Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 13, 2018 (the "Application"). The Landlord applied for compensation for damage to the unit and sought to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

This matter came before me for a hearing September 06, 2018. An Interim Decision was issued September 10, 2018. This decision should be read in conjunction with the Interim Decision.

The Landlord appeared at the hearing with two witnesses who were only present for the hearing when required. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties and witnesses provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. Service of the evidence had been an issue at the first hearing. I addressed service of the evidence at this hearing and both parties confirmed they received the evidence of the other party.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the rental unit?

2. Is the Landlord entitled to keep the security deposit?

3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord had limited her claim at the first hearing to $4,028.00 for a chipped countertop.

A written tenancy agreement was submitted as evidence. It is between the Landlord and Tenant in relation to the rental unit. The agreement is for a fixed term from February 1, 2018 to January 31, 2019. The Tenant paid a $775.00 security deposit.

The parties agreed the Tenant vacated the rental unit May 31, 2018.

Both parties agreed the Tenant provided her forwarding address in writing to the Landlord on the move-out Condition Inspection Report. Both parties agreed the move-out inspection occurred May 31, 2018.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Both agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

Both parties agreed on the following. The parties did a move-in inspection February 12, 2015. The unit was empty at the time. A move-in Condition Inspection Report was completed and signed by the parties.

The Tenant testified that she believed she was given a copy of the move-in Condition Inspection Report but could not remember when or how. The Landlord testified that she gave the Tenant a copy in person. She could not recall when but said it was within two weeks of doing the inspection.

Both parties agreed on the following. The parties did a move-out inspection May 31, 2018. The unit was empty at the time. A move-out Condition Inspection Report was completed and signed by both parties.

The Tenant testified that the Landlord did not provide her with a copy of the move-out Condition Inspection Report. She said she took a photo of the report. The Tenant acknowledged receiving a copy in the evidence. The Landlord testified that the evidence was sent by registered mail and received by the Tenant September 13, 2018.

The Landlord agreed she did not provide a copy of the move-out Condition Inspection Report to the Tenant and said the Tenant took a photo of the report.

In relation to the chip in the countertop, there was no issue that the Tenant caused this. She acknowledged that she caused it and said her daughter put a jar on the counter causing it to chip.

The Landlord did not take a position on how the chip was caused. The Landlord testified that she contacted the company that installed the countertop and they advised her the chip could not be repaired and that the counter had to be replaced. The Landlord testified that the chip had been filled with resin by the Tenant. She relied on the photos in this regard.

The Landlord called the witnesses from the company that installed the countertop. Witness J.A. confirmed the company installed the countertop in the rental unit. Witness J.A. testified that the Landlord sent photos of the chip and asked if it could be fixed or if the countertop had to be replaced. Witness J.A. testified that, based on the photos sent by the Landlord, the company determined the chip could not be repaired and that the countertop had to be replaced. Witness J.A. testified that the Landlord was provided with a quote of $4,028.33 to replace the countertop.

Witness J.A. testified that the Tenant also contacted the company about this chip. Witness J.A. said that, based on the photos provided by the Tenant, the company thought the chip could be repaired. Witness J.A. said the photos were pixilated and were not as good quality as the photos sent by the Landlord. Witness J.A. said the photo sent by the Tenant made the chip look smaller.

Witness C.A. testified that the damage to the countertop is outside of what the company would consider a chip. She said the countertop has been smashed like something has been dropped on it. She testified that a chip repair would not look nice.

The Tenant was given an opportunity to question the witnesses. In response to her questions, witness J.A. again testified that the photo sent by the Tenant to the company was unclear, pixilated and did not show the extent of the damage. Witness J.A. agreed she sent the Tenant an email stating the repair would cost $340.00. Witness J.A. said the repair person would have attended and determined it was not possible to repair the chip once they observed it in person. Witness J.A. confirmed nobody from the company had attended the rental unit to observe the chip in person.

I had the Landlord and Tenant show me which photos were sent to the company as these were submitted as evidence.

The Landlord testified that the photos sent by the Tenant are of the chip with resin in it. The Landlord said the photos she sent were of the chip with the resin removed. The Tenant disagreed that she filled the chip with resin.

The Tenant submitted that there is no evidence of what photos the Landlord sent to the company as the Landlord simply uploaded the photos to me, not the correspondence with the photos attached.

The Landlord took the position that the chip is not reasonable wear and tear. The Tenant did not agree that the chip was beyond reasonable wear and tear and maintained that it was caused by her daughter putting a jar on the counter.

The Tenant submitted that the Landlord did not minimize her loss as she did not contact anyone else about fixing the chip and did not have the company attend and look at the chip in person. The Tenant pointed out that she contacted two other companies about fixing the chip. She had submitted evidence of this.

The parties submitted the correspondence with the company that installed the countertop and I have reviewed this.

The Tenant submitted a quote from a second company stating it would be $220.00 to repair the chip. This is based on three photos of the chip sent via email.

The Tenant submitted a third quote showing the repair would be $535.00.

Analysis

Section 7 of the *Residential Tenancy Act* (the "*Act*") states:

> (1) If a…tenant does not comply with this Act…or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance…must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

There was no issue that the Tenant participated in the move-in and move-out inspection and therefore I find the Tenant did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Section 18 of the *Regulations* states:

> Condition inspection report
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> 18 (1) The landlord must give the tenant a copy of the signed condition inspection report
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> (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
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> (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
>
> (i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

(2) The landlord must use a service method described in section 88 of the Act [service of documents].

[emphasis added]

Neither party could say when the Landlord provided the Tenant with a copy of the move-in inspection. Both parties agreed the Landlord did not provide the Tenant with a copy of the move-out inspection except as evidence on this hearing which was received by the Tenant September 13, 2018. I am not satisfied the Landlord complied with section 18(1)(a) of the *Regulations* and find the Landlord did not comply with section 18(1)(b) of the *Regulations*.

Given I am not satisfied the Landlord complied with section 18(1)(a) or (b) of the *Regulations*, I am not satisfied the Landlord gave the Tenant a copy of the move-in or move-out Condition Inspection Report "in accordance with the regulations" as required under section 24(2)(c) and 36(2)(c) of the *Act*. Therefore, I find the Landlord extinguished her right to claim against the security deposit for damage to the rental unit.

I note that the Tenant taking a photo of the move-out Condition Inspection Report is not sufficient. It was the Landlord's obligation to provide a copy of the move-in and move-out Condition Inspection Report to the Tenant in accordance with the *Act* and *Regulations*.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of May 31, 2018, the date the tenancy ended and the date the Landlord received the Tenant's forwarding address. However, the Landlord had extinguished her right to claim against the security deposit for damage and therefore her only option under section 38(1) of the *Act* was to repay the deposit or claim against it for something other than damage to the rental unit. Given the Landlord did neither, I find the Landlord breached section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the deposit. Therefore, the Landlord must return $1,550.00 to the Tenant.

The Landlord is still entitled to claim for compensation for damage to the unit and I consider that now.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord, as Applicant, has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning "it is more likely than not that the facts occurred as claimed".

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and states:

> (2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Based on the photos of the chip, I find the chip is beyond reasonable wear and tear. There is no evidence before me that this countertop was compromised prior to the tenancy. The chip is large. The Tenant testified that the chip was caused by her daughter putting a jar on the countertop; however, I cannot accept that putting a jar on a countertop with the usual level of care expected would cause a chip of this size and depth. I am satisfied based on a balance of probabilities that the chip is beyond reasonable wear and tear and therefore that the Tenant breached section 37 of the *Act*.

There was no issue that the Landlord now has a countertop with a large chip in it. I accept that the Landlord must address this damage.

I do not accept that the Landlord must replace the countertop. I am satisfied that the Landlord can repair the chip.

I do not find the testimony of witness J.A. or C.S. in relation to the need to replace the countertop reliable given their company told the Tenant the chip could be repaired. Witness J.A. testified that this was based on the photos sent by the Tenant which did not show the extent of the damage. I have looked at the photos and do not accept that they are unclear or pixilated to the extent that they do not accurately show the chip.

I note that witness J.A. responded to the Tenant's email stating "Thank you for the photos. The cost to have us come and fill the chip is $340.00. kindly advise how to proceed". The email does not state that the photos are unclear. Witness J.A. did not request further photos or clearer photos before providing the estimate. The email does not state that the estimate is based on a repair person coming to the rental unit and confirming the extent of the damage. In the circumstances, I do not accept witness

J.A.'s reasons for the different opinion provided to the Landlord and Tenant in this matter.

Further, I do not find the opinion that the countertop must be replaced reliable given two different opinions were provided by the same company in relation to the same chip and given nobody from the company has attended the rental unit to view the chip in person.

I note that the Landlord submitted that the Tenant sent photos to the company with the chip filled in. The Tenant denied this. I am not satisfied that the photos show the chip filled in. In any event, I am satisfied the photos show the extent of the chip.

I also note that the Tenant submitted quotes from two other companies in relation to repairing the countertop. Neither quote indicates that repair is not possible.

The Landlord did not submit any other evidence that the countertop needs to be replaced rather than repaired.

The Landlord did not submit evidence about repairing the chip given her position. However, the Tenant did submit evidence on this point. The quotes for repair range from $220.00 to $535.00 to repair the chip. The company that installed the countertop indicated to the Tenant it would cost $340.00 to repair. I find it reasonable to accept the estimate provided by the company that installed the countertop.

I note that I do not find the Landlord minimized her loss in this matter as she did not obtain opinions or quotes from other companies other than the company that installed the countertop. However, the Tenant did and these show a range of quotes and I find the quote from the company that installed the countertop reasonable.

I therefore award the Landlord $340.00 in compensation for the chip in the countertop.

Given the Landlord was partially successful in this application, I grant the Landlord reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to $440.00. However, the Landlord must return $1,550.00 to the Tenant. Taking the amount of compensation owed into account, the Landlord must only return $1,110.00 to the Tenant. The Tenant is issued a Monetary Order in this amount.

Conclusion

The Application is granted in part. The Landlord is entitled to $440.00. However, the Landlord must return double the deposit to the Tenant which equals $1,550.00. Taking the amount of compensation owed into account, the Landlord must return $1,110.00 to the Tenant. The Tenant is issued a Monetary Order in this amount. If the Landlord does not return $1,110.00 to the Tenant, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 26, 2018

Residential Tenancy Branch