



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for the loss of value of a stainless-steel counter top and for the recovery of the filing fee. The landlord also applied to retain a portion of the security deposit in satisfaction of the claim. Both parties attended the hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance, I confirmed service of documents. The tenant acknowledged receipt of evidence submitted by the landlord and stated that she had not filed any evidence of her own. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order for the loss of value of a stainless-steel counter top and for the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The background facts are generally undisputed. The tenancy started in July 2017 for a fixed term of two years. The monthly rent was \$7,000.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$3,500.00. The rental unit was brand new at the start of tenancy. The tenant moved out on June 14, 2019. Copies of move in and move out inspections were filed into evidence.

The landlord stated that the rental unit is a luxurious apartment located in a heritage building. The fittings and features are high end and command a monthly rent of \$7,000.00.

The landlord stated that at the end of the tenancy the stainless-steel counter top was heavily scratched. The landlord filed photographs of the counter top. The tenant agreed that the counter tops were scratched but maintained that this was a result of wear and tear.

The tenant stated that the scratches were minor and were caused by the use of plates and utensils and by the damp or dry cloth used to clean the counter top. The tenant stated that the landlord did not caution her about placing hot items on the counter top. The tenant added that the damage is cosmetic and does not affect the functionality of the counter.

The landlord stated that he consulted with a builder regarding options to replace or remove the scratches. The landlord stated that he was informed that the cost to replace the counter top is \$5,000.00 and therefore he decided not to replace the counter top but to claim \$1,000.00 for the loss of its value.

Analysis

Residential Tenancy Policy Guideline #1 addresses **Landlord & Tenant – Responsibility for Residential Premises**.

In part, this guideline provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant

In this case, I find that the rental unit was brand new at the start of tenancy and that at the end of tenancy, the counter top had several scratch marks. The tenant agreed that the counter top was scratched but stated that it was a result of wear and tear.

The tenant took responsibility for the scratches on the counter top but expressed surprise that she was responsible for replacing the entire kitchen counter top. Based on the testimony of both parties, I find on a balance of probabilities that it more likely than not that the scratches were not caused by plates, utensils and cleaning cloth and therefore were not a result of normal wear and tear.

The counter top has not been replaced by the landlord and will be used by the new tenant. Therefore I also find that the counter top is functional, and the damage is cosmetic. The landlord has applied for \$1,000.00 for the loss of value of this item. I find that while the counter top has scratch marks, this damage does not affect its functionality. However, the marks have reduced the value of the counter top and I will award the landlord an arbitrary amount towards this loss of value.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the estimate filed by the landlord, the age of the countertop (2 years) and the useful life of a countertop as per *Residential Tenancy Policy Guideline #37* (25 years), I award the landlord a minimal award of \$500.00.

The landlord has also filed a claim for the recovery of the filing fee. Since the landlord is successful in his claim, I award the landlord the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim of \$600.00. The landlord has a security deposit of \$3,500.00 in his possession. I order the landlord to return \$2,900.00 to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as

applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of a portion of the security deposit in satisfaction of the monetary claim. Because the landlord has established a claim in the amount of less than the security deposit it is appropriate that I order the return of the balance of the security deposit to the tenant.

Accordingly, I so order and I grant the tenant a monetary order in the amount of \$2,900.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order in the amount of **\$2,900.00.**

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: October 03, 2019

Residential Tenancy Branch