this tenancy, I find that the landlord is entitled to a monetary award of the requested \$500.00 for cleaning this rental unit.

I have also given careful consideration to the landlord's request for a monetary award for damage to a door and to a counter top. The landlord gave sworn testimony that the owner of the property has had the door replaced at a cost of \$100.00. The move-in condition inspection report did not mention any problems with the bathroom door when this tenancy began. However, the move-out report has two specific notations regarding this broken bathroom door. Based on the landlord's undisputed sworn testimony and written evidence, I find that the landlord is entitled to a monetary award of \$100.00 to replace the bathroom door that was damaged during the course of this tenancy.

The landlord's claim for \$1,000.00 for the replacement of a counter top in the kitchen that was damaged or chipped during the course of this tenancy presents somewhat of a problem in that the landlord testified that it has not yet been repaired or replaced. She said that the owner has not rented the premises again and is waiting to obtain a determination as to her entitlement to compensation from the tenants before she proceeds to undertake repairs or replacement of the damaged counter top. While the move-out condition inspection report identifies a chip that was not present in the move-in inspection report, there is no clear indication from either that report or through the photographic evidence as to the size of this chip. The landlord provided no evidence with respect to the age of the counter top, which would help to determine its remaining useful life and whether this feature of the rental unit might be due for replacement soon, even had there been no damage arising out of this tenancy. The landlord's failure to take action to repair or replace the counter top during the four months following the end of this tenancy can be interpreted as either a lack of funds to undertake this type of major repair or a reflection of the relative insignificance of this damage.

Although the landlord has not demonstrated any actual losses arising out of the damage to the counter top, I do accept that there has been at least some diminishment in the value of the property as a result of damage to the counter top in the kitchen that has yet to be repaired. Based on a balance of probabilities and after considering the undisputed evidence presented by the landlord, I find that the landlord is entitled to a monetary award of \$250.00 for the damage to the counter top, a figure which represents one-half of the estimated cost of repairing the counter top if it can be colour matched. While I recognize that this may not cover the eventual costs of either repairing or replacing the counter top, at this stage there is no certainty that the landlord will choose to undertake repairs or replacement. Since she has left this item unrepaired for over four months, she may have accepted that the magnitude or location of this damage is such that she may choose to leave this counter top unrepaired. At any rate, I find that

the landlord has not supplied sufficient evidence to warrant a more significant monetary award for damage to the counter top.

I allow the landlord to retain the security deposit for this tenancy plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenants.

Conclusion

I issue a monetary award in the landlord's favour against Tenants KD and PD under the following terms, which allows the landlord to recover for damage and the filing fee and to retain the tenants' security deposit:

Item	Amount
Replace Damaged Door	\$100.00
Damage to Counter Top	250.00
Professional Carpet Cleaning	192.94
General Cleaning of Rental Home	500.00
Less Security Deposit	-750.00
Filing Fee	50.00
Total Monetary Order	\$342.94

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 04, 2014

Residential Tenancy Branch

