



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for damage, to retain the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that sometime in September of 2020 the Dispute Resolution Package and the evidence the Landlords submitted with the Application were sent to the Tenants, via registered mail. The Agent for the Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On September 27, 2020 the Tenants submitted evidence to the Residential Tenancy Branch. The Agent for the Tenants stated that this evidence was mailed to the Landlords in late September of 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on December 28, 2019;
- the tenancy ended on August 31, 2020;
- the Tenants paid a security deposit of \$800.00;
- the Landlords have not yet returned the security deposit;
- a condition inspection report was not completed at the beginning of the tenancy;
- the Landlord did not schedule a time to complete a condition inspection report at the start of the tenancy;
- a condition inspection report was completed at the end of the tenancy, on August 31, 2020, at approximately 7:00 p.m.;
- the Tenant with the initials "SU" provided a forwarding address, in writing, on August 31, 2020;
- the only Tenant present at the inspection on August 31, 2020 was the Tenant with the initials "SU"; and
- the final condition inspection report was not signed by either party.

The Landlord stated that she did not sign the final condition inspection report because the Tenant with the initials "SU" refused to sign it and the Landlord was "flustered".

The Tenant with the initials "SU" stated that she did not sign the final condition inspection report because she did not agree with all of the information on the report and because the other Tenants were not present and she did not wish to agree to any deductions from the security deposit without their consent.

The Landlords are seeking compensation, in the amount of \$411.97, for cleaning the rental unit. The Landlords submitted photographs, which the Landlord stated were taken at approximately 7:00 p.m. on August 31, 2020. She stated that the photographs show that the rental unit required cleaning at the end of the tenancy and that the Tenants did not clean the stovetop after she took the submitted photographs.

The Agent for the Tenants stated that the photographs submitted by the Landlord do not accurately reflect the condition of the rental unit at 7:00 p.m. on August 31, 2020. He stated that the Landlord's photographs must have been taken between 3:00 p.m. and 7:00 p.m. on August 31, 2020, as the stovetop was cleaned after those photographs were taken and prior to the time the final condition inspection report was completed at 7:00 p.m. He stated that after the stove was cleaned it "looked a little better". He stated that apart from the stove, the Landlords' photographs fairly represent the cleanliness of the unit at the end of the tenancy.

The Landlords submitted an email, dated September 01, 2020, which the Landlord stated was sent by the individual who cleaned the unit. This email declares that the cleaners spent 11.5 hours and requested payment of \$411.97.

The Agent for the Tenants submits that the cleaning costs submitted by the Landlords are inconsistent. He noted that in the email the Landlords sent to the Tenants on September 08, 2020, the Landlords declared the cleaning cost was \$450.00 and in the email that was sent to the Tenants on September 07, 2020, the Landlord declared that the cleaning took 6 hours.

The Landlord stated that she sent \$450.00 to the cleaners, which included a tip. She stated that the email she sent on September 07, 2020 was not worded properly and she should have declared that two cleaners spent 6 hours each cleaning the unit.

The Landlords are seeking compensation, in the amount of \$2,205.00, for replacing the countertop in the kitchen and bathroom. The Landlords submitted photographs of the damaged countertops, which the Agent for the Tenants agrees reflect the condition on the countertops at the end of the tenancy. The Landlord stated that the countertops were new in 2017.

The Agent for the Tenants stated that the countertops were damaged through normal use during the tenancy and there was no "major incident" that caused the damage.

The Landlords submitted an invoice, dated September 09, 2020, that indicates they were charged \$2,017.00 to replace the two countertops.

The Agent for the Tenants submits that the costs for repairing the countertops provided by the Landlords are inconsistent. He noted that in the email the Landlords sent to the Tenants on September 08, 2020, the Landlords declared the cost of replacing the countertops would only be \$1,575.00.

The Landlord stated that the estimate she provided in the email on September 08, 2020 was based on an estimate provided to her by her contractor, which was less than the actual cost.

The Agent for the Tenants submits that the Landlord should not be entitled to recover the fee for filing this Application for Dispute Resolution, as the Landlords did not make a reasonable effort to settle this dispute prior to filing this Application for Dispute Resolution.

The Agent for the Tenants submits that the Landlord should only be entitled to keep the security deposit for the cleaning and damage. He argues that the Tenants are students and cannot afford the costs being claimed by the Landlords.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* requires tenants to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of the tenancy.

Residential Tenancy Branch Policy Guideline #1 reads, in part:

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. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

I favour the testimony of the Agent for the Tenants, who declared that the stovetop was cleaned after the photograph submitted by the Landlords was taken, over the testimony of the Landlord, who stated that the photograph of the stovetop submitted in evidence fairly represents the condition of the stove at the end of the tenancy.

I favoured the testimony of the Agent for the Tenant in regard to the stovetop because the condition inspection report that was completed at the end of the tenancy does not mention the need to clean the stove. I find it reasonable to conclude that the Landlord would have recorded the need to clean the stove if it had needed cleaning at the end of the tenancy.

On the basis of other photographs submitted in evidence by the Landlords, which the Agent for the Tenant acknowledges reflect the cleanliness of the unit at the end of the tenancy, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when

they failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I find the other photographs clearly show that cleaning was required.

I therefore find that the Landlords are entitled to compensation for the cost of cleaning the rental unit, which was \$411.97. On the basis of the email dated September 01, 2020, I am satisfied the Landlords were charged this amount. I find that the Landlord provided reasonable explanations for the discrepancies in the emails dated September 07, 2020 and September 08, 2020, and I have no reason to conclude that the cleaning costs were not \$411.97.

On the basis of the undisputed evidence, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to repair the damage to the countertops that occurred during the tenancy. On the basis of the photographs of the damage, I find that the damage cannot be considered reasonable wear and tear.

As the Tenants did not repair/replace the damage countertops, I find that the Landlords are entitled to compensation for replacing them.

On the basis of the invoice submitted in evidence, I am satisfied the Landlords were charged \$2,205.00 for replacing the countertops. I find that the Landlord provided reasonable explanations for the lower estimate she provided to the Tenants and I have no reason to conclude that the replacement cost was not \$2,205.00.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of countertops is 25 years. As the Landlord stated the counters were installed in 2017, I find that they were approximately 3.5 years old at the end of the tenancy. I therefore find that the countertops had depreciated by $(3.5/25)$ 14% at the end of the tenancy and that the Landlord's are entitled to 86% of the cost of replacing them, which is \$1,896.30.

In adjudicating this matter, I have placed no weight on the Agent for the Tenants' submission that the Tenants are students and cannot afford the costs being claimed by the Landlords. I do not have authority to reduce the amount of a legitimate claim on the basis that the other party cannot afford to pay an amount owed.

Section 23(1) of the *Act* stipulates that a landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 23(3) of the *Act* stipulates that the landlord must offer the tenant at least 2 opportunities, as prescribed by section 7 of the *Residential Tenancy Regulation*. Section 7 of the *Residential Tenancy Regulation* stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and that if the tenant is not available at the date(s)/time(s) offered the landlord must propose a second opportunity in the approved form.

On the basis of the undisputed evidence, I find that a condition inspection report was not completed at the start of this tenancy and that the Landlords did not schedule a time to complete that reports, as is required by section 23(3) of the *Act*.

Section 24(2)(a) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 23(3) of the *Act*. As the Landlords did not comply with section 23(3) of the *Act*, I find that their right to claim against the deposit is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 24(2)(a) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damages and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the deposits; the tenancy ended on August 31, 2020; and the Landlord received a forwarding address, in writing, on August 31, 2020.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord

did not comply with section 38(1) of the Act, I find that the Landlord must pay double the pet damage deposit and security deposit to the Tenant.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

In considering the claim for the filing fee I reject the Agent for the Tenants submission that the Landlords did not make reasonable efforts to settle this dispute prior to filing this Application for Dispute Resolution. The evidence shows that the Landlord attempted to reach a settlement when the condition inspection report was completed on August 31, 2020. I find this was a reasonable effort and that the Tenants had an equal opportunity to reach out and make a settlement offer to the Landlords.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,408.27, which includes \$411.97 for cleaning, \$1,896.30 for replacing the countertops, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. The Tenants are entitled to the return of double their security deposit, which is \$1,600.00.

After offsetting the above two amounts, I find that the Tenants owe the Landlords \$808.27. Pursuant to section 72(2) of the *Act*, I permit the Landlords to retain the Tenants' security deposit of \$800.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance \$8.27. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia 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: January 05, 2021

Residential Tenancy Branch