



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

The landlord applies for a monetary award for damage to a counter, two walls, a hole in a door and a baseboard.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has caused damage beyond reasonable wear and tear during this tenancy? If so, what is the proper measure of damages?

Background and Evidence

The rental unit is a small, one bedroom apartment.

The tenancy started in May 2012 and ended April 30, 2015. The monthly rent was \$1100.00. In an earlier proceeding the tenant obtained a monetary order against the landlord for the return of the deposit money. The parties say that order has not yet been satisfied by payment in any amount.

The landlord says the tenant damaged a custom made table top or counter, that the landlord, a qualified finishing carpenter, designed and built in or about 2008.

The counter suffered a very thin but lengthy crack along a line where laminated birch had been glued together and along another of such seams at a right angle to the main crack.

As well, the tenant caused a minor gouge in a wall in a bedroom. The gouge is about six inches long.

The landlord claims that on another wall the tenant left a scuff that required painting.

The landlord says the tenant also caused damage to a baseboard. It is cracked along a portion about six to eight inches.

Last, the landlord says that the tenant's cat scratched away the edges around a small hole the landlord had cut through a door to run cables and cords.

The tenant says the wall and baseboard damage are reasonable wear and tear over a tenancy lasting three years and that his cat did not damage the edges of the hole.

He says that the counter cracked because it is necessary to stand on it in order to gain access to the cupboards located above it and is so using it the damage occurred.

Analysis

I find that the wall gouge and the baseboard crack are not reasonable wear and tear. It is obvious from the photos submitted by the landlord that each has sustained a significant bump or impact with a heavy object. The tenant is responsible for their repair.

In both cases, a proper repair would involve mudding, sanding and painting of the affected areas.

Having regard to the damage shown and the landlord's evidence about work done to repair the two items, I award the landlord the amount of \$150.00 for the cost of the repair to both.

I dismiss the landlord's claim for damage to the cable hole in the French doors. The wear at the edges of the hole as shown in the landlord's photos are not consistent with the landlord's hypothesis that the tenant's cat has scratched away at the hole. It is more likely that the edges of the hole have been worn away by the working of cables, cords and plugs through it. As such, the damage is reasonable wear and tear, for which the tenant is not liable.

I dismiss the landlord's claim for the repair of a scuff mark on a wall. There is no evidence to show the extent of the claimed mark. Normally, a landlord must expect minor scuffing to walls over the span of a three year tenancy. I find this damage has not been shown to be beyond reasonable wear and tear.

I dismiss the landlord's claim for repairs, including emergency repairs to the custom counter. I regret to say that even though the landlord has obviously spent considerable time and expertise in designing and constructing the laminate birch counter, he is the author of his own misfortune.

It is conceded by the landlord that to gain access to and make use of the cupboards he had installed above the counter it is necessary to stand on the counter. The counter does not appear to have been designed or bolster sufficiently to serve that purpose.

The landlord says that he warned the tenant to use a step ladder to get up on the counter. The tenant denies it and I find it unlikely that such a warning was given. In any event, whether a step ladder was used or not it was still expected that a tenant using the cupboards would have to stand on the counter.

The landlord says he warned the tenant not to stand on the edge of the counter. The tenant denies receiving any instruction about standing on the counter to get to the cupboards. Leaving aside what the "edge" of the counter might be, I prefer the tenant's recollection of any such instruction over that of the landlord. The landlord proved to have an unreliable memory about events.

For example, he testified, under oath, that he had constructed the counter with very long lag bolts (and specifically "bolts" not screws) inserted through the laminate birch pieces forming the counter. That statement is clearly rebutted by his own photos taken during his repair work. They show no such bolts nor any channels through which the bolts might have passed. His testimony that he used a hacksaw to cut the bolts is simply not accepted.

As well, the landlord testified that there was a second metal bracket, not apparent in his photos, holding up and reinforcing the part of the counter that extended out over the floor; the area that sustained the cracking. The tenant's photos of the counter, taken just before move out, show the complete front and underneath the counter. There is no such second bracket nor evidence that one might ever have been there.

In conclusion, it is most likely that the counter was cracked while the tenant was standing on it to gain access to the cupboard installed above, as was expected in the design of the rental unit. The tenant is not responsible for damage resulting from that normal and expected use of the counter in that manner.

Conclusion

The landlord is entitled to a monetary award of \$150.00. Given the limited success of his application I award him recover of \$50.00 of the filing fee. He will have a monetary order against the tenant in the amount of \$200.00.

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 23, 2016

Residential Tenancy Branch