Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord for a Monetary Order for damage to the rental unit, and to recover the filing fee from the Tenant.

An agent for the company Landlord (the "Landlord") and the Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application and their documentary and photographic evidence. The Tenant confirmed that she had not provided any evidence prior to this hearing.

At the start of the hearing, the Landlord was asked about his monetary claim and he explained that he was seeking to keep the Tenant's security deposit and requesting a Monetary Order for the remaining balance. However, the Landlord did not elect to keep the Tenant's security deposit on his Application. The Landlord explained that this was a clerical error. Section 72(2) of the *Residential Tenancy Act* (the "Act") permits me to offset an award granted to a landlord from a tenant's security deposit. However, in the alternative I amended the Landlord's Application to include the request to keep the Tenant's security deposit pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to costs for refinishing the kitchen cabinets?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim for damages to the rental unit?

Background and Evidence

The parties agreed that this tenancy for an apartment in a residential complex started on July 1, 2009 for a fixed term of one year which then continued on a month to month

basis thereafter. Rent was payable by the Tenant in the amount of $1,020.00 at the start of the tenancy which was then increased to $1,230.00 during the tenancy. The Tenant paid the Landlord a security deposit of $510.00 on June 9, 2009 which the Landlord still retains.

The parties also confirmed that a resident manager had completed a move-in *Condition Inspection Report* (the "CIR") on July 1, 2009. During the tenancy, a fire occurred in the residential complex which caused smoke damage to the Tenant's rental unit. As a result, remediation work took place. The resident manager then completed another CIR with the Tenant on June 27, 2011 to document the state of the rental unit at that point.

The parties confirmed that the tenancy ended on July 30, 2015 which was the same date that the move-out CIR was completed. The CIR reports were all provided into evidence. The parties confirmed that the Tenant had provided her forwarding address on the move-out CIR and that the Landlord made the Application on August 8, 2015.

The Landlord testified that after the Tenant had given written notice to end her tenancy, the resident manager completed a monthly inspection of the rental unit. During this inspection the resident manager noticed that there were several scratch marks on the kitchen cabinets. The Landlord referred to a multitude of photographic evidence indicating this damage. The Landlord hypothesised that the Tenant had used an abrasive cleaner to clean the cupboards which caused the damage. The Landlord provided an estimate and an invoice for the cost of getting the cupboards refinished and repaired in the amount of $703.50.

The Landlord stated that even though the Tenant had given written consent for him to keep her security deposit, the Tenant wrote on the move-out CIR that was she disputing the damage to the kitchen cabinets. The Landlord explained that due to this comment he cautiously made the Application pursuant to the requirements of the Act.

The Tenant disputed the damages stating that the restoration company that completed the fire remediation work had cleaned the kitchen cupboards in such a way that it had slowly led to the scratches on the cupboard. The Tenant stated that she had asked the Landlord to contact the restoration company to see if they had used anything that would have caused the damage, but the Landlord did not provide her with any evidence from the restoration company.

The Tenant testified that when she received the rental unit at the start of the tenancy the cupboards were dirty with oil and grease. The Tenant said that she had to clean this off the cupboards and during the tenancy she kept on top of this cleaning to prevent the

accumulation of the dirt. The Tenant submitted that over time this may have led to the damage. The Tenant referred to the Landlord's photographic evidence and stated that this showed that there were areas on the kitchen cabinets which did not show any scratches. The Tenant denied that she had used anything abrasive to clean the cabinets.

When the Tenant was asked about what could have caused the scratches to the kitchen cabinets, the Tenant stated that they were caused over a long period of time and that if she had stayed longer then the damage would have got considerably worse. However, the Tenant denies that she is responsible for this damage.

The Tenant then submitted that the resident manager had entered the rental unit multiple times to complete repairs to the cabinets and suggested that this could have also led to the damage.

The Landlord replied stating that they had been minor repairs that were done to the kitchen cabinets but these were limited to the hardware issues such as replacing magnetic catches and draw glides. The Landlord stated that the restoration company is a professional company that only uses soft sponges to clean the soot off the cabinets after the fire event.

The Landlord stated that the move-in CIR and the one completed after the fire incident in 2011 showed that there was no damage to the kitchen cabinets and that they were clean. The Landlord then referred to the move-out CIR which indicated "D" for damage to the kitchen cabinets.

Analysis

I have carefully considered the evidence of both parties in this case and I make the following findings. Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a CIR can be used as evidence of the state of repair and condition of the rental suite unless the parties can provide a preponderance of evidence to suggest otherwise.

Firstly, I accept the Landlord's evidence that when the Tenant indicated on the move-out CIR on July 30, 2015 that she disputed the damage to the kitchen cabinets this created ambiguity and uncertainty as to whether the Tenant consented to the Landlord keeping her security deposit. Therefore, I find the Landlord was correct in making the Application out of an abundance of caution on August 8, 2015. As a result, I find the

Landlord made the Application within the 15 day time limit provided by Section 38(1) of the Act to keep the Tenant's security deposit.

Having weighed up both parties evidence, I find the Landlord's evidence is more compelling than the Tenant's evidence. The Landlord relied on photographic evidence which clearly shows extensive scratch marks which satisfies me that this damage was caused during the tenancy and went beyond that of reasonable wear and tear.

In addition, I accept that the CIR documents completed by the Landlord as conclusive evidence that this damage was neither present at the start of the tenancy or after the fire event occurred. I find the Landlord's evidence is consistent with his hypothesis that the damage was caused as a result of the Tenant using harsh abrasive cleaning materials on the cabinets. This is also further supported by the Tenant's testimony that she cleaned the cabinets frequently to avoid dirt and grease.

I find the Tenant failed to provide a preponderance of evidence to suggest that she had not caused the damage to the cabinets and I find the Tenant's suggestion that the damage was caused by the professional remediation company is highly unlikely. Even if I do accept that the restoration company caused the damage, which I do not, the Tenant would have had a duty to mitigate the loss by alerting the Landlord to this damage when it started to become apparent to the Tenant. I find it highly improbable that the damage shown in the Landlord's photographic evidence would not have been noticed by the Tenant.

Based on the foregoing, I find the Landlord has proved his monetary claim in the amount of **$703.50** as verified by the invoice provided into evidence. As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **$50.00** filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlord is **$753.50**.

As the Landlord already holds $510.00 of the Tenant's deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2)(b) of the Act. As a result, the Landlord is granted a Monetary Order for the remaining balance of **$243.50**. This Order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment. Copies of the order are attached to the Landlord's copy of this decision.

Conclusion

The Landlord has proved that the Tenant caused damage to the Landlord's rental unit. Therefore, the Landlord may keep the Tenant's security deposit and is issued a Monetary Order for the remaining balance of $234.50.

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: February 12, 2016

Residential Tenancy Branch