



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWOOD RIDGE DEVELOPMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for damages, to retain the security deposit toward compensation owed and for the recovery of the filing fee paid for this application.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing, as was the Tenant and the Tenant’s roommate (the “Tenant”). The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package, along with copies of the Landlord’s evidence by registered mail. The Tenant did not submit any evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and ask questions.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damages?

Is the Landlord entitled to retain the security deposit toward compensation owed?

Should the Landlord be granted the recovery of the filing fee paid for the Application for Dispute Resolution.

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on February 1, 2017 and ended on April 30, 2018. The move-in Condition Inspection Report was completed on January 27, 2018 and the move-out report on April 30, 2018. The reports were submitted into evidence by the Landlord.

Monthly rent in the amount of \$1,900.00 was due on the first day of the month. A security deposit in the amount of \$950.00 was paid at the outset of the tenancy. The Landlord confirmed they are still holding the full security deposit amount.

The Landlord is claiming \$157.50 for drywall and painting of 3 walls, \$94.50 for carpet cleaning, \$210.00 for professional cleaning of the rental unit, and \$9.08 for lightbulbs and baking soda.

During the hearing, the Tenant agreed to cover the costs outlined above and stated that they agreed to these on the Condition Inspection Report at move-out.

The Landlord is also claiming \$1,008.00 for the cost of repairing the kitchen quartz countertops. On the move-out Condition Inspection Report, the following statement was included, "some kind of discoloration on kitchen counter". The condition of the kitchen at the time of move-in was noted as a new unit with no damages or dirt throughout the unit.

The Landlord submitted photos of the kitchen counter to show the discolouration present on the surface. The Landlord testified that they tried to correct the situation by having the counter cleaned. When that did not change the discolouration, they brought in a company to apply an enhancer product. The Landlord testified that the enhancer product application also did not correct the discolouration on the counter.

The Landlord testified that they obtained two quotes to repair the counter, one for \$1,800 to replace the entire counter which would also involve additional plumbing costs, and one quote for \$1,008.00 including tax for repair of the counter. Both quotes were submitted in evidence.

The quote submitted by the Landlord for replacement of the countertop notes that the issue was likely caused by alkaline or acidic items that were left on the countertop for a long period of time that caused a chemical reaction with the resin in the quartz.

The Landlord provided testimony that they have not yet repaired the countertops as the owner wanted to wait for the results of the Dispute Resolution hearing first. Therefore the Landlord is claiming \$1,008.00 based on the quote they received for repair of the counter. They have decided not to go ahead with the full replacement of the counter and will repair the countertop instead.

The Landlord noted that an addendum to the tenancy agreement requires tenants to notify them of any issues in the rental unit. The Landlord testified that this was particularly important in a new unit as any issues brought to their attention may have been covered by warranty.

The Tenant was in agreement to all of the monetary claims of the Landlord, except the cost of repairing the countertop. The roommate of the Tenant testified that he attended the move-out inspection on behalf of the Tenant and that he brought up the discolouration of the countertop to notify the Landlord of the issue.

The Tenant stated that the countertop may have been defective as the rental unit was kept very clean while they were there and nothing was left on the counter that would have caused the chemical reaction claimed by the Landlord.

The Tenant stated that they did not notify the Landlord of the discolouration on the countertop during the tenancy as it seemed minor and the counter was not broken or damaged, just slightly discoloured in some areas. The Tenant believed this to be caused either by a defect in the counter or just by use over time, as the counter was new when they moved in.

The Tenant does not believe they should be responsible for the cost of repairing the countertop.

Analysis

Based on the evidence and testimony of both parties, and on a balance of probabilities, I find as follows:

The parties were in agreement that the Tenant is responsible for the costs of the drywall repair and painting, carpet cleaning, cleaning of the rental unit and the costs of purchasing lightbulbs and baking soda. The Landlord is awarded the recovery of these amounts.

The parties were not in agreement as to whether the cost of repairing the kitchen countertop is the responsibility of the Tenant. I note that in accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus is on the party filing the application to prove their claim, on a balance of probabilities.

While the discolouration of the countertop was noted in the Condition Inspection Report upon move-out, and photos were submitted by the Landlord, I do not find sufficient evidence to determine that the Tenant is responsible.

A letter submitted in evidence by the Landlord from a countertop company states that the discolouration may have been from leaving alkaline or acidic items on the countertop for long periods of time. However, as the discolouration appears to not just be in an isolated area, without further evidence, I cannot determine whether the discolouration was from the actions of the Tenant, whether it was a defect in the countertop, or if it was caused by something else entirely.

In accordance with Section 32(4) of the *Act*, a tenant is not responsible for reasonable wear and tear in a rental unit. Without sufficient evidence, I am not able to determine whether the slight discolouration is to be expected through regular use of a new countertop.

Based on the above analysis, I find that the Landlord has not shown that the Tenant should be responsible for the cost of repairing the kitchen countertop.

The Landlord has also filed to retain the security deposit towards the compensation owed. Section 38(1) of the *Act* states that a landlord has 15 days from the later date of the end of tenancy or the date the forwarding address was provided in writing to either repay the security deposit or file against it.

As the tenancy ended on April 30, 2018 and the Tenant's forwarding address was provided on the same day, I find that the Landlord had 15 days from April 30, 2018 to repay the security deposit or file a claim against it. As the Landlord applied for Dispute Resolution on May 14, 2018, they applied within the 15 days allowable under the *Act* and are therefore permitted to claim against the security deposit.

As the Landlord was partially successful in their claim, I award the recovery of the filing fee paid for this application in the amount of \$100.00. A Monetary Order will be issued to the Tenant in the amount outlined below, for the return of the remainder of their security deposit after deductions are made.

Monetary Order Calculations

Security deposit	\$950.00
<i>Less drywall repair and painting</i>	<i>(\$157.50)</i>
<i>Less carpet cleaning</i>	<i>(\$94.50)</i>
<i>Less cleaning of rental unit</i>	<i>(\$210.00)</i>
<i>Less lightbulbs and baking soda</i>	<i>(\$9.08)</i>
<i>Less recovery of filing fee</i>	<i>(\$100.00)</i>
Total owing to Tenant	\$378.92

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$378.92** for the return of the remainder of the security deposit after deductions are made pursuant to Sections 67 and 72 of the *Act*. The Landlord is entitled to **retain \$571.08 from the security deposit** as compensation for cleaning and repairs, as well as the recovery of the filing fee paid for this application.

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 12, 2018

Residential Tenancy Branch