



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANDMARK REALTY MISSION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was originally scheduled to be heard on January 16, 2014 to deal with a landlord's application for a Monetary Order for damage to the rental unit and authorization to retain the security deposit. At the January 16, 2014 hearing only the landlord appeared. The landlord requested an opportunity to re-serve the hearing documents and evidence package upon the tenants as the hearing documents and evidence package were returned as unclaimed. The landlord stated the tenants had provided a forwarding address via email prior to the end of tenancy but the address may no longer be the tenants' current address. The landlord also wanted an opportunity to confirm the tenants' current mailing address. I ordered the hearing adjourned and authorized the landlord to re-serve the tenants.

At the re-convened hearing of March 18, 2014 the female tenant appeared and confirmed that the tenants' mailing address had changed since providing the landlord with an address via email. The tenant confirmed that the tenants had received the hearing documents that were re-served by the landlord and confirmed that the images on the landlord's disk were viewable by the tenants. The female tenant also confirmed that she was representing both named tenants.

The landlord requested the application be amended to reduce the landlord's monetary claim. As this request for amendment was beneficial for the tenants, I permitted the amendment.

Both parties 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.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced on September 1, 2009 and ended on September 30, 2013. The tenants paid a security deposit of \$425.00 on August 22, 2009. The landlord prepared condition inspection reports at the beginning and end of the tenancy. The tenants did not authorize any deductions from the security deposit at the time of the move-out inspection.

It was undisputed that the rental unit was approximately two years old when the tenancy commenced and approximately six years old at the end of the tenancy.

Below, I have summarized the landlord's claims against the tenants and the tenant's responses to those claims.

Repairs

The landlord was seeking \$89.67 for repairs with respect to the kitchen drawer, sink plug, and baseboard heater. The tenant agreed to compensate the landlord for these items for the amount claimed.

Wall damage

The landlord was seeking \$45.00 to repair pet scratches to the walls. The tenant agreed to compensate the landlord for this damage for the amount claimed.

Laminate flooring damage

It was undisputed that there was some existing damage to the flooring at the start of the tenancy but that there was more damage present at the end of the tenancy. The landlord estimated that the area of the flooring that was scratched at the beginning of the tenancy was 5% and approximately 30% of the floor area was scratched at the end of the tenancy. The landlord presented a diagram in an attempt to show how she approximated the area of damage. The tenant did not object to the landlord's approximations.

Using a replacement cost of \$1,893.82 and a useful life of 20 years for laminate flooring, the landlord requested compensation of \$312.48 for the additional damage caused during the tenancy after taking into account six years of depreciation.

After some discussion about useful life of laminate flooring, the parties agreed to settle this issue by recalculating the landlord's award based upon 15 years of useful life for laminate flooring.

Granite countertop damage

The landlord submitted that the granite countertops in the kitchen and bathroom were significantly stained during the tenancy and suspected the staining was the result of food and unclear liquids and/or dirty dishes or clothes left sitting on the countertops. Due to the great expense of \$4,894.40 to replace the countertops, the countertops have not yet been replaced; however, the landlord is seeking compensation for diminished value. The landlord submitted that approximately 50% of the area adjacent to the stove was stained; 20% of the surface adjacent to the kitchen sink was stained; and, 25% of the bathroom countertop was stained. Since the estimate for replacement of countertops was not broken down by piece, the landlord estimated the all of the damage approximated 32% of the countertop area. Applying 32% to a remaining useful life of 19 years, the landlord requested compensation of \$1,190.32 from the tenants for damage to the countertops.

The landlord acknowledged that she was uncertain as to whether the countertops had been sealed prior to the tenancy, although she suspected they were likely sealed when originally installed by the builder. The landlord acknowledged that no special care instructions were given to the tenants.

The tenant responded by stating she could not see evidence of staining on the kitchen countertops as the kitchen countertops looked the same at the beginning and end of the tenancy. The tenant claimed there were no photographs taken of the countertops during the move-in inspection. The landlord responded by stating there were no photographs taken of the countertops at the beginning of the tenancy because there was no damage to document, as evidence by the move-in inspection report. However, the landlord had photographs of the unit taken prior to the tenancy for advertising purposes and they were available for viewing on the landlord's website. The photographs appearing on the website show an unstained countertop in the kitchen and bathroom.

The tenant acknowledged that staining did occur to the bathroom countertop but claimed it was from a water leak in an upper unit. The tenant submitted that the staining was apparent very shortly after the flood occurred. The tenant submitted that her co-tenant had reported the leak to an agent for the landlord who inspected the bathroom ceiling after the flood.

The landlord claimed the tenants did not report a flood in the bathroom. The landlord called as a witness the agent identified by the tenant as the agent her co-tenant contacted about the flood. The agent testified that she was not contacted by the tenants about a flood and did not inspect the ceiling in the bathroom.

The landlord was of the position that had a flood caused the damage to the bathroom countertop, the landlord could have pursued a claim against the other unit if the tenants had not been negligent by failing to report the problem.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Considering everything presented to me, I provide the following findings and reasons with respect to the landlord's claims against the tenants.

Repairs and wall damage

As the tenant was agreeable to compensating the landlord the amounts claimed for these items, I award the landlord \$89.67 and \$45.00 as claimed.

Laminate flooring damage

In recognition of the settlement agreement reached between the parties with respect to this portion of the landlord's claim, I re-calculate the loss based upon laminate flooring having an estimated useful life of 15 years. Since the laminate flooring was six years old at the end of the tenant, the flooring had nine years of useful life remaining.

Therefore, I calculate the landlord's award as follows:

Depreciated value of flooring (\$1,893.82 x 9/15 years)	\$1,136.29
Increase in damaged area (30% less 5%)	<u> x 25%</u>
Award	\$ 227.25

The landlord is awarded \$227.25 for damage to the laminate flooring caused during the tenancy.

Granite countertop damage

The tenant raised two issues with respect to countertop damage and I will address those issues separately.

a) Bathroom countertop damage

The tenant acknowledged the countertop in the bathroom was stained during the tenancy but attributed this to a flood in an upper unit. I find there is insufficient evidence that there was a flood in an upper unit that caused this damage; however, if there had been a flood, I accept the landlord's position that failure to report it to the landlord amounts to negligence on part of the tenants. I find it reasonable to expect that where a unit that is damaged by a flood the tenant would notify the landlord of such at the earliest time possible so the landlord may take appropriate action to minimize further damage, remediate the damage and/or pursue a claim against a party responsible for damage. I find that failure of a tenant to report a flood (or other damaging incident) takes away or significantly reduces the landlord's available remedies and this amounts to negligence on part of the tenant. The Act provides that a tenant is responsible for damage caused by the tenant's actions or negligence. The tenant presented hearsay evidence that her co-tenant reported a flood to the landlord's agent. The landlord's agent unequivocally denied receiving such notice from the tenants. Therefore, I find the landlord has suffered a loss in value because of the tenants' actions or negligence.

b) Kitchen countertop damage

The Residential Tenancy Regulations provides that a condition inspection report prepared in accordance with the Regulations is the best evidence as to the condition of a rental unit unless there is a preponderance of evidence to the contrary.

The move-in inspection report is not in the same format as the form produced by the Residential Tenancy Branch; however, the Act permits landlords to use their own format so long as the same information is conveyed. Upon review of the move-in inspection report used by the landlord I accept that the same information is conveyed on the landlord's form as is required under the Regulations. The move-in inspection report indicates the countertops were in good condition and there is no indication they were damaged or stained at the beginning of the tenancy. I find the move-in inspection report is consistent with the photographs that were used to advertise the rental unit prior to the formation of this tenancy.

The move-out inspection report prepared by the landlord's agent is signed by both parties but does not contain all of the information required on such reports. As such, I find the presence of the tenant's signature on the report does not indicate that she agreed with the landlord's assessment of the property at the end of the tenancy. I take the report as a reflection of the landlord's observations and interpretations as to the condition of the unit at the end of the tenancy without agreement of the tenant. The landlord recorded the condition of the kitchen countertops as being dirty, stained and water damaged.

Upon comparison of the photographs taken at the beginning and end of the tenancy, and in conjunction with the information reflected on the move-in and move-out inspection reports, I accept on the balance of probabilities that the countertops were stained during the tenancy.

Although I accept that the countertops were stained during the tenancy I take notice that granite countertops require regular sealing so as to prevent staining and the landlord did not take such steps or provide the tenants with specific care instructions for granite countertops. Despite the lack of sealing or care instructions I also find it reasonable the tenants would have contacted the landlord upon noticing the countertops were beginning to show signs of staining so that further staining may be minimized. Therefore, I find it appropriate that both parties shall bear responsibility for the staining of the kitchen countertops.

In light of the above, I hold the tenants entirely responsible for the damage to the bathroom countertop and partially responsible for the kitchen countertops. Since it is not reasonable to cut sections of countertop and replace only the damaged sections, I find that holding the tenants responsible for only 32% of the depreciated value of the countertops, as claimed by the landlord, more than adequately reflects the landlord's contribution to the damaged countertops. Therefore, I grant the landlord's request for compensation of \$1,190.32 as claimed.

Monetary Order

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord with this decision. I also award the filing fee to the landlord as the landlord was largely successful with this application.

The landlord is provided a Monetary Order calculated as follows:

Repairs	\$ 89.67
Wall damage	45.00
Laminate flooring damage	227.25
Granite countertop damage	1,190.32
Filing fee	50.00
Less: security deposit	<u>(425.00)</u>
Monetary Order	\$ 1,177.24

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,177.24 to serve 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: April 15, 2014

Residential Tenancy Branch

