



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K & G Claire Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant. The landlord applied for a monetary order for damage to the unit, site, or property; to keep all or part of the pet damage deposit or security deposit; and to recover the RTB filing fee. The tenant applied for the return of her security deposit; for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; and to recover her RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agree that the tenancy started August 15, 2012 and ended December 31, 2013. The tenant paid a security deposit of \$350.00.

A previous arbitrator's decision dated January 7, 2014 (RTB File AAAAAA) awarded \$82.30 to the landlord for unpaid rent and the RTB filing fee, that amount to be retained from the security deposit. The balance remaining of the security deposit at the date of this hearing is \$267.70.

The tenant gave evidence that she provided her forwarding address to the landlord in writing on January 7, 2014. She seeks the return of her security deposit and an award for double her security deposit.

The landlord claims the tenant damaged the laminate flooring and kitchen countertop. The landlord gave evidence that the laminate floors and countertop were new in 2012. He provided a receipt for kitchen and vanity tops dated July 2012; the rental unit number is written on the receipt, although the rental unit number does not appear to be written in the same handwriting as the rest of the receipt. The landlord also provided a receipt for remodeling including installing a laminate floor and various other work; the receipt provides the rental unit number but it is not dated. The landlord provided a copy of his cheque stub for the remodeling invoice and that is dated July 14, 2012.

The landlord provided an invoice from a contractor dated January 10, 2014 for \$480.00 labour for the replacement of some laminate flooring and the kitchen countertop; he also provided a copy of the cheque he issued to the contractor dated February 7, 2014. The landlord provided a receipt dated January 21, 2014 for \$130.20 for a new countertop. He also provided a receipt dated January 9, 2014 for flooring and underlay; there is a notation on the receipt showing calculations for a smaller amount of materials (200 square feet) which the landlord states is the amount used in the rental unit in this application. The amount calculated for 200 square feet of flooring materials is \$264.00. The landlord's total claim is therefore \$874.20 ($480.00 + 130.20 + 264.00$).

The landlord's contractor SR gave evidence that he replaced a section of laminate flooring in the living room that was about 11' x 19'. He said there was a bubble in the flooring about every 2 or 3 feet. Asked what might have caused such damage, the contractor said he thought water dripping on the floor. The landlord gave evidence that he saw a clothes drying rack in the living room during the tenancy, and he thought that water dripping from clothes might have caused the damage. The contractor gave evidence that there was a round burn mark about 2" to 3" in diameter beside the sink; he thought it might have been caused by a hot object being placed on the arborite countertop.

The landlord said he had photographs of the damage but they were lost.

The tenant gave evidence that the floors were not damaged. She submitted photographs, including a photo she says was taken on January 7, 2014 that appears to show a laminate floor in good condition. The tenant's evidence is that she did not hang dripping wet clothes from the clothing rack the landlord saw in the living room. The tenant gave evidence that she thought the landlord might have installed new flooring in another rental unit and provided receipts from that work.

The landlord asserts that it is difficult to see the floor damage in the tenant's photo of the floor.

The tenant also gave evidence that she did not see a burn mark on the kitchen counter. Asked whether she ever put a hot pot on the counter, she said she did not.

Analysis

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing. According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the security deposit.

In this case, I find the tenancy ended on December 31, 2013. I accept the tenant's evidence that she provided her forwarding address to the landlord in writing on January 7, 2014. The landlord therefore had until January 22, 2014 (15 days after January 7, 2014) to either return the security deposit or apply for dispute resolution. The landlord applied for dispute resolution on January 21, 2014. For that reason, the tenant is not entitled to the return of double her security deposit, as provided for in Section 38(6).

The landlord's claim for replacement of a section of laminate flooring in the living room is supported by the verbal evidence of his contractor and by receipts for labour and materials. The landlord's claim is carefully documented, since he also provided evidence to support his assertion that the flooring and countertop were installed in 2012. However, the landlord's claim lacks photographs of the damage. On the other hand, the tenant provided a photograph that appears to show the laminate flooring in good repair.

I find that, on a balance of probabilities, the landlord has met his burden of proof of showing that the tenant damaged the laminate floor. The landlord's documentary evidence and the corroborating evidence of his witness make it more likely than not that he did replace a section of laminate flooring in the rental unit due to damage. I accept the landlord's evidence that the damage is too difficult to see in the tenant's photograph.

I find that, on a balance of probabilities, the landlord has also met his burden of proof in showing that the tenant damaged the countertop. It seems unlikely that the landlord would have replaced countertop that was less than two years old if it were not damaged, and I accept the evidence of the landlord and his witness that he did replace the countertop.

The landlord is therefore entitled to his costs of replacement, which are \$874.20, and to his RTB filing fee of \$50.00, for a total of \$924.20. I order that the landlord retain the remaining security deposit of \$267.70 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$656.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$656.50.

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: June 2, 2014

Residential Tenancy Branch