



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RADKE BROS. CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, 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, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's claim is in relation to damage to a kitchen countertop.

Both parties were represented at the hearing by their respective agents. Each agent confirmed that he had authority to act. All in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant's agent admitted service of the dispute resolution package and all evidence before me.

Preliminary Issue – Amendment to Landlord's Application.

The landlord initially filed its application on the basis of an estimated cost of \$735.00 to repair the counter top. The actual cost was \$708.75. The landlord's agent asked to amend the landlord's application to the reduced amount. As there is no prejudice to the tenant in allowing this amendment, the amendment is allowed.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agents, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 December 2011. The tenancy ended 31 January 2015. At the end of the tenancy, monthly rent was \$1,600.00. The landlord continues to hold the tenant's security deposit in the amount of \$747.50, which was collected on 1 November 2011. The tenant and tenant's agent were cotenants of the rental unit and signed the same tenancy agreement.

The landlord's agent testified that the damage to the countertop was first noticed on a pre-move out inspection. The landlord's agent testified that the counters were installed in fall of 2011. The landlord's agent testified that he provides verbal instructions on care and upkeep to new tenants.

The landlord's agent testified that he has used the counter company for over thirty years. The landlord's agent testified that in those thirty years the company has installed approximately fifteen counters for the landlord. The landlord's agent admitted that other counters installed have sustained this type of damage and submits that the damage was caused by similarly negligent tenants. The landlord's agent testified that the counters were installed correctly. The landlord provided a letter from the installation company that indicates industry procedure.

The landlord provided me with various photographs:

Photograph 1: This photograph was taken on 31 January 2015. Pieces of the fridge, which were removed for cleaning, are seen in the corner of the counter. The landlord's agent asks me to note that there is a puddle of water on the counter.

Photographs 2 and 3: These photographs were taken on 31 January 2015. The photographs show the same area as in photograph 1, but the fridge components have been removed. The landlord's agent asks me to note that there is a puddle of water on the counter. As well the seam of the counter is visible. The landlord's agent testifies that this is damage.

Photographs 5 and 6: These photographs show the damage to the counter. The laminate can be seen to be lifted. I would estimate that the difference is no more than one millimetre.

The tenant's agent testified that he and the tenant did not leave puddles on the counter. The tenant's agent testified that to the left of the sink was a dish drying rack. The tenant's agent testified that the dish drying rack did not extend to the joint. The tenant's agent testified that he and the tenant would place a dish towel under the drying rack to catch errant water droplets.

The agent testified that the area around the joint was occupied by two small electric appliances: a toaster and a coffee maker.

The tenant's agent submits that the counter was not built properly if it was damaged with the occupants' use. The tenant's agent testified that when he showed the photographs of the damage to a home repair store employee the employee suggested using a repair kit to fix the damage.

I was provided with a copy of the condition move out inspection report. The tenant and tenant's agent made the following notation:

We do not believe the damage to the counter was our doing and we feel that they were not sealed or installed properly.

The landlord claims for \$858.75:

Item	Amount
Counter Installation	\$708.75
Plumbing Labour (4h x \$25/h)	100.00
Recover Filing Fee	50.00
Total Monetary Order Sought	\$858.75

Analysis

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear.

On the basis of the photographic evidence provided to me, the damage to the counter was minimal. The tenant's agent testified that he and the tenant would not leave water on the counter for long periods of time. The tenant's agent testified as to the use of the kitchen counter around the joint. While, I do not accept the tenant's agent's supposition that the landlord or its agents put water on the counter for the purposes of taking the photographs on 31 January 2015, I accept that the condition of the counter that day did not represent their regular use. The presence of electronic appliances near the joint is inconsistent with the theory advanced by the landlord that the tenant would leave puddles of water on the joint. On the basis of the evidence before me, I find that the tenant did not cause damage to the rental unit through his actions or neglect. Any damage to the counter was sustained as a result of wear and tear and as such is not compensable under the Act.

The landlord's application is dismissed without leave to reapply.

As the landlord was not successful in this application, it is not entitled to recover the filing fee.

The parties agree that the landlord continues to hold the tenant's security deposit in the amount of \$747.50, which was collected at the beginning of the tenancy. *Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" provides guidance in this situation:

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 depositunless 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.

There is no evidence before me that indicates that the tenants' right to the security deposit has been extinguished. As the landlord still holds the tenant's security deposit, I order that the security deposit shall be returned to the tenants forthwith.

Conclusion

The landlord's application is dismissed.

I issue a monetary order in the tenants' favour in the amount of \$747.50. The tenant is provided with a monetary order and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: August 18, 2015

Residential Tenancy Branch

