



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

The landlord and tenant "CK" attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The service of the landlord's application and evidence was discussed and the tenant confirmed that he and the other tenant, "KK", received the landlord's application and evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and for recovery of the filing fee paid for this application?

Background and Evidence

Although no written tenancy agreement was provided into evidence, the landlord submitted without dispute that the tenancy began on July 1, 2014, ended on June 30, 2015, monthly rent was \$2400.00, and the tenants paid a security deposit of \$1200.00. With the exception of an agreed upon amount, the landlord has returned the tenants' security deposit.

The landlord's monetary claim is \$141.75 for a repair of a kitchen island.

In support of her application, the landlord submitted that the tenants damaged the kitchen island countertop when they apparently placed a hot object on the surface. The landlord submitted further that the damage was not noticed at the final, move-out inspection; rather, the cleaning person noticed it thereafter when she attended for further cleaning.

The landlord stated that this damage was not listed on the condition inspection report, as it was not noticed when the inspection with the tenant occurred. The condition inspection report was not submitted into evidence.

The landlord's relevant evidence included a copy of the receipt for repair of the kitchen island and copies of photographs of the alleged damaged countertop.

Tenant's response-

The tenant submitted that he had doubts about the damage, as neither he nor the landlord noticed the alleged damage of the final inspection, or during the several inspections during the tenancy. The tenant submitted further that the parties had a thorough inspection of each room of the rental unit, the inspection lasting over an hour.

The tenant submitted that the photographs of the landlord were not clear that there was damage.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In reviewing the evidence, I find the landlord failed to substantiate that the tenants damaged the kitchen island. I accept that the parties conducted a final inspection of the rental unit and that the alleged damage was not noted or seen. The landlord confirmed she did not see the damage at the final inspection and that the cleaning person noticed

the damage. In my view, if the countertop was as damaged as claimed, this alleged damage would be noted with the tenant at the final inspection and noted on the condition inspection report.

I further determined that if this alleged damage was easy to miss, it would have been just as easy to miss at the move-in inspection.

Overall, I find the landlord has not supported her claim for damage as I find she has not submitted sufficient evidence to support that the tenants damaged the kitchen island countertop during this tenancy.

I therefore dismiss the landlord's monetary claim, without leave to reapply.

Conclusion

The landlord's application is dismissed.

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: January 18, 2016

Residential Tenancy Branch

