



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, FFL

Introduction

A hearing was convened on October 16, 2018 in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The hearing on October 16, 2018 was adjourned for reasons outlined in my interim decision of October 16, 2018. The hearing was reconvened on December 17, 2018 and was concluded on that date.

In my interim decision of October 16, 2018 the Landlords were given authority to re-serve the Tenants with the Notice of Dispute Resolution Proceeding, via email.

In my interim decision of October 16, 2018 the Landlords were given authority to re-serve the Tenants with evidence listed in my interim decision, via email. The Landlord and the Tenant agree this evidence was served to the Tenant on October 18, 2018, via email, and the evidence was accepted as evidence for these proceedings.

In my interim decision of October 16, 2018 the Tenants were given authority to serve evidence to the Landlords, via registered mail. The Tenant stated that evidence the Tenant submitted to the Residential Tenancy Branch on October 05, 2018 was served to the Landlord, via registered mail, on November 26, 2018. The Tenants provided Canada Post documentation that corroborates this service and the documents were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to keep all of the security deposit in compensation for damage to the rental unit?

Background and Evidence

The Landlords and the Tenant agree that:

- the tenancy began on November 27, 2015;
- the tenancy ended on March 15, 2018;
- the Tenant paid a security deposit of \$950.00;
- a condition inspection report was completed at the beginning of the tenancy; and
- a condition inspection report was completed at the end of the tenancy.

The Landlords applied to retain the security deposit in compensation for damage to bathroom cabinet doors and countertop.

The Landlord and the Tenant agree that at the end of the tenancy a cabinet door and the countertop in the master bathroom were damaged by water at the end of the tenancy. The parties agree that two cabinet doors in the other bathroom were also damaged by water at the end of the tenancy.

The Tenant stated that this is an old house and the cabinet/counter may have been damaged at the start of the tenancy. The male Landlord stated that these areas were not damaged at the start of the tenancy.

The Landlord and the Tenant agree that there was no plumbing problem in the bathroom that caused the damage to the cabinet doors and countertop. The Tenant stated that these areas were damaged by water splashing out of the sink during normal use. The Landlord contends that the damage was due to undue care and the Tenants' failure to clean up water that has spilled.

The Tenant stated that she did not use this sink differently than any other sink she has used. She speculates that the gap between the counter and the cabinet door was too small, which may have caused water to become trapped between those areas. The

male Landlord stated that the Tenants did not report a problem with water becoming trapped between the cupboard doors and the counter.

The Landlords and the Tenant agree that the Tenant attempted to repair the water damage; however the repair was inadequate.

The Landlord submitted an estimate that indicates it will cost \$1,526.70 to repair the damage.

The Tenant stated that the house was built in 1994 and she speculates the cabinets are also that old. The male Landlord stated that they are not the first owners of the rental unit and he does not know when the cabinets and countertop were installed.

Analysis

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report does not indicate that the cabinet in either bathroom was damaged at the start of the tenancy and the Tenants have not submitted evidence that convinces me they were damaged at the start of the tenancy, I find that the doors on the bathroom cabinets and countertops were not damaged at the start of the tenancy.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the doors on the bathroom cabinets and countertops were damaged at the end of the tenancy. As these areas were not damaged at the start of the tenancy, I must conclude that they were damaged during the tenancy.

Section 37(2) of the *Residential Tenancy Act (Act)* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear. I find that the Tenant failed to comply with section

37(2) of the *Act* when the Tenant failed to repair the damage caused by the Tenant. In determining that the Tenant caused this damage I was heavily influenced by the Tenant's testimony that there were no plumbing problems that caused the water damage and that the damage was caused by water spilling from the sink during normal use. I find, on the balance of probabilities, that the Tenants' failure to wipe this water on a regular basis damaged the counter top and cabinet doors.

In adjudicating this matter I have placed no weight on the Tenant's submission that the gap between the counter and the cabinet door was too small, which may have caused water to become trapped between those areas. I find that this submission is highly speculative; that it is relatively unlikely; and there is simply no evidence to corroborate this submission.

The Landlords have submitted evidence that it would cost \$1,526.70 to repair the damage.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of cabinets and countertops is 25 years. As the Tenant is only speculating on the age of the cabinets/countertop and the Landlords do not know the age of those items, it is left to me to determine their age. On the basis of the photographs submitted in evidence I find that the cabinets and countertop are at least 12.5 years old and that they have depreciated by 50%. As they have depreciated by 50%, I find that the Landlords are entitled to 50% of the cost of repairing them, which is \$763.35.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$863.35, which includes \$763.35 in damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the

Landlords to retain \$863.35 from the Tenants' security deposit of \$950.00, in full satisfaction of this monetary claim.

The Landlords must return the remainder of the Tenants' security deposit, which is \$86.65, and I grant the Tenants a monetary Order for this amount. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: December 17, 2018

Residential Tenancy Branch