Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This reconvened hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenants pursuant to section 72.

At the original hearing, the tenants applied and were granted an adjournment to have a full opportunity to respond to the landlord's claims and supporting materials. Both parties attended this hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties acknowledged receipt of the materials submitted by the other party. The landlord requested that her original application for a monetary award of $21,130.20 be amended and reduced to $6,413.00. That application to amend was not disputed by the tenants, and did not prejudice their position in this hearing and therefore the amendment was allowed. The tenants were represented by an advocate and presented one witness to testify.

Both parties submitted substantial materials including 1 binder each of evidence for this hearing. Included in those materials were numerous witness letters from each party, photographs and other documentary evidence. I have only made reference to the materials which I found both relevant and important to reference in this decision.

Preliminary Issue

Over the course of this hearing, in reference to their own materials, the tenants stated that they wanted to recover $1207.84 as well as their security deposit from the landlord. The tenants' advocate indicated that the tenants have made a formal application. However, given the lateness of the filing of that application, it was not able to be

considered for this hearing date. Dispute Resolution Rules of Procedure Rule No.2 states,

> *To counter an existing application for dispute resolution or in response to a related application for dispute resolution, respondents may make a cross application by filing their own application for dispute resolution.*
> *The issues identified in the cross application must be related the issues identified in the application being countered or responded to.*

Further, Dispute Resolution Rules generally refer to the importance of ensuring ensure a fair, efficient and effective process. An important element of the principles of justice and the dispute resolution rules of procedure are that a respondent must be informed of the case against them in an organized and timely manner. In this case, I find that the landlord had insufficient notice that she would be required to respond to the tenants' application at this hearing. Further, I do not find that the tenants' application for a monetary order with respect to a loss of quiet enjoyment is sufficiently connected to the landlord's application for recovery of loss as a result of damage to the rental unit. Therefore, I decline to consider the tenants' application with respect to a request for a monetary order at this time. That matter is set to be heard at a later date.

Issues to be Decided

Is the landlord entitled to a monetary order for money owed for damage as a result of this tenancy?
Is the landlord entitled to retain all or a portion of the tenants' security deposit in satisfaction of any monetary award?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on July 1, 2014 for a one year fixed term with a rental amount of $1400.00 payable on the first of each month. The landlord testified that she continues to hold a $700.00 security deposit paid by the tenants at the start of the tenancy. All parties agreed that the tenants vacated the rental unit on October 31, 2014 after providing notice to end tenancy to the landlord on September 29, 2014.

The landlord sought a monetary award in the amount of $6413.00 to repair three items within the rental unit: the kitchen countertop; a secondary countertop ("elevated bar"); and the wood floor. The landlord testified that, at the start of the tenancy, these items were in excellent condition and that, at the end of the tenancy, they were damaged so that they required repair.

With respect to the kitchen countertop, the landlord testified that the countertop was concrete and in good condition at the start of tenancy with no significant marks. She provided photographs from the end of the tenancy illustrating some discoloration and deterioration to the surface of the concrete countertops. The tenants both testified that there was some minor discoloration (whiteness) at the start of the tenancy and that, based on research they submitted for this hearing, it is usual for porous concrete countertops to develop mineral deposits and marks as a result of common household items and cleaning products. The tenants also testified that their materials show that concrete countertops require regular maintenance and periodic re-sealing.

The tenants and their advocate submitted documentary evidence providing information about concrete countertops. This information included online research materials with information about mineral deposits, deterioration from acidic materials as well as the need to reseal concrete countertops periodically and the porous and susceptible nature of concrete countertops. The tenants also submitted email advice from contractors who had been provided with the circumstances of this specific countertop.

The landlord provided some initial quotes from one specific contractor and an ultimate invoice for the concrete countertop repair from that same contractor in the amount of $4770.00. The work listed on the invoice included repair of the damaged area and re-sealing of the countertop. The tenants submitted that the landlord should have provided other estimates to consider if her contractor would ultimately provide the best price. The tenants' advocate submitted that any damage to the concrete countertop was as a result of reasonable wear and tear in the lifetime of a concrete countertop.

With respect to the second countertop, (a second, yellow cedar, raised countertop in the kitchen area referred to as the "elevated bar"), the landlord testified that the countertop had been handmade and individually designed. The contractor who originally created the countertop was the contractor who provided the repair of this item. The landlord provided photographs from the end of tenancy that she claims illustrate the damage to the countertops, describing the damage as staining and discoloration. The landlord provided an invoice in the amount of $848.00 to strip and resurface the countertop. Again, the tenants submit that other quotes may have resulted in a lower price for this work.

The tenants testified that the costs were likely higher for this countertop because of the landlord's choice to have a custom piece within the rental unit and to use one contractor for this work and all of the repairs for this unit. Tenant LA testified that she had discovered the discoloration after move-in but assumed that the landlord was already aware of the damage. Therefore, Tenant LA did not bring the discoloration on the elevated bar to the attention of the landlord. The tenants' advocate submitted that there

are no clear photographs submitted by the landlord that show the discoloration to the elevated bar. The tenants submitted photographs from the start of the tenancy that they claim show the discoloration already existed at move-in.

With respect to the wood floors, the landlord testified that the floors were scratched by the tenants during the course of their tenancy. She provided photographs from the end of the tenancy illustrating a deep gouge in the hardwood floor. The landlord submitted an invoice in the amount of $795.00 for partial removal and replacement of twelve floor boards. Tenant LA conceded that, during the rushed move-out from this residence, in attempting to move furniture herself, she scratched the floor to the rental unit. Tenant LA testified that the landlord was beginning to intimidate her and this lead to her hurried work and ultimately, the scratched floor. The tenants' advocate submitted that, the tenant was affected by "stress caused by the landlord's inappropriate demands" and so therefore cannot be considered negligent or solely responsible for the damage.

The landlord did not provide any other quotes for the repair and replacement of floorboards, testifying that several floorboards had to be replaced because of the way the floor was initially laid out and connected. She testified that the specialty floor's new pieces needed to be stained to match the existing floor and that a "diamond coat" was put on the entire 600 square foot floor to protect it. The landlord also testified that other floor companies that she had contacted said they did not have the time to look at her floor.

The tenants submitted a quote in the amount of $267.50 for "repair of a big scratch on wooden floor". Tenant AH testified that information material submitted by the tenants showed that diamond coating, if done, is to be done approximately every 4 years. He also testified that they should not be responsible for additional costs because of the type of floor the landlord chose to put in. Further, the tenants submitted that the expense the landlord chose to take in protecting it with diamond coating the floor went beyond what was required to repair the floor. The tenants' advocate also submitted that the landlord should have foreseen this type of damage in rushing the tenants out of the rental unit.

The landlord submitted emails prepared for the purposes of this hearing from former renters who stated

- "I witnessed no obvious damage to any of the appliances, floors, walls or fixtures. In fact, I thought the suite was beautifully decorated and arranged… The countertops had no observable damage, nor did the floors, cupboard doors or windows."
- "When I checked into your apartment suite, it was in a clean and presentable condition… Indeed there were excessive wearing down of the countertops which

> I found unusual. The defects were rather pronounced which I noted on checking in, but as for the flooring, I did not notice that there were damages perhaps because they were replaced before I arrived."

With respect to all of the items claimed by the landlord and the tenant's suggestion that her standards of maintenance were too high in maintaining and repairing the rental unit, the landlord testified that she had a right to the standard that she had previously established in her rental unit. The landlord noted, referring to the tenant's evidence that the online ad that the tenants had responded to stated that the residence was an upscale unit with specialty design. At some points, the landlord stated that she "didn't bother" to get other estimates or quotes for the work required at the end of the tenancy.

The landlord sought a monetary award as follows;

Item	**Amount**
Concrete countertop (kitchen)	$4770.00
Elevated bar (yellow cedar countertop)	848.00
Wood Floors (scratch)	795.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Sought	**$5763.00**

The landlord also submitted an email prepared for the purposes of this hearing from the contractor who completed the work. In response to the submissions of the tenant that the contractor's prices may have been inflated or unreasonable, the contractor described the nature of his business and the length of time he has been in business. He also wrote that he would never inflate his quotes or lie for anyone.

The landlord testified that, beyond the damage to the three items, the tenants left the rental unit very unclean. She provided evidence, both in receipts and in a written statement from the cleaner listing the work that was done to clean the residence after the tenants vacated. She also submitted photographs that illustrated the unit had been left with cleaning to be done before the landlord could re-rent the unit. The landlord testified that she is not claiming to recover her cleaning costs.

Analysis

Section 37 of the *Act* states that, at the end of a tenancy, a tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear…" The landlord argues that the tenants did not leave the unit reasonably clean. However, she sought compensation only for the damage to the rental unit that she believes is beyond reasonable wear and tear for this four month tenancy.

Residential Tenancy Policy Guideline No. 1 clarifies tenant responsibilities to a rental premises;

> *…The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. …*
> *The tenant is not responsible for reasonable wear and tear to the rental unit … or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act … (the Legislation).*
> *…*
> *Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.*
> *…*
> *An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.*

In this case, the tenant acknowledges damaging the floor and denies causing damage to the counters beyond normal wear and tear (and pre-existing damage). The tenant relies on the landlord's failure to comply with the *Act* with respect to condition inspection and the condition inspection report at move-out. The tenant also argues that any damage that required repair could have been repaired for much less than the costs submitted by the landlord. The landlord claims that the damage she claims was done by the tenants over the course of the tenancy and that the tenants are solely responsible. She argues that her costs are reasonable and that she took intermediate steps to repair instead of replace the damaged items.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

With respect to the concrete kitchen countertop, I accept the landlord's testimony, supported by her photographic and documentary evidence that, over the course of the tenancy, the countertop deteriorated. She provided only one invoice in the amount of $4770.00. In the normal course, the provision of more than one invoice or initial quotes allow an arbitrator to better determine the appropriate cost for any damage or loss. As the landlord did not provide any other estimates for this work, I accept that the materials submitted by the tenants regarding concrete countertops should be taken into consideration. I find that the landlord's award for repair of the concrete countertops should be reduced given the information provided by the tenants describing the susceptibilities s of concrete countertops and the need for regular maintenance and resealing,

Residential Tenancy Policy Guideline No. 40 provides useful life guidelines for a variety of household amenities, fixtures and items. Countertops are given an estimated useful life of 25 years. However, as shown by the tenants, concrete countertops have some to certain weaknesses. Given that provision, I reduce the useful life of these concrete countertops to 20 years. These countertops were, according to the landlord's witness' written testimony are approximately **5 years old requiring replacement or at least re-finishing in approximately 15 years (15/20). Therefore, in these circumstances, considering the submission of the tenant and the age of the countertop, I find the landlord entitled to $3577.20, (3/4 of the cost to refinish the countertop).**

With respect to the elevated bar (yellow cedar countertop), I accept the landlord's testimony supported by her photographic and documentary evidence that this bar was damaged during the course of the tenancy. The landlord provided one invoice in the amount of $848.00. As the landlord provided no other independent estimates and because **this elevator bar was built in 2010**, this amount is also left open to scrutiny. **The elevated bar is 5 years old and, based on the useful life guidelines, would likely be required to be replaced or at least re-finished in the next 15 years (15/25)**. **Given these considerations, I find the landlord is entitled to recover $678.40 (4/5 of the cost to refinish the countertop).**

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY ACT ON February 2, 2016 AT THE PLACES INDICATED.

With respect to the wood floors, I accept the evidence of both the landlord and Tenant LA's candid admission that she scratched the floor. The tenants did not decline responsibility but merely indicated the circumstances and that the landlord may have exacerbated the situation leading to the damage. Also, the tenants submitted that the landlord's cost for the work was inflated. With respect to the floor replacement, I find the landlord was able to explain in her testimony why other pieces of wood needed to be replaced and stained beyond the directly damaged pieces. I also find that any behaviour by the landlord does not reduce the culpability of Tenant LA for the damage she caused. However, I do find, based on all of the evidence of both parties, that the diamond coating was standard maintenance and not a cost that should be borne by the tenants. Therefore, I find the $795.00 invoice should be reduced by $150.00 for the cost of diamond coating. I find the landlord is entitled to $645.00 toward the work to repair the floor.

The tenants and their advocate submitted that the high end nature of this rental unit and result in a standard of care beyond which they are required to meet in making repairs or maintaining the premises. I find that the tenants were aware of the nature of the rental unit that they chose, specifically described in the ad they discovered as "upscale". On viewing the rental unit prior to move-in and on move-in condition inspection, the tenants also would have been aware of the nature of the finishings in the unit. I find that the tenants accepted responsibility for the rental unit as it was on move-in.

I am granting the landlord's application for a monetary order, including damages totalling $ 2226.70. I allow the landlord to retain the tenants' $700.00 security deposit in partial satisfaction of the monetary award pursuant to section 72(2) of the *Act*. I note that the tenants' advocate submitted the landlord's right to retain the security deposit had been extinguished. However, section 72(2) provides;

> **72** (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
>
> (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
>
> (b) <u>in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.</u>
>
> (**emphasis added**)

As the landlord has been partially successful in her application, I find that she is also entitled to recover the $50.00 filing fee for this application.

Conclusion

I issue a monetary order in favour of the landlord as follows;

Item	Amount
Concrete countertop (kitchen)	**$3577.50**
Elevated bar (yellow cedar countertop)	**678.40**
Wood Floors (scratch)	645.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Sought	**$4250.90**

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 20, 2015

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY ACT ON February 2, 2016 AT THE PLACES INDICATED.

Residential Tenancy Branch