



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding First United Church Social Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; her son; and an agent for the landlord.

In her Application for Dispute Resolution the tenant wrote:

"I am applying for compensation under the Residential Tenancy Act on the basis that overpaid rent to the landlord. I have enclosed an additional page with more details and a monetary order worksheet."

In an additional 1 page note the tenant further clarified her claim as follows:

"The landlord assessed a charge back of \$1,127.70 for the cost of a second counter replacement, and I understand that the landlord collected the charge back along with my rent. However, I do not accept that this amount was my responsibility."

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order to recover an overpayment of rent, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on November 1, 1998 and ended when the tenant vacated the rental unit on December 17, 2014.

The tenant submitted that beginning in May 2013, the landlord started charging her an additional \$55.00 per month for a period of 19 months or a total charge of \$1,045.00.

The landlord submitted that during and immediately after this tenancy the landlord replaced the kitchen countertops 3 times – 2005; 2010; and at the end of the tenancy in 2014. The landlord submitted into evidence a copy of a letter dated May 4, 2010.

In this letter the landlord informs the tenant they hold the tenant responsible for the damage to the countertop because of her failure to report a leaking tap and was replacement at the time of the letter. The letter advised the tenant they would charge the tenant \$1,127.70 for the replacement.

The landlord also submitted into evidence letters confirming, each year, what the tenant's rent contribution was to be after consideration of her subsidy application. I note the letters show that the tenant's rent contribution from May 1 2010 to April 30, 2013 was \$510.00 and from May 1, 2013 to the end of the tenancy was \$460.00.

The tenant ledger submitted by the landlord shows that prior to May 2013 the tenant did not pay any additional amounts to address the charge back made to the tenant's account for the countertop in May 2010. However, from May 2013 forward the tenant continued to pay at least \$510.00 until the end of the tenancy, including those months when her rent contribution was only \$460.00.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find that from the testimony and submissions of both parties, the landlord did not charge the tenant an overpayment of rent at any time during the tenancy. I find that the tenant made payments to the landlord over the course of several months of the tenancy towards a charge the landlord had applied to the tenant's account for damage to the rental unit countertop.

I note that the tenant makes this claim over 6 years after the landlord informed the tenant that they held her responsible for the payment including almost 2 years after the end of the tenancy and after the landlord was successful in a monetary claim against the tenant for replacement of the third countertop.

While the tenant now disputes that she should not have had to pay for the 2nd counter replacement, I find that the equitable principle of *laches* operates to bar the tenant's claim. This is a legal doctrine that equity aids the vigilant and not those who slumber on their rights. I find that the tenant's inordinate delay in asserting this claim and the

manifest prejudice to the landlord that has resulted from her failure to make a timely objection warrants the denial of this claim.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety and without leave to reapply.

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: June 08, 2017

Residential Tenancy Branch