



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SIMPLE PURSUITS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S

Introduction

On April 13, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*.

W.L. attended the hearing as an agent for the Landlord and both Tenants attended the hearing as well. All parties provided a solemn affirmation.

W.L. advised that she served a Notice of Hearing and evidence package to each Tenant by email on April 17, 2020 and the Tenants confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been served the Notice of Hearing and evidence packages. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

The Tenants advised that they served their evidence to the Landlord by registered mail and W.L. confirmed that the Landlord received this on August 10, 2020. Based on this undisputed testimony, I have accepted the Tenants’ evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2016 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on March 31, 2020. Rent was established at \$2,230.00 per month and was due on the first day of each month. A security deposit of \$1,050.00 was also paid. A copy of the signed tenancy agreement was submitted into evidence.

All parties agreed that a move-in inspection report was conducted on June 30, 2016 and that a move-out inspection report was conducted on March 31, 2020. A copy of these reports was submitted as documentary evidence.

They also all agreed that the Tenants provided a forwarding address in writing on the move-out inspection report.

W.L. advised that the Landlord was seeking compensation in the amount of **\$1,134.00** because the Tenants damaged the kitchen cabinets. She acknowledged that when the move-out inspection was conducted with Tenant K.O., a scratch on the face of one of the cabinets was marked off; however, they could not agree with whether this was damage or not, as evidenced by K.O. not signing this report. W.L. confirmed that she noted additional damage on the report afterwards, but she acknowledged that this was not an attempt to portray a scenario where this additional damage was also noted during the inspection with K.O. As there was no signed agreement on the condition of the rental unit, these other notes were simply additional recording of what she believed may be damage.

She referenced a quote from a repair company, dated April 8, 2020, which she contends indicates that the areas in question were determined by this company to be

damage beyond ordinary wear and tear. She then cited a second quote from a different repair company to support the cost to repair this damage. She noted that the pictures submitted as documentary evidence depict the cabinet drawers and other areas of the kitchen as being “beat up”.

K.O. advised that they lived in the rental unit for 45 months and that as a stay at home mother, she would use the kitchen daily. As these cabinets were painted, they were particularly vulnerable to being damaged. She stated that only one scratch on the face of the cabinet was noted on the move-out inspection report, and she did not sign this report as she was unable to make a decision on whether W.L.’s \$75.00 estimate to fix this scratch was appropriate. She stated that she would have to consult with Tenant T.O. first to have a discussion over this issue.

She submitted that W.L. went back into the rental unit after the move-out inspection report and then noted other deficiencies on the report. She questioned whether the repair company could assess or determine what would constitute ordinary wear and tear, and she noted that the cost of repair was essentially the same amount as the Tenants’ security deposit. She referenced pictures submitted as documentary evidence which she contends depicts the rental unit in a reasonable condition at the end of the tenancy. She advised that the areas that the Landlord considers damage are simply wear and tear from ordinary use.

T.O. stated that the pictures that the Landlord submitted are hyper-pixelated and it is not clear if the areas that the Landlord considered as damaged were done by them or the previous tenants.

W.L. referenced pictures submitted of other rental units of comparable age and use, and she stated that the damage in the disputed rental unit is not present in the other rental units. She advised that the pictures of the rental unit were taken during the time of the move-out inspection report.

K.O. again reiterated that there was only one picture that they submitted of what might be considered damage, and they were never given an opportunity to repair this.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As all parties agreed that a move-in and move-out inspection report was conducted with the Tenants, I find that the Landlord did not extinguish their right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants’ forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the Tenants’ forwarding address in writing was provided to the Landlord on March 31, 2020 and that the tenancy ended that same day. As the Landlord made this Application within the 15-day frame to claim against the deposit, and as the Landlord’s right to claim against the deposit was not extinguished, I find that the doubling provisions do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claims for compensation in the amount of \$1,134.00 to cover the costs in bringing the rental unit back to a re-rentable state, while the parties disagree with the condition of the rental unit at the end of the tenancy, I find it important to emphasize that the *Regulations* do allow for the consideration of a preponderance of evidence that could potentially support a particular position.

When reviewing the evidence before me with respect to the state of cabinets, I acknowledge that the Tenants' pictures only depict the one scratch on the cabinet face; however, as the majority of the Landlord's claim pertains to the inside edges of the cabinets, and as all the drawers are closed in the Tenants' pictures, I do not give their evidence much weight.

Furthermore, while a move-out inspection was attended by both W.L. and K.O., there was clearly no agreement on the condition of the rental unit. As the cabinets in the Tenants' pictures are closed and as the *Regulations* allow for the consideration of a preponderance of evidence, I find that the areas that the Landlord is claiming compensation for were more likely than not as depicted in the Landlord's pictures. As such, I am satisfied that the crux of this Application will address the areas of the cabinets that the Landlord considers to be damage that is beyond ordinary wear and tear.

In considering these areas of the cabinets, I acknowledge the Tenants' position that what is depicted in the pictures is hyper-pixelated; however, I find that there are many of these pictures that demonstrate deficiencies that are easily visible to the naked eye, and I do not find it reasonable that this was not noticeable during the tenancy. While the Tenants' claim to have used the rental unit in a normal, everyday fashion, it is not clear to me how the edges of the inside of the cabinets would be so evenly worn along the edges if used ordinarily. It appears as if an object has been repeatedly dragged over these areas. Furthermore, there is a gouge on the face of one cabinet that I would not consider to have been caused through ordinary use of the kitchen.

I do acknowledge that Policy Guideline # 1 states that the “tenant is not responsible for reasonable wear and tear to the rental unit” and that “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”. However, this does not appear to me to be natural deterioration due to aging or other natural forces. This appears to be more along the lines of carelessness or negligence.

Having said that, I also acknowledge that there is a useful life of building elements and that these elements will wear down over time. In addition, while the Landlord considers this damage which requires that new cabinet fronts to be installed, I find that the damage is mostly aesthetic and does not impact the ability of these items to be used normally. Furthermore, the Landlord cannot be expected that the rental unit will always be in brand new condition without some signs of wear.

When reviewing the totality of the evidence before me, I am satisfied by the Landlord’s pictures that there were some deficiencies in the kitchen that I would consider to be beyond ordinary wear and tear. However, I am not satisfied that the damage was so extensive that it required the remedy that the Landlord applied. Based on the evidence before me, I find it reasonable to conclude that there would have been other methods for repairing this aesthetic damage that did not involve complete replacement. As such, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$350.00** as a cost commensurate with the devaluation this aesthetic damage has caused.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

| | |
|-----------------------------|-----------------|
| Repairs | \$350.00 |
| Security deposit | -\$1,050.00 |
| TOTAL MONETARY AWARD | \$700.00 |

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$700.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should

the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: August 26, 2020

Residential Tenancy Branch