



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 709 HOMES LTD. C/O FIRST SERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord sought:

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

Pursuant to the *Act*, the tenant sought:

- a monetary order for loss pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order that the landlord comply with the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. With respect to service, the tenant submitted that the landlord's application for dispute resolution was served to a different address than the forwarding address she provided on move-out. However, both parties confirmed receipt of the other party's evidentiary materials for this hearing and the tenant confirmed that she had received the materials in time to consider and respond to them in a meaningful way. Given this testimony and the evidence submitted with respect to service, I find the tenant was sufficiently served for the purposes of these applications.

Issues to be Decided

Is either the landlord or the tenant entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award or is the tenant entitled to return of the security deposit? Is the landlord or the tenant entitled to recover the filing fee for this application from the other party?

Background and Evidence

This tenancy began on February 1, 2014 as a one year fixed term tenancy. A copy of the residential tenancy agreement was submitted for this hearing. Prior to move-out, the rental amount of \$1125.00 was payable on the first of each month. The landlord continues to hold a \$562.50 security deposit paid by the tenant on February 3, 2014. The landlord sought to retain the security deposit towards an \$893.50 monetary award while the tenant sought to have this security deposit returned and recover an additional amount for a total of \$1912.50. The tenant testified that, at the request of the landlord, she returned the keys to the rental unit on January 29, 2015. Both parties agreed that all of the tenant's possessions were removed from the unit by January 29, 2015 and that the tenant paid full rent for the month of January 2015.

The tenant submitted that the landlord's application for dispute resolution was served to a different address than the forwarding address she provided to the landlord. She also claimed that the landlord failed to complete move-in or move-out condition inspections and reports properly. Finally, the tenant claimed that the landlord did not provide the tenant with a full opportunity to clean the rental unit before the expiry of her tenancy. She testified that she was forced to hand over the keys to the unit before the expiry of her tenancy. The tenant submitted that all of these factors should result in a dismissal of the landlord's application. The tenant also sought a monetary award for the loss of use of the rental unit for the final two days of January 2015.

The landlord submitted that the condition inspection reports provided proof that the kitchen countertop was damaged during the tenancy. She testified, referring to the condition inspection reports, that the move-in report did not identify damage to the countertop but damage was noted on move-out. The landlord submitted one invoice dated March 3, 2015 in an amount of \$577.50 to remove and dispose of an old countertop and supply and install a new countertop. As well as that paid invoice, the landlord submitted two estimates in higher amounts for similar work. The tenant testified

that she often used the countertop to cut food during her tenancy but she claimed that the countertop was damaged when she moved in.

The landlord testified, with evidence in the form of a letter provided to the tenant, that she advised the tenant of the costs for failing to clean the rental unit at the end of tenancy. The landlord also submitted emails from the tenant that included the following;

- that the countertops were “non-durable” so the tenant believed it was unfair to charge for any damage;
- that the tenant requested to drop off the keys Saturday (January 31) if she couldn't complete cleaning the unit;
- that the tenant had debated the cost of cleaning herself versus paying the landlord for cleaning;
- that, by January 27, the tenant stated that she was budgeting for 2-3 hours of cleaning by the a professional cleaner;
- that the tenant agreed to arrange to have the landlord set up carpet cleaning;
- that the landlord did not provide a move-out inspection opportunity beyond the date scheduled (January 29); and
- that the tenant provided her forwarding address to the landlord on January 29.

The landlord also testified that the tenant agreed to pay for carpet cleaning and suite cleaning. She referred to the residential tenancy agreement that indicated professional carpet cleaning was required at the end of tenancy. The “condition of the premises” section of the agreement states that “The tenant agrees to leave the vacated premises in a reasonably clean condition, otherwise, will be subject to claims by the landlord under the *Act*. Tenants must have drapes, blinds, all window covering, and carpets professionally cleaned upon vacating.” The landlord referred to the move-out notice to the tenant that offered cleaning services as well as email correspondence from the tenant inquiring about the cleaning services. The landlord submitted receipts and invoices as documentary evidence to support her claim for compensation.

The landlord submitted an invoice dated January 31, 2015 with an amount identifying the tenant's unit and an amount of \$70.00 for carpet cleaning. The landlord sought to recover \$73.50 for the cost of the tenant's carpet cleaning including taxes.

The landlord submitted a receipt for suite cleaning in the amount of \$87.50 (for 3.5 hours at \$25.00 per hour). It described cleaning as follows; “stove, fridge (both inside, outside and underneath), bathroom, patio, touch up cleaning cupboards and drawers, Tile floor cleaning”. The tenant testified that she believed the cost of the cleaning was too high and the time for that cleaning was more than was required. She concedes that

she had not completed cleaning but she also noted that the suite cleaning invoice is dated January 29, 2015, 2 days before the end of her tenancy.

Analysis

Landlord Application: The landlord has shown, on a balance of probabilities that the tenant owes for carpet cleaning. Based on the provisions of the residential tenancy agreement, and the correspondence with the tenant by email, I find that the tenant agreed to pay for the cost of professional carpet cleaning. Therefore, the landlord is entitled to \$73.50 for the cost of carpet cleaning. I find the necessity and cost of carpet cleaning and countertop repairs have been proven by the landlord.

Section 67 of the *Act* provides that, if damage or loss results from a tenant (or landlord) not complying with the *Act*, regulations or the tenancy agreement, an arbitrator may order that tenant to pay compensation. Residential Policy Guideline No. 16 provides that an arbitrator can award a sum for out-of-pocket expenditures if those expenditures are proved at the hearing. The landlord has provided undisputed, sworn testimony with respect to the damage to the countertop. The landlord submitted photographs that identify the damage; the tenant acknowledged cutting food directly on the kitchen counter and the landlord provided receipts proving her out-of-pocket expenses in replacing the countertop. I find the landlord is entitled to recover some cost related to the countertop replacement.

I note that, in accordance with Residential Tenancy Policy Guideline No. 40, the useful life of a countertop is approximately 25 years. The landlord testified that this rental unit is more than 10 years old and therefore would be subject to a degree of wear and tear over the course of its life. The tenant testified, without any dispute raised by the landlord, that the countertops were not quality, durable countertops and so, perhaps would have a shortened useful life in all of the circumstances. The tenant also testified that she used the counters to cut directly on with a knife. A reasonable person would anticipate damage from such action. Given the age of the rental unit and considering the admission of the tenant, I find that the landlord is entitled to recover 50% of the cost of the counter replacement for an amount of \$288.75.

Section 37 of the *Act* states that, when a tenant leaves a rental unit at the end of a tenancy, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I have found that the tenant caused damage to the kitchen countertop beyond reasonable wear and tear. I have found that the tenant agreed to provide compensation for the cost of professional carpet cleaning. However, I accept the testimony of the tenant, supported by all of the evidence that she was not

given a reasonable and complete opportunity to clean her rental unit before she vacated. The landlord's invoices for cleaning of the unit indicate that the cleaning was done days before the expiry of the tenancy. The landlord's email submissions indicate that the tenant had requested further time to clean the rental unit herself. Regardless of whether the tenant would have ultimately cleaned the residence at move-out, the landlord is under an obligation to allow the tenant to do so before making a claim against the tenant's security deposit.

Tenant Application: The tenant has rebutted the landlord's claim against the entirety of her security deposit. She has also claimed for loss of use of her rental unit for two days. She testified, without any opposition from the landlord, that the tenant was required to provide the keys to the rental unit two days prior to the expiry of her tenancy. Both parties agreed that the tenant paid rent for the month of January 2015 and I find that, in all of the circumstances, the tenant was entitled to have access to the unit for those two days. In a reverse circumstance, where the tenant remained in the unit beyond the expiry of her tenancy, she would be responsible for a per diem rental amount. In this case, I find the tenant is entitled to \$72.50 for two days' of loss of use of the rental unit prior to the end of her tenancy. ($\$1125.00 \text{ rent per month} / 31 \text{ days in January} = 36.29 \text{ rent per day approximate} \times 2 \text{ days} = \$72.58 \text{ for 2 days loss of use}$)

I do not find that the tenant has shown, on a balance of probabilities that the landlord's actions or lack of action resulted in any other loss as a result of this tenancy applicable under section 67 of the *Act*. The tenant testified that all of her application for dispute resolution is for the return of her security deposit and the equivalent amount as a result of the landlord's failure to comply strictly with the *Act* in applying to retain the security deposit with respect to this tenancy.

The landlord applied within the timeline required under the *Act* to retain the security deposit in this matter. I have found the landlord had a legitimate claim to a portion of that security deposit for carpet cleaning and damage to the unit. I also note that, while the landlord did not allow a full opportunity for the tenant to use the rental unit for the last two days of her tenancy or have an opportunity to complete the clean-up and participate in a proper move-out inspection, the tenant has been found not responsible for the cleaning costs that the landlord incurred. In all of the circumstances and considering the provisions of section 72(2) of the *Act*, I do not find that the tenant is entitled to an amount equivalent to her security deposit as a result of any lack of compliance by the landlord with section 38 of the *Act*.

Section 72(2)(b) of the *Act* allows an arbitrator to off-set any monetary claim of the landlord's with a security deposit that continues to be held by that landlord. I allow the

landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary award. The landlord testified that she continues to hold a security deposit of \$562.50 plus any interest from February 3, 2014 to the date of this decision for this tenancy. There is no interest payable over this period of time.

As both parties were partially successful in their applications, I find that each party will bear the cost of their own filing fee paid for this application.

Conclusion

I am issuing the attached monetary order in favour of the tenant as follows:

Item	Amount
Return of Security Deposit	\$562.50
Tenant compensation for loss of use of rental unit	72.58
Landlord's cost of Carpet Cleaning	-73.50
Landlord's cost of Countertop Repair	-288.75
Total Monetary Order to the Tenant	\$272.83

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 1, 2015

Residential Tenancy Branch

