



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application and amended application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on December 1, 2016 and ended on February 27, 2019. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. Rent of \$1,000.00 was payable on the first day of each month.

The Landlord states that the Tenant left the unit damaged and claims as follows:

- \$16.20, \$16.75 and \$14.53 as the mailing costs for the Landlord’s service of its application, evidence and a postal error;
- \$577.50 as the cost to install a laminate counter top piece; and
- \$1,000.00 for lost rental income.

The Landlord states that the Tenant damaged the laminate countertop with a burn and that this damage occurred sometime prior to December 2017. The Landlord states that the Tenant had asked the Landlord to water the plants in the Tenant's unit while the Tenant was out of country for a couple months starting in December 2017. The Landlord states that the burn was discovered when the Landlord moved a plant pot from a spot on the counter. The Landlord describes the burn as being approximately 1 inch and provides a photo of the countertop. The Landlord states that the Tenant must have caused the damage as it was not there at move-in as indicated in the move-out inspection.

The Landlord states that a few days after the Tenant returned from the trip the Landlord informed the Tenant of the damage and that the Tenant informed the Landlord that this burn was present but missed at the move-in inspection. The Landlord states that after the move-in inspection the Tenant had notified the Landlord about other damages that had been missed in the inspection but did not include any mention of damage to the countertop even though the Tenant pointed out damage to the fridge that is located beside the counter. The Landlord states that the Tenant also informed the Landlord that the Tenant's cousins who were visiting the unit while the Tenant was away that the damage occurred while the cousins were there. The Landlord states that they then jointly agreed to look for repairs.

The Landlord states that they wanted the damage repaired by the Tenant as soon as possible but that the Tenant delayed the repairs. The Landlord states that the counter top has to be removed from the unit and taken to a repair shop as it needed to be cut to specifications and was fully recovered with new laminate. The Landlord states that the actual repair to the counter only took about an hour however the counter was removed for a week while waiting for the laminate to arrive. The Landlord states that the repairs were completed by March 16, 2019. The Landlord states that the countertop is about 7 years old and was new when they renovated the building. The Landlord provides the receipt for the costs claimed of \$577.50.

The Tenant states that there was no damage to the counter when the Tenant left for the two months. The Tenant states that although the Landlord was granted permission to access the unit for plant watering the Landlord also accessed the unit without the Tenant's permission to change the bedding in one of the bedrooms. The Tenant states that she believes the Landlord used the unit for their own purposes while she was away and that the burn occurred during this use. The Tenant describes the burn as like a burn from a lit match stick. The Tenant states that the Landlord's husband and father both smoke and have been seen smoking outside the unit. The Tenant denies telling the Landlord that the Tenant's cousins caused the burn only that it may have been her cousins. The Tenant states that because of a previous experience of being the first person to enter another person's home that was on fire, the Tenant is especially careful about fire. The Tenant states that the laminate counter is likely older than 7 years as the house is old and the carpets in the units rooms were aged. The Tenant states that the Tenant had obtained quotes of \$250.00 to patch the areas by scraping and filling the spot.

The Landlord states that they were informed by repair persons that if not repaired the burn would worsen through further use on that area. The Tenant states that she used the counter everyday with heavy cooking containers and that this never caused any further damage to the burned area. The Tenant states that the Landlord was not concerned about the damage during the tenancy and only cared about their next tenancy. The Landlord states that the Landlord's husband does not smoke and that the Landlord's father only smokes outside the building.

The Landlord states that as a result of the damage and the length of repairs they were not able to obtain a tenant until April 1, 2019. The Landlord states that the unit was advertised online in February 2019 and that no availability date was put in the as because the Landlord was hoping that the damage would be repaired. The Landlord states that they did not want to disturb a new tenant with the repair period. The

Landlord states that the counter had to be removed as the laminate had to be a special cut.

The Tenant states that the Landlord ended the tenancy with a one month notice to end tenancy for cause and that the reason was for the damage to the counter top. The Tenant states that she did not dispute the notice as she was moving out anyway. The Tenant states that the Landlords started showing the unit in January 2019. The Tenant states that the Landlord never did any inspection of the unit during the tenancy.

The Landlord states that if the Tenant had only noticed the burn upon return from the trip the Tenant never informed the Landlord and the Landlord would have expected this to be reported immediately. The Landlord states that they informed the Tenant of the damage a couple of days after the Tenant's return. The Tenant states that if the Landlord saw the damage in December 2018 they should have informed the Tenant in one of the numerous texts they sent to the Tenant while she was away. The Tenant wonders why the Landlord waited until the Tenant returned. Neither Party has any idea of the expected useful life of laminate counter top.

Analysis

Section 37 of the Act provides, inter alia, 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. The Landlord's evidence of discovering the burn while the Tenant was away holds a ring of truth. The Tenant's evidence of having obtained quotes for a patch tends to support that the burn was caused by the Tenant or by guests of the Tenant. For these reasons, I find on a balance of probabilities that the Tenant or a person allowed into the unit by the Tenant did cause the damage to the countertop.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage

or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Nothing in Policy Guideline #40, "Useful Life of Building Materials", sets out an expected useful life of laminate countertops and the Parties did not give any evidence of any useful life, only indicating that the countertop was at least 7 years old. I do consider however that the countertop has some loss of useful life given its composition and age of at least 7 years. Further given the undisputed evidence that the burn was not repaired immediately after discovery and the undisputed evidence of the continued use of the counter by the Tenant without any evidence of the damaged area increasing, I find on a balance of probabilities that the burn was only esthetic in nature and that the countertop was useable as a countertop despite the burn.

The Landlord only provided oral evidence that the countertop had to be removed for a full recovering of laminate and did not provide any supporting evidence of not being able to reduce the costs by either filling or patching the small burn. The Tenant gave oral evidence of obtaining a quote for this less expensive method of repair. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that it took reasonable steps to mitigate the loss from the burn and has not substantiated that the damage caused the extent of loss claimed. However as the Tenant gave evidence that the burn could have been repaired for **\$250.00** I find on a balance of probabilities that the Landlord is entitled to this sum.

Given the undisputed evidence that the Landlord started showing the unit in January 2019 and the Landlord's evidence that the rental advertisement did not provide an available date for occupancy, I find on a balance of probabilities that there were other factors slowing the rental of the unit other than the Landlord's need to remove the counter for repair. Further, as the Landlord gave no supporting evidence that the countertop had to be removed and could not be repaired inside the unit, I find on a

balance of probabilities that the Landlord has not substantiated that the Tenant caused a month's loss of rental income. I therefore dismiss this claim.

There is nothing in the Act that provides for recovery of participation costs for the dispute proceedings other than the filing fee. As the requirement to serve the Tenant with materials is part of the dispute proceedings, I dismiss the Landlord's claims for its postal costs.

As the Landlord's application has met with limited success I find that the Landlord is only entitled to recovery of half the filing fee in the amount of **\$50.00** for a total entitlement of **\$300.00**. Deducting **\$300.00** from the security deposit plus zero interest of **\$500.00** leaves **\$200.00** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain **\$300.00** from the security deposit plus interest of \$500.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$200.00**. If necessary, this order may be filed in the 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: May 08, 2019

Residential Tenancy Branch