Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, MNRL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the "Application") on February 27, 2020 seeking an order for compensation for damages to the rental unit, and recovery of rent and utility costs. The landlord also applied to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on April 24, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

The tenant and landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the tenant confirmed they received the notice of the hearing in person, and the landlord's evidence package via email. The landlord confirmed receipt of the tenant's evidence via email.

Preliminary Issue

The landlord's Application lists a claim for unpaid rent and utilities in the amount of $1,330.00. This is for the amount of $1,250.00 rent, leaving $80.00 for utilities. In the hearing, the landlord stated this was not at issue and the tenant paid these amounts using the security deposit and key fob deposit. The tenant submitted evidence showing very recent payment of outstanding utility costs.

By mutual agreement, the tenant and landlord agree this portion of the claim is no longer at issue. For this reason, I dismiss the landlord's claim for this amount.

When completing the application form on February 27, 2020, the landlord also claimed an amount of $20.00 for "unpaid use common area fee." There was no evidence

presented on this cost, and the landlord did not state in the hearing what this cost represents. With no evidence and no testimony on this, I dismiss this portion of the claim.

On April 8, 2020 the landlord submitted an invoice for carpet cleaning and pictures of the carpet cleaning. They did not include this as part of their original claim when applying on February 27. They did not put in amendment form as required in the hearing process. I do not allow the amendment, with the further cleaning undertaken by the landlord taking place well past the original application, on March 17, 2020. The messages to the tenant show their discussion on this issue took place after the cleaning was completed and was added to the claim after that. This is not part of the original claim; as such, I shall not hear the claim. I note the landlord may file a new and separate application for this claim subject to any limitations noted in the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage, compensation for monetary loss, and recovery of money for unpaid rent and utilities pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

Neither the landlord nor the tenant presented a documented tenancy agreement. The landlord spoke to the agreement that was in place. The rent was $2,500.00 per month, payable on the first of each month. There was a security deposit of $1,250.00 and a cost of parking, monthly at $100.00. This tenancy began on March 1, 2019. The tenant confirmed these details.

Both parties confirmed there was no condition inspection meeting at the start of the tenancy. This unit was brand new at the start of the tenancy.

The tenant notified the landlord of the end of tenancy on January 20, 2020, with the end date being “by Feb 29, 2020.” The tenant provided a copy of this note in the evidence.

The tenant presented that they attended the unit twice on February 29. The first visit was to finish maintenance and clean-up. The tenant presented a letter of a family member that spoke to finishing up painting. Later around 4:30 – 5:00 p.m. the tenant attended to walk through the unit with the landlord. They stated there was no document to complete, and no document on hand for both to sign and do the proper walk through. Both parties discussed the carpet, the countertop and the toilet.

The landlord presented the following evidence for their claim of countertop damage at $2,000.00:

- Two photos showing the damage: a small circular scratch and a crack at a corner angle;
- Text message, with the tenant's replies, asking about the damage – these attach videos of noise emanating from the unit;
- Text message of March 17, 2020 stating the result of a warranty inspection – the responsible agency determined it was not a warranty issue.

The landlord stated the countertop damage resulted from the tenant hitting the countertop – evidence of this is the videos taken outside of the unit with noise coming from within. The landlord consulted the developer about countertop damage and the developer told her it was not a warranty issue. The countertop material is "stone", with this being a "quite modern building".

The tenant provided evidence showing that they identified the issue to the building strata when a questionnaire was sent in late 2019 to inquire about warranty issues to the common areas. The tenant stated they listed the countertop issue on this document even though it is not a common area problem. This is due to the discussion they had with other residents in the building who had similar issues with countertops. For this reason, the tenant presents that it is a developer issue that should properly be looked into as a discussion on warranty. The tenant stated the discussion they had with the landlord was on this topic.

The tenant presented that there were other tenants in the building that had a similar problem. This is borne out by a Facebook group of "at least 3 or 4 people" that discussed these issues. The tenant did not provide evidence from this forum. The tenant presented that they provided details to the property warranty department via the '15 Month Building Review/Common Property Deficiencies' – this document contains the statement "crack in the kitchen counter". This was to let the owner proceed on the countertop issue with the strata. They did acknowledge the form specifies issues with

the common property; however, they stated they felt it beneficial to put the information regarding the countertop in the document, with it being a common issue with other building residents.

On carpet cleaning, the landlord presented an invoice for the claimed amount of $126.00. This receipt for this service is dated March 17, 2020. They sent images to the tenant via text message showing the before and after images of the carpet cleaning.

The tenant presented their receipt for $137.97 for carpet cleaning that took place on February 22, 2020. This receipt shows the cleaners focused on two stains with partial success in removing the stains.

Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

Section 37(2) of the *Act* requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The landlord presented evidence of the countertop damage. There is no condition inspection report from which to measure the condition of the countertop at the time of the start of tenancy. The rental unit was “brand new” at the time of the tenancy and I accept that as fact – neither the tenant or the landlord mentioned a flaw at the beginning of the tenancy.

The primary means to measure ensuing damage – the condition inspection report – is not in place at neither the start nor the end of the tenancy. The tenant stated that there was no document present at the time of the final meeting on February 29, 2020; therefore, there was no proper walk-through meeting that took place at the end of the tenancy. This is normally required under the *Act*.

I find the tenant is not responsible for the damage to the countertop because of the evidence the landlord presented to attribute the damage to the tenant and actions they feel caused the damage. These are video clips which depict noise emanating from the unit. I give no weight to this evidence. The landlord connects the damage to the tenant’s unit noise and stated in the hearing it was due to banging on the countertop. By way of text messaging, the tenant explained both videos to the landlord – one of these was of singing, and the other was a shelf falling over. The video does not prove noise is connected to damage, which is the only reason the landlord offers.

The landlord presented the countertop is made of stone. I find the videos do not capture anything of extreme force that could crack this material. I do not connect the incidents of noise from the unit leading to countertop damage on a surface that is made of stone.

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. In the case before me, I find the landlord has not established, on a balance of probabilities that the damage resulted from any actions or neglect on the part of the tenant. Furthermore, the landlord also has not established the cost of the countertop. The claim for $2,000.00 on this issue is not established with receipts or estimates from service providers that would attend to replacement or repair work. The note from the landlord on their submission of evidence on April 8, 2020 states “we required around $2000 to fix the countertop”. The landlord does not present evidence for this amount.

In summary, I find this is not damage that was caused by the tenant, either deliberately or as a result of neglect and has therefore not violated the requirements under section 37(2) of the *Act*. For these reasons, I find the landlord cannot recover compensation for damage to the countertop. This claim is dismissed.

As the landlord was not successful in this application, I find they are not entitled to recover the filing fee paid for this application.

Conclusion

For the above reasons, I dismiss the landlord's application for compensation, without leave to reapply.

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: April 28, 2020

Residential Tenancy Branch