Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNSD, MNDC, MND, FF

Introduction

In the first application the tenant seeks to recover from the landlord Ms. P.R. the remainder of security and pet damage deposits and invoke the doubling penalty provided in s. 38 of the *Residential Tenancy Act* (the "*Act*").

In the second application the respondent landlord Ms. P.R. and her husband the landlord Mr. P.R. apply to recover the cost of repair of a water damaged kitchen countertop, its backsplash and a bathroom vanity counter.

The landlords' application was brought too late to be scheduled with the tenant's application on February 2. It has been set to be heard on July 4, 2017. At this hearing the tenant and Mr. and Ms. P.R. agreed to have the landlords' application brought forward and heard with the tenant's application.

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

Is the tenant entitled to recover the remainder of her deposit money? Is she entitled to the doubling penalty? Has the tenant caused damage to the landlords' counters or vanity and if so, what is a reasonable repair cost?

Background and Evidence

The rental unit is a three bedroom house. There is a written tenancy agreement. The tenancy started in December 2015. The monthly rent was $1850.00, due on the first of each month. The tenant paid the landlords a $925.00 security deposit and a $925.00 pet damage deposit.

The tenancy was for a fixed term to March 31, 2016. The written tenancy agreement provided that the tenancy would then end and the tenant would vacate the premises. However, by agreement, the tenant stayed until June 24.

The parties had done a walk through inspection at the start of the tenancy and did the same just before the end. On neither occasion did the landlords prepare an inspection report for the tenant's signature.

At the move out walk through Mr. R. claimed the tenant had damaged the kitchen counter and the bathroom vanity counter. The tenant disagreed, considering it to be reasonable wear and tear.

Mr. R. made an assessment of the damage: being the cost to sand the two wood tops and reapply coats of a polyurethane sealant. He reduced the $1215.00 estimated repair cost by one-fifth for depreciation and by seven- sixtieths as an allowance for "wear and tear." He deducted the total, the amount of $473.55, from the deposit money and on June 21, gave the tenant a cheque for $1228.55, along with a statement of his calculations.

The tenant provided the landlords with her forwarding address in writing on August 15, 2016.

The kitchen counter and its backsplash are of fir, coated with polyurethane. The bathroom vanity is a mahogany dresser, converted to accept a bathroom sink and the necessary plumbing.

Mr. R. testifies that at the start of the tenancy the tenant's attention was brought to both the kitchen countertop and the bathroom vanity top, the fact that they were wood and that standing water must not be left on either, otherwise they would stain. He says he told the tenant she must wipe each counter after use to avoid water damage. He says the tenant acknowledged the obligation and said she would comply.

He says that he or Ms. P.R. attended at the premise for various other matters on eight occasions during the tenancy and discovered standing water, for example: pools of water around glasses on the counter. He says that he warned the tenant several times that she must wipe up the standing water.

He says that he and Ms. P.R. rented out the premises for a year and a half before this tenant and that there was no problem with water staining on the tops.

The tenant testifies that she was surprised when the landlords said she would be charged for water damage to the kitchen and vanity tops. She says there was some staining already in existence at the start of the tenancy.

She agrees that the parties discussed water stains many times. They were getting worse over time, however, she says, she never left standing water on the countertops.

Analysis

The Tenant's Claim for Deposit Money

Section 38 (4) of the *Act* permits a landlord to keep deposit money at the end of a tenancy where either the tenant has agreed in writing to permit it to be applied against an obligation (like repairs) or where an arbitrator has ordered that the landlord may keep it.

Incidentally, though it is not particularly relevant to this dispute, a landlord loses her right to claim against deposit money for damage to the premises if that landlord fails to prepare move-in or move-out inspection reports.

Section 38 provides that once a tenancy has ended and once a tenant has provided her landlord with a forwarding address in writing, the landlord has a fifteen day period during which she must either re-pay the deposit money to the tenant or make an application to keep it. If the landlord fails to meet that deadline, she is penalized by having to account to the tenant for double the deposit money. She may still make a claim against the tenant but she must also suffer the penalty.

The evidence shows and I find that the landlords have failed to comply with s. 38. Following receipt of the tenant's forwarding address in August, they failed to either repay the deposit money or make an application within the fifteen day period. They must account to the tenant for double the deposit money.

In calculating the amount to be doubled, a question arises whether the amount to be doubled should be the full deposit amount or merely the remainder after accounting for the lesser amount returned earlier.

The relevant portions of s. 38 provide:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that
(a) the director has previously ordered the tenant to pay to the landlord, and
(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

First, on a plain reading of s. 38 the amount to be doubled is the entire deposit given as security less any amount the tenant has agreed in writing the landlord may keep or any amount remaining unpaid under a monetary order issued by an arbitrator. The section consistently speaks of “a security deposit” or “a pet damage deposit” as a fixed, constant amount, without reference to any “balance of a deposit” or “remainder.” Section 38(7) requires a landlord in breach of the section to pay the tenant double “the amount of the security deposit pet damage deposit or both, as applicable.” Had the legislature intended that only a balance or remainder of a deposit be doubled, it would have said so in the legislation.

Second, Residential Tenancy Policy Guideline 17, “Security Deposit and Set off [*sic*]” specifies what amounts are not to be doubled. It provides:

> 4. In determining the amount of the deposit that will be doubled, the following are excluded:
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> • any arbitrator's monetary order outstanding at the end of the tenancy;
> • any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
> • if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

It does not specify that any lesser amount actually returned to the tenant is to be excluded before the doubling.

Third, if only the balance of the deposit, after a unilateral deduction by the landlord, is the amount to be doubled, it would, in my view, promote the unilateral keeping of a portion of a deposit by a landlord, up to an amount the landlord considers to be not worth the tenant's while to apply to recover, even if that remainder was doubled. That would be contrary to the purpose of the legislation. I think the intention of the legislation is that the entire deposit is to be returned and if the entire deposit is not returned then the entire deposit is the amount to the doubled, less any amount actually returned.

In result the tenant is entitled to a doubling of her deposit money from $1850.00 to $3700.00, less the amount of $1228.55 actually paid by the landlords, leaving a balance of $2471.45.

The Landlords' Claim

I find the photographs submitted by the landlords to be convincing evidence of significant water damage to the kitchen countertop, its backsplash and to the bathroom vanity counter. The damage is consonant with standing water having been left on their surfaces. Given the numerous conversations that I find occurred between the parties, I consider it unlikely that there was any damage worth noting at the start of the tenancy.

I consider it more likely than not that the tenant was informed at the start of the tenancy of the special requirements for the keeping of these wooden tops and that she acknowledged it.

The landlords were in the home at various times and I consider it more likely than not that the accruing water staining to these areas was noted and that the simple maintenance instructions were repeated to the tenant.

I find that the tenant failed to follow the maintenance steps she had agreed to, the damage resulted and that she is responsible for the cost of the repair of the tops and backsplash.

I find Mr. R.'s estimate of the time and cost of repair to be moderate and his inclusion of calculations for wear and tear and for deprecation or "betterment" to be generous.

I award the landlords the amount of $621.45, as claimed.

Conclusion

The tenant's application against the landlord Ms. P.R. is allowed in the amount of $2471.45 plus recovery of the $100.00 filing fee.

The landlords' application is allowed in the amount of $621.45, plus recovery of the $100.00 filing fee.

The tenant will have a monetary order against the landlord Ms. P.R. for the difference of $1850.00

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: February 03, 2017

Residential Tenancy Branch