Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

The landlord seeks compensation from her former tenants, pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to recover the cost of the filing fee, pursuant to section 72 of the Act.

Both parties attended the hearing on May 4, 2021. No issues of service were raised by the parties, and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Issue

Is the landlord entitled to any or all of the compensation claimed?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began on December 14, 2019 and ended on December 15, 2020. Monthly rent was $1,750.00 and the tenants paid a $887.50 security deposit and a $887.50 pet damage deposit. These deposits are currently held in trust by the landlord pending the resolution of this application.

A copy of a written tenancy agreement was in evidence. The tenancy agreement indicated (on page two, marked by an "X" in the relevant boxes) that electricity and natural gas were included in the rent. Immediately below that section of the tenancy agreement is a field titled "Additional Information:" in which the tenancy agreement indicates "WATER, GAS, ELECTRIC 50% SHARE OF BILLS".

The landlord seeks the following compensation:

$12.00 for City of Kelowna landfill costs
$682.08 for a replacement countertop (IKEA)
$211.50 for Fortis Gas
$377.68 for Fortis Electricity
$372.00 for labour costs

A copy of a Monetary Order Worksheet was submitted into evidence, which itemized these claims. Receipts, invoices, and utility bills were in evidence. It should be noted that the landlord sought compensation for costs related to an electrical and fuse box issues; however, as no receipts or invoices were submitted into evidence, I am unable to consider that aspect of the landlord's application. This was explained to the landlord.

In evidence was a copy of a Condition Inspection Report. The landlord testified that this was completed at the start of the tenancy, but the tenants were not present at this inspection. The landlord completed the report at the end of the tenancy, but despite giving the tenants a few opportunities to be present for that inspection, they did not.

The landlord claims the landfill cost because she had to carry a lot of the tenants' "junk" to the landfill that they had left behind. The labour costs are for the twelve hours that the landlord and another individual spent in cleaning up the property. This amount works out to $15.50 an hour per person. The twelve hours expended appears to be an estimate, as no written log of the hours appears to be in evidence.

The landlord seeks the countertop replacement cost because the tenants damaged it. As it is an IKEA countertop, it cannot be sanded down but must be replaced. The landlord testified that it was only about two years old when it had to be replaced.

The utility amounts are calculated at 50% and on a per diem basis. These amounts were not paid by the tenants, as required by the tenancy agreement. The landlord gave oral evidence regarding this aspect of her claim.

The tenants testified that "most of it's true," in referring to the landlord's testimony. The tenant acknowledged that, "yes, there was quite a lot of waste" in the property, but that they did their best to clean it up and get rid of various items. "We did our best to clean it up," the male tenant remarked. There was a doghouse that the tenants were supposed to remove, but they testified that the landlord's vehicle blocked access and they were unable to remove the doghouse.

Regarding the countertop, the tenant testified that “we’re not sure what’s happening there,” but believe that the landlord simply wants to renovate “off of our dime.”

As for the end of tenancy inspection, the tenants testified that the male tenant and the landlord’s partner had an altercation, and that they chose not to participate in the final condition inspection for safety reasons.

In rebuttal, the landlord testified that she “was not impeding the tenant’s move. I moved my car around multiple times.” However, the landlord noted that the tenants did not really ask her that they needed help, and the landlord commented that “a little conversation goes a long way.”

In their final submissions the tenants reiterated that they “did our best to clean up” the property, but, the female tenant was pregnant at the time the tenancy was coming to an end and thus her mobility was rather limited. (Sadly, the tenant suffered a miscarriage two days after the tenancy ended.)

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Claim for Unpaid Utilities

The landlord seeks $211.50 for Fortis Gas and $377.68 for Fortis Electricity. The tenancy agreement required the tenants to pay for 50% of the utilities. The landlord submitted copies of the utility bills, along with her calculations as to the specific amounts that the tenants should have paid.

The tenants did not dispute, or otherwise make any mention of, this aspect of the landlord’s claim.

Taking into consideration all of the undisputed oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for $589.18 for unpaid utilities.

It should be noted that the water bill initially claimed was not on the landlord's Monetary Order Worksheet and thus this amount cannot be claimed.

Claim for Countertop

The landlord seeks $682.08 to cover the cost of replacing the damaged countertop.

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The Condition Inspection Report describes the condition of the countertop at the start of the tenancy as "WOOD VENEER PERFECT" and "G" (meaning "Good"). The condition of the countertop at the end of the tenancy is noted as "WARPED, STAINED, BLEACHED" and "P" (meaning "Poor"). There was submitted into evidence by the landlord a couple of photographs of the damaged countertop; however, the countertop in the photo appears to have already been removed from the kitchen, so I do not place any significant weight on that specific evidence. The tenants' testimony regarding the countertop was simply that they did not know what happened and that the landlord is trying to have them pay for her renovation. I am not persuaded by this argument.

Taking into consideration all of the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for the countertop, though the amount must be reduced due to depreciation, as explained below.

To summarize, the information contained in the Condition Inspection Report persuades me to find that the tenants, likely through negligence, damaged the countertop. Moreover, there is no evidence before me to find that the damage was caused by reasonable wear and tear. Finally, given that the countertop was two years old at the time of replacement, and taking into account that kitchen counters are presumed to have a 25-year life expectancy (see *Residential Tenancy Policy Guideline 40,* page 6), I must apply an 8% deprecation to the award for a revised amount of $627.51.

Claim for Cleanup Labour and Landfill Costs

The landlord seeks $372.00 for labour costs. She testified that it took her twelve hours to clean up the property. While there is no log or record of the time spent, the tenants both acknowledged that “yes, there was quite a lot of waste.” It is not lost on me that the tenants appeared to “do their best” to clean up the property. However, the tenants’ admissions support the landlord’s claim that a lot of work *did* go into cleaning and tidying up the property.

There is in evidence a text message between the male tenant and an individual by the name of “Josh.” The text message, which appears to have been sent by the tenant on the morning of December 15, reads: “[. . .] Our landlord blocked us in on moving day, what a gem.” The tenants both testified to the landlord and her partner blocking the tenants’ egress. The landlord denied this. The events are not entirely clear, but what is clear is that there was an altercation and the relations between the parties was heated.

Taking into consideration all of the oral testimony and documentary evidence presented before me, and applying the law to the facts, I nevertheless find on a balance of probabilities that the landlord has, *prima facie*, met the onus of proving a claim for compensation for having to clean up the property. However, in the absence of any detailed log, and in the absence of any testimony from the third party (presumably “Ian”) who assisted in the cleanup, I am unable to find that the landlord is entitled to $372.00.

However, the landlord has proven that the tenants breached section 37(2) of the Act. For this reason, I award the landlord nominal damages. “Nominal damages” may be awarded where no significant loss has been proven, but where it has been proven that there has been an infraction of a legal right. In this dispute, I award the landlord nominal damages in the amount of $100.00.

Finally, I am inclined to grant the landlord’s claim for the $12.00 landfill charge. This was proven as a required cost to clean up the property, a receipt is in evidence, and the tenants did not dispute this minor claim.

Claim for Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in her application, I grant her $100.00 in compensation to cover the cost of the filing fee.

Summary of Award

I award the landlord a total of $1,428.69 in compensation.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain $1,428.69 of the tenants' security and pet damage deposits in full satisfaction of the above-noted award.

The balance of the security and pet damage deposits (which total $1,775.00), in the amount of $346.31, must be returned to the tenants within fifteen days of the landlord's receipt of this decision.

Conclusion

I hereby grant the landlord's application, subject to the retention, and return of the amounts set out above.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 5, 2021

Residential Tenancy Branch