



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on September 13, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlord and the Tenant both attended the hearing. All parties provided testimony. Both parties confirmed receipt of each other's evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 damage to the unit or for damage or loss under the Act?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Background and Evidence

Both parties agree that the Landlord has already returned the security deposit in the amount of \$650.00.

The Landlord is seeking \$3,570.00 in compensation for the cost of replacement countertops. The Landlord stated that the Tenant sent him a text message stating that the kitchen sink had collapsed sometime in 2016. The Landlord stated that he went over to assess the damage and noticed that the whole countertop was raised up (where it meets the seam), and also noticed that the undermount sink had detached from the counter. The Landlord stated that the sink and counters were professionally installed and that this should not have occurred with normal use. The Landlord alleges that the Tenant stood on the counters to install a light above the sink. The Landlord provided an estimate from the countertop company which shows that the cost to repair this counter is \$3,570.00.

The Tenant stated that he remembers the incident well and that he was doing dishes one evening when he heard a noise come from the sink. Then, 30 seconds later, the whole sink detached from the countertop. The Tenant stated that this is when the cracks formed, and became more noticeable. The Tenant also stated that the countertop only became "raised" up after the Landlord came to fix the sink. The Tenant stated that the Landlord installed brackets under the sink (as per the photos) to support it and in doing so, forced the sink and counter upwards, which separated the counter from the adjoining counter at the seam. The Tenant stated that the other cracks in the counter, are natural fissures in the granite. The Tenant pointed out that, as per the countertop invoice, fissures are a natural part of the granite, and there were not cause by his misuse. The Tenant stated that these fissures are almost impossible to see, and it is ridiculous that he be blamed for these. The Tenant stated that the sink was only held in place by glue attaching the sink to the counter, and some clips or brackets should have been used.

The Landlord stated that the countertops were installed in 2014, and this damage should not have occurred. The Landlord stated that clips are not always required when installing these types of sinks.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the *Act* states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I find the Landlord has provided a summary of what was contained in the condition inspection report, but has failed to provide an actual copy of this report. I do not place much weight on the Landlord's letter speaking to the condition inspection report, as it is not signed by the Tenant. In any event, there is insufficient evidence showing the condition of the counters at the start of the tenancy.

Having reviewed the evidence and testimony on this matter, I note the Landlord has the burden to prove that the damage was caused by the Tenant, and that it was not from normal wear and tear. In this case, there is insufficient evidence showing the condition of the counters at the start of the tenancy. Also, although the Landlord has alleged that the Tenant has misused the counter/sink, such that it would break and fail, I find there is insufficient evidence to support this. The Tenant stated that he was simply doing the dishes when the undermount sink detached, while it was full of water.

I am mindful that, as per the invoice from the countertop company, natural cracks and fissures are normal. I find a certain amount of imperfections can be expected in granite, including some small cracks. I acknowledge some of these cracks became more visible over time and after the sink collapse. However, I find there is insufficient evidence that this was caused by neglect from the Tenant. I also note the Landlord came himself after the collapse and installed supporting brackets under the sink. The Tenant stated that this actually worsened the cracking and lifting of the counter.

It is unclear what caused the cracking of the countertops, or why the sink suddenly detached. However, I find the Landlord has failed to provide sufficient evidence to establish that the cracks in the counters were caused by the Tenant (no condition inspection report provided) or that the sink collapse was caused by unreasonable use. It appears to be an unfortunate and serendipitous occurrence and it remains unclear if the damages were caused by poor installation, improper repair efforts by the Landlord, or by neglect or misuse. Ultimately, the burden remains on the Landlord to prove his claim, and I find he has not sufficiently done this.

The Landlord's application is dismissed in full, without leave to reapply. The Landlord stated he has already returned the security deposit. As such, there is no further action required with respect to the deposit.

Conclusion

The Landlord's application is dismissed, in full, without leave.

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: September 14, 2018

Residential Tenancy Branch