



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, MNSD

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain 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 its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on April 1, 2015 and ended on May 1, 2016. The tenants were obligated to pay \$9800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$4900.00 security deposit and \$4900.00 pet deposit. The landlord returned \$1632.29 of the deposits to the tenant and retained the remaining \$8167.71 as he feels he is justified in doing so due to the damages he says the tenant is responsible for. The landlord testified that the unit is just less than 10 years old. The landlord stated that the tenant is responsible for damaging the countertop, kitchen cabinets, walls, tiles, and carpet. In addition the landlord stated that the tenant left the unit dirty and required extra cleaning. Also, the landlord stated the tenant over held the unit by one day and is seeking a pro-rated amount of rent for that day.

The landlord is applying for the following:

1.	Countertop Restoration	\$1,200.00
2.	Kitchen Cabinet Repair	\$1595.00
3.	Wall Repair	\$1664.88
4.	Tile Replacement	\$419.20
5.	Suite Cleaning and Carpet Cleaning	\$472.50
6.	Carpet Deductible	\$2500.00
7.	Unpaid Rent	\$316.13
8.		
	Total	\$8167.71

The tenant gave the following testimony. The tenant testified that she does take limited responsibility for the countertop and suite cleaning. The tenant disputes the wall repair, carpet deductible and unpaid rent. The tenant says she agrees to the tile repair in the entrance way but not the kitchen.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.**

I address the landlords' claims and my findings as follows.

1. Countertop Restoration - \$1200.00.

The landlord testified that there are many cut and scratch marks on the marble countertop. The landlord testified that the work was done but did not provide a receipt to support that amount. The tenant did acknowledge that she did some damage and feels it only fair that she pay for some of this cost but not the amount as claimed. The tenant asked that the age of the countertop be taken into account.

Based on the tenants' acknowledgement for causing some of the damage, the age of the counter and the documentation of the landlord, I find that the landlord is entitled to some

compensation for this but not the amount as sought. Based on the above, I find that the appropriate amount the landlord is entitled to is \$600.00.

2. Kitchen Cabinet Repair – \$1595.00.

The landlord stated that the veneer was damaged to one of the cabinets and that these are very expensive Italian cabinets to replace. The landlord testified that he has not conducted this repair yet.

The landlord is not entitled to any award for this claim for the following reasons. The landlord has not repaired the item and has not incurred any “out of pocket” costs. Furthermore, the landlord has rented the unit at the same price and has suffered no loss. Finally, the damage depicted in the landlords’ evidence is not beyond wear and tear and is of a minor nature. Based on these reasons, I dismiss this portion of the landlords claim.

3. Wall Repair – \$1664.88.

The landlord testified that the walls were damaged from the tenant hanging so many paintings and photos in the unit. The landlord testified that the tenant patched, filled and painted the walls but to a very poor level that required him to repaint the unit. The landlord stated that the suite was fully painted in August 2014.

The tenant testified that she painted the unit with the paint that was left in the closet. The tenant testified that she wiped the walls and perhaps made some marks but feels she did a good job and restoring them to their original condition.

Based on the condition inspection report, photos and the invoice from the landlord, I find that the landlord has provided sufficient evidence to support this claim. I do accept the tenant made attempts to restore the unit to its original condition, however, based on the evidence before me I find that it was left in less than satisfactory condition that goes beyond wear and tear. Policy Guideline 40 lists the useful life of building elements like paint at 4 years. At move out the paint was 21 months old. Using the cost of repairs and paint and dividing that number over 48 months = $\$34.69 \times 27$ months of useful life remaining giving the landlord an award of \$936.50. The landlord is granted that amount.

4. Tile Replacement - \$419.20

The landlord testified that one kitchen tile needed to be replaced and two in the entranceway. The landlord acknowledged that the kitchen tile had poor grouting. The landlord testified that the entranceway tiles were stained with something that he was unable to remove.

The tenant testified that she accepts responsibility for the entranceway tiles but not the one kitchen tile. The tenant testified that the kitchen tile was poorly installed causing it to crack.

I agree with the tenant that the kitchen tile was poorly installed causing it to crack prematurely. Based on the tenants’ acknowledgment and accepting responsibility for the cost of replacing the two entranceway tiles. I find that the landlord is entitled to 2/3 of this claim for an amount of \$279.46.

5. Suite and Carpet cleaning - \$472.50.

The landlord testified that the suite was left extremely dirty and not in a presentable condition. The landlord provided the condition inspection report, photos and receipt to support his claim.

The tenant testified that she thought her cleaning lady did a good job but concedes some areas were missed. Residential Tenancy Policy Guideline 1 states that the tenant is responsible for leaving the unit reasonably clean at move out. Based on the evidence before me, I find that the tenant did not leave the suite reasonably clean and the landlord is entitled to \$472.50.

6. Carpet Deductible - \$2500.00.

The landlord testified that the tenant had spilled wine over the carpet. The landlord testified that the carpet was just less than 10 years old. The landlord testified that the carpet had to be replaced at a cost of \$12,937.78. The landlord testified that he was paid directly by the tenants insurance company \$10,437.78. The landlord seeks the remaining \$2500.00 for 100% compensation.

The tenant testified that her insurance paid for the matter and that the landlord was given new carpet where old carpet had been. It was explained to the parties that based on the carpets age, the cost of the new carpet and applying Policy Guideline 40 that states carpets' useful life is ten years old; the landlord has already been generously compensated for this claim above what the guideline would award him and I therefore dismiss this portion of the application.

7. Unpaid Rent - \$316.13.

The landlord testified that the tenant did not finish moving until May 2, 2016 and did not return the keys. The landlord is seeking a pro-rated amount for over holding the unit.

The tenant testified that she was unable to move into her new place until May 2, 2016 and that she emptied the unit. The tenant testified that she moved her belongings to the garage and storage locker and removed them on May 2, 2016.

The tenant acknowledges that she still had keys to the unit and possession of it until she returned the keys to the landlord on May 2, 2016. Based on the above I find that the landlord is entitled to \$316.13.

As the landlord has been successful in some of his application he is entitled to the recovery of the \$100.00 filing fee.

It is worth noting that the landlord stated that this unit is a very high end unit and that special consideration should be given. The landlord did not provide sufficient evidence to support that claim.

Conclusion

In summary, the landlord has been successful in the following claims:

1.	Countertop Restoration	\$600.00
2.	Wall Repair	\$936.50
3.	Tile Replacement	\$279.46
4.	Suite Cleaning and Carpet Cleaning	\$472.50

5.	Unpaid Rent	\$316.13
6.	Filing Fee	\$100.00
	Total	\$2704.59

The landlord has established a claim for \$2704.59. I order that the landlord retain that amount in full satisfaction of the claim and return the remaining \$5463.12 of the deposits to the tenant. I grant the tenant an order under section 67 for the balance due of \$5463.12. This order may be filed in the Small Claims 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: November 17, 2016

Residential Tenancy Branch