



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the named tenant attended the hearing and each gave affirmed testimony, and the tenant was accompanied by another person identified as a co-tenant. The co-tenant did not testify, however the parties agree that the application should be amended to name both tenants, and the frontal page of this Decision reflects that amendment.

The parties were given the opportunity to question each other and give submissions.

During the course of the hearing the parties confirmed that neither party has provided any evidence to the other party. Any evidence that a person wishes me to consider must be provided to the other party, and where it has not been provided, it cannot be considered. Since no one has exchanged any evidence, I decline to consider any of it. Only the testimony of the parties is considered in this Decision.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on May 15, 2019 and reverted to a month-to-month tenancy after May 31, 2020, which ultimately ended on June 30, 2020. Rent in the amount of \$3,795.00 was payable on the 1st day of each month, and there are no rental arrears. The landlord collected a pro-rated amount of rent for the first partial month of the tenancy. On April 12, 2019 the landlord collected a security deposit from the tenants in the amount of \$1,897.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a duplex which is only about 4 years old, and the other half of the duplex is owned by another person. The landlord does not reside on the rental property.

The landlord further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy and the parties participated in a move-out condition inspection report at the end of the tenancy. The tenant pointed out a stain on the countertop during the move-out condition inspection, and the landlord seeks to keep the entire security deposit to assist with costs to replace the kitchen island countertop, made of quartz material. The tenants left a stain in the middle which is about 4 inches. The landlord reached out to the manufacturer who recommended a cleaning solution, which the landlord tried but was unsuccessful in removing the stain. The only other option recommended was to replace the entire countertop and the quote was \$4,050.00, plus taxes. The benefit of quartz is that it's strong, porous and ultra-durable. The landlord has had white quartz countertops for 10 years and has never had stains left on them like this. The countertop has not yet been replaced.

The landlord received a forwarding address in writing from the tenants on July 8, 2020 and the rental unit was re-rented for July 15, 2020.

The tenant testified that the rental unit was kept very clean during the tenancy, but the tenant used Lysol wipes. A towel holder with black felt underneath must have created a stain, and apparently those wipes are ones that may react.

The stain is minimal and was not caused by negligence, but is normal wear and tear. Signs of wear will happen; the white countertop wouldn't stay pristine. At the beginning of the tenancy the parties also noticed a chip on another countertop which is also quartz that was never replaced during the tenancy. The landlord has not replaced the countertop so has not suffered a financial loss, and the rental unit has been re-rented.

Analysis

The issue isn't about whether or not the landlord has yet to replace the countertop, but whether or not the tenants should pay for it.

Where a party makes a monetary claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The tenants do not dispute that the stain exists and that it didn't exist at the beginning of the tenancy. However, there is no evidence to satisfy me of the amount of the damage. The landlord has failed to establish element 3 in the test for damages, and therefore, the landlord's application must be dismissed. The landlord may not keep the security deposit, and must return it to the tenants within 15 days of today's date.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety, and I order the landlord to return the security deposit to the tenants within 15 days of today's date.

This order is final and binding and may be enforced.

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: September 08, 2020

Residential Tenancy Branch