



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

At the beginning of the tenancy the landlord withdrew the claim for unpaid rent or utilities.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for damage to the countertops in the rental unit and cleaning costs?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?

Background and Evidence

The landlord testified that this month-to-month tenancy began on June 2, 2016 and ended on April 30, 2017. Rent in the amount of \$920.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a

security deposit from the tenant in the amount of \$460.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a condominium apartment subject to strata by-laws, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy, and a move-out condition inspection report was completed at the end of the tenancy on April 30, 2017. The landlord didn't have his copy of the move-in portion when he arrived for the move-out portion so the parties used the tenant's copy, but the tenant wouldn't sign it. A copy has been provided for this hearing by the tenant.

The countertop had been replaced in 2006 and at move-out there were 3 marks caused by the tenant. The landlord testified that they appeared to be burn marks. A copy of a quote has been provided for this hearing showing a cost of \$1,162.71. The landlord has pro-rated the claim due to depreciation and has calculated 14 years @ \$46.50 per year = \$651.00, and the landlord claims that amount. The landlord has also provided digital photographs that he testified were taken during the move-out condition inspection as well as the countertop at move-in and before it was replaced, and all photographs are dated. Neither the landlord nor any contractors did any damage to the countertops during the tenancy, as suggested in the tenant's evidentiary material. A copy of a Decision of the director has been provided to illustrate that countertop damage is not necessarily normal wear and tear.

The landlord also claims \$60.00 for cleaning the oven after the tenant moved out. The oven was not clean at move-in and the tenant wanted some compensation for that, and the landlord paid the tenant \$100.00. To now say it need not be cleaned at the end of the tenancy because it was not clean at the beginning of the tenancy is not fair. At the end of the tenancy it was covered in grease, and the landlord testified he couldn't see a square inch of metal inside, much worse than before the tenant moved in.

The landlord received the tenant's forwarding address on May 1, 2017 by email.

The landlord seeks a monetary order of \$651.00 for the countertop, \$60.00 for cleaning, \$100.00 as recovery of the filing fee, and an order permitting the landlord to keep the security deposit.

The tenant testified that the oven was dirty at move-in as well as the rest of the kitchen except the fridge. The Move-in Condition Inspection Report shows that the oven, cabinets and doors were all dirty. The tenant had a friend help with the cleaning at the commencement of the tenancy, and the parties agreed at the beginning of the tenancy that the tenant didn't need to leave it clean at the end of the tenancy. The tenant did clean the rest of the rental unit at the end of the tenancy.

There was a move-in strata fee of \$100.00 which the tenant didn't pay. The agreement was that due to the fact that the rental unit wasn't ready to move into until June 2, 2016 as agreed, and

the tenant paid rent for June 1, the tenant wouldn't pay the strata move-in fee. The fee is not in the tenancy agreement and the tenant does not know if the landlord paid it. The tenant did not get \$100.00 from the landlord for cleaning.

The tenant did not damage the countertop during the tenancy. The landlord's material says "discoloration" and "burn marks," but the tenant denies causing any damage.

The tenant provided the landlord with a forwarding address on May 1, 2017 via email.

Analysis

Where a party makes a claim for damages against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

A tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear and must repair any damage caused by the tenant or the tenant's guests. The *Act* also states that the condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I accept that both parties were present for the inspections, and I have reviewed the reports and digital evidence of the landlord. The landlord also testified that the countertop was replaced in 2006 and claims a pro-rated amount due to its age. The move-in condition inspection report shows that the countertop had "nicks to right of sink," and the move-out portion of the report shows "discoloration."

I have also reviewed the Decision of the director provided by the landlord. In that case the Arbitrator found that burn marks in a countertop are not normal wear and tear and a pro-rated amount was awarded to the landlord. In this case, the landlord is not certain that the marks are burns, and the tenant testified that they are not burns, but does not know what caused the marks. I am not convinced that the photographs depict burns, but certainly discoloration that has rendered it somewhat unsightly. I find that it is not normal wear and tear and I accept the landlord's claim of \$651.00.

With respect to cleaning, the *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit in a state of cleanliness and repair that makes it suitable for occupation by a tenant, and a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. The landlord testified he paid the tenant \$100.00 for cleaning at the beginning of the tenancy, however I find the tenant's testimony to be equally believable, that the strata move-in fee of \$100.00 was not paid by the tenant in exchange for not being able to move in on the agreed date, and that the landlord did not pay the tenant \$100.00 for cleaning. I am not

satisfied that the landlord has established that any cost incurred for cleaning were incurred as a result of the tenant's failure to comply with the *Act* or the tenancy agreement, nor has the landlord established how that amount was determined, and I dismiss the landlord's cleaning claim.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord holds a security deposit in the amount of \$460.00, and I order that the landlord keep the security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$291.00 ($\$651.00 + \$100.00 = \$751.00 - \$460.00 = \291.00).

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby order the landlord to keep the \$460.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$291.00.

This order is final and binding and may be enforced.

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: October 11, 2017

Residential Tenancy Branch