



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with the landlords' application, filed on August 29, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$2,625.00 for damage to the rental unit, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two landlords, female landlord ("landlord") and "male landlord," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 73 minutes.

This hearing began at 1:30 p.m. with me and the two landlords present. The tenant called in at 1:32 p.m., stating that she was on the phone with her lawyer. I informed the tenant that I did not discuss any evidence with the landlords in her absence. The hearing ended at 2:43 p.m.

The two landlords and the tenant confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord identified herself as the primary speaker for both landlords at this hearing. Both landlords stated that they co-own the rental unit together. The landlord confirmed the rental unit address.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“*Rules*”). The two landlords and the tenant all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The tenant confirmed receipt of the landlords’ application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords’ application.

The landlord confirmed that both landlords received the tenant’s first evidence package on March 4, 2022, and the tenant’s second evidence package on March 8, 2022. She said that the tenant’s second evidence package was late, but the landlords did not suffer any prejudice, they reviewed the evidence, and they did not object to me considering it at this hearing or in my decision. In accordance with sections 88 and 90 of the *Act*, I find that both landlords were duly served with the tenant’s two evidence packages.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords’ claims and my findings are set out below.

The landlord and the tenant agreed to the following facts. This tenancy began on March 6, 2020 and ended on January 31, 2021. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$2,450.00 was payable on the first day of each month. A move-in condition inspection report was completed with both parties present. A move-out condition inspection report was completed by the landlords only, without the tenant present. The landlords did not provide an approved RTB form for a final opportunity to perform a condition inspection, to the tenant. A security deposit of \$1,225.00 and a pet damage deposit of \$1,225.00 were paid by the tenant and the landlord was authorized to retain both deposits in a settlement agreement reached at a previous RTB hearing with a different Arbitrator on July 23, 2021. The file number for that hearing appears on the front page of this decision.

The landlord testified regarding the following facts. The landlords seek \$2,625.00 from the tenant to replace the kitchen and bathroom countertops at the rental unit. The landlords did not provide a receipt for this cost, only an invoice with a balance due. The tenant caused damages at the rental unit. The countertops were not fixed properly before the tenant moved out. The tenant agreed in writing to pay for damages. The tenant engaged in "misuse and carelessness" at the rental unit. The landlords submitted pictures and videos of the condition of the rental unit. The tenant responded in writing that she would pay a monthly installment for the cost of the repair. The landlords never got compensation for damages from the tenant. The landlords had to pay out of pocket and could provide a receipt in the future, if they request it from the company. The tenant failed to show up at the move-out inspection and it was her legal responsibility to abide by the terms of her tenancy agreement. The landlords provided emails between both parties where the landlords request money for rent, damages, and cleaning. The tenant responded by apologizing and saying that she would pay for it. The landlords provided a quote to the tenant for the replacement of the countertops but did not include a copy for this hearing as evidence. The landlords are "not saying it's the tenant's fault but we have reasonable grounds to believe it's the tenant's fault because the evidence points to the tenant."

The male landlord testified regarding the following facts. The tenant did not attend the move-out condition inspection. She left her keys at the concierge. The tenant said that she had to go to the airport, so she was waiting for her cab to leave, when the male landlord came to do the move-out condition inspection. The rental unit was not clean, which the tenant admitted, so he could not see the damages to the countertops at the rental unit, when he was talking to the tenant on the day that she left. There were star-shape scrapes, knife marks, and colour issues on the countertops. The landlords are not seeking to obtain the quote amount of \$3,200.00 to \$3,500.00, as noted in the

landlords' emails to the tenant. The landlords are only seeking \$2,625.00 from the tenant. The countertops are at least 15 years old, but the landlord does not know how old the building, since the countertops are original to the building. This is a one-bedroom and one-kitchen condo, so there are only two countertops to replace in the rental unit. The countertops were replaced on March 8, 2021, as per the email in front of the male landlord, during this hearing. The landlords did not provide a copy of this email, as evidence for this hearing. The landlords paid \$2,625.00 by cash on March 27, 2021 as per the email in front of the male landlord, during this hearing. The landlords did not provide a copy of the receipt for the payment in cash. The landlords were busy with cleaning, the property manager was taking photos to re-rent the unit, and the landlords could not control the schedule of the contractor to replace the countertops. The invoice for the countertops was provided by the company a couple of weeks after the work was done, as it is dated for March 24, 2021. The contractor only informed the landlords verbally, that there was a delay before they could come to the rental unit to replace the countertops.

The tenant testified regarding the following facts. She disputes the landlords' entire application. The landlords are targeting her because she is "nice" and has a "wealthy mother," so they know she can pay. The landlords are upset that they could not re-rent the unit for the same rent as the tenant paid of \$2,450.00 per month, since the rent for the new tenants is \$1,950.00, which is \$500.00 less. The landlords said there were "minor scratches" on the countertops, they did not say it was \$2,625.00 worth of damages. The tenant does not know if the landlords actually replaced the countertops because they did not provide a receipt. The tenant knows accounting, so why would the landlords not provide a receipt for the work that was done, if it was actually completed. It does not add up. This is a scam by the landlords to prey on the tenant. The tenant paid for one month of rent to the landlords, as per her agreement at the previous RTB hearing. She did not cause any damages or knife marks to the bathroom or kitchen countertops at the rental unit. She did not agree to pay the landlords to replace the countertops, in the emails between both parties. The tenant was referring to her girlfriend who went to fix the rental unit by cleaning it. The tenant admits that she did not properly clean the rental unit and agreed to pay for that, but the landlords came up with new damages to the countertops about 10 days to 2 weeks later. The tenant did not admit any fault for the damages to the countertops. Her friend took photographs of the rental unit when it was sunny and provided videos, which show that there were no damages to the countertops at the rental unit. The landlords told the tenant that they were brand new countertops when she moved in, but they have now admitted that the countertops are 15 years old. The tenant agrees that she did not properly clean the rental unit and she is bad at cleaning because she has always had

housekeepers clean her place in the past. The tenant apologized for her bad job at cleaning in the emails to the landlords and agreed there may have been some discoloration to the countertops, but she did not cause any damages to them.

Analysis

Credibility

I found the tenant to be a more credible witness, as compared to the two landlords. The tenant provided her testimony in a calm, candid, straightforward, and consistent manner. She did not change her testimony, when asked questions by the landlords or me. The tenant admitted when facts were unfavourable to her, including that she did not properly clean the rental unit, she owed rent to the landlords, and there may have been discolouration to the countertops.

Conversely, I found the two landlords to be less credible witnesses, as compared to the tenant. The landlord provided her testimony in an upset, agitated, inconsistent, and argumentative manner. Her testimony changed frequently throughout this hearing. She argued with me when I asked her questions about the landlords' documents. When the landlord asked questions to the tenant, she argued with the tenant when she did not like the answers that the tenant provided. The male landlord's testimony was inconsistent and changed during this hearing.

Legislation and Rules

The landlords, as the applicants, are required to present their application, including any evidence and claims.

The following RTB *Rules* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the two landlords did not sufficiently present their application and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

During this hearing, the two landlords failed to properly explain and provide sufficient details about their claims and evidence. This hearing lasted 73 minutes and I provided them with multiple opportunities to present their submissions and respond to the tenant's submissions. I repeatedly asked them if they had any other information to present during this hearing.

I asked the landlords numerous questions about their evidence, since they did not properly explain or reference it, during this hearing. I provided the landlords with extra time during this hearing, to look up information in their documents, since they requested same on multiple occasions. It was only at this time, that the landlords went through some of their documents in detail, after I specifically asked questions about them.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

I dismiss the landlords' application of \$2,625.00 without leave to reapply. I find that the landlords failed all four parts of the above test.

It is undisputed that the landlords completed a move-out condition inspection without the tenant present. It is undisputed that the landlords did not provide the RTB approved form for a final opportunity to schedule a move-out condition inspection, to the tenant. This form is required by section 17(2)(b) of the *Regulation*. Therefore, I find that the landlords failed to show that the tenant refused or failed to attend a move-out condition inspection.

I accept the tenant's affirmed testimony that she did not cause damages to the bathroom or kitchen countertops at the rental unit. I accept the tenant's affirmed testimony that she did not agree to pay the landlords, to replace the kitchen or bathroom countertops at the rental unit. I find that the landlords' emails refer to multiple issues including loss of rent, flooring damage, and cleaning, aside from the countertops. The tenant agreed that she did not properly clean the rental unit and agreed to pay for a loss of rent to the landlords.

I find that the landlords failed to provide sufficient evidence to demonstrate the age of the kitchen and bathroom countertops at the rental unit. The male landlord said he thought the countertops were 15 years old but was unsure. He claimed that they were original to the building but did not know the age of the building. Therefore, I was unable to determine the useful life of the kitchen and bathroom countertops, and whether they would require replacement in any event, as per Residential Tenancy Policy Guideline 40.

I find that the landlords failed to provide sufficient evidence that the countertops in both the kitchen and bathroom had to be replaced, rather than repaired. During this hearing, the landlords failed to reference documentary evidence from qualified professionals, to demonstrate the above fact.

I find that the landlords failed to provide sufficient evidence that the tenant caused damages beyond reasonable wear and tear, requiring replacement and reimbursement, as per Residential Tenancy Policy Guideline 1.

I find that the landlords failed to provide sufficient evidence as to why the replacement of the countertops was delayed. It is undisputed that the tenant vacated the rental unit on January 31, 2021. The landlords claimed that the above work was done on March 8, 2021, the invoice was issued on March 24, 2021, and the invoice was paid on March 27, 2021. During this hearing, the landlords did not reference documentary evidence to show that the contractor was delayed in completing the above work. The landlords

stated that they were busy with cleaning and trying to re-rent the unit. They did not indicate if or when new tenants moved into the rental unit, or whether it was before or after the replacement of the countertops. They did not indicate whether other people were in the rental unit, prior to the replacement of the countertops, potentially contributing to any damages to the countertops.

The landlords did not submit a receipt or proof of payment for the \$2,625.00 to replace the bathroom and kitchen countertops. There is no receipt to indicate if or when any payment was made by the landlords, or the method of any payment. The landlords stated that they could obtain a receipt after this hearing. The landlords failed to provide bank statements to show if or when they withdrew cash of \$2,625.00 to pay for the work done. I find that the male landlord's submission that the above work was done on March 8, 2021, and paid by cash on March 27, 2021, to be insufficient, without documentation to substantiate same. The tenant questioned if the landlords actually completed and paid for the above work, because the landlords failed to provide a receipt for same.

I find that the landlords had ample time from filing this application on August 29, 2021, to this hearing date of March 14, 2022, a period of approximately 6.5 months, to submit the above documents to support this application and failed to do so.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlords' entire application is dismissed 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 *Residential Tenancy Act*.

Dated: March 15, 2022

Residential Tenancy Branch