



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 an application by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary order for damages pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to the service of the respective applications and evidence on file. The tenant T.M. had some difficulties calling into the hearing and when she was able to it was very difficult to make out what she was saying as she kept cutting in and out of the hearing. The tenant A.K. was provided an opportunity to request an adjournment but he stated he was ok to proceed on his own. In either event, T.M. was able to get back into the conference and she confirmed she did not have anything additional to add after A.K. provided his testimony.

Issues

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain all or a portion of the security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy for this one-bedroom apartment began on October 1, 2020 and ended on September 30, 2021. The tenant A.K. moved out a couple months earlier on July 31, 2021, but there was not any evidence before me that he was removed from the lease or that a new tenancy was entered into with the tenant T.M. The tenants paid a security deposit of \$875.00 at the start of the tenancy. The landlord continues to retain \$711.19 of this deposit and the balance of \$163.81 has been returned to the tenants. The rental unit was built in 2017 and this was only the second tenancy since that time.

A move-in condition inspection report was completed with the tenants on September 27, 2020. A move-out condition inspection report was completed without the tenants on September 30, 2021. The landlord testified that the tenant T.M. initially agreed to a move out inspection at 1:00 p.m. on this date but the day before advised she was not able to attend. The landlord testified that the tenant had a subsequent opportunity to do a move-out inspection as he was holding some small items the tenant had left behind which the tenant was supposed to come pick up; however, this never happened. The tenant testified that she was not able to make the initial scheduled inspection as she was 8 months pregnant and moving at the time. The tenant submits that she was not offered a second opportunity for an inspection as required.

The landlord is claiming \$420.00 for the cost to repair a chip in the quartz countertop. The landlord submitted before and after pictures which illustrate the damage. The landlord submitted a receipt for this expense. The landlord testified that although it was a small chip it took 2-3 hours to for the contractor to match and repair the chip.

The landlord is claiming \$174.40 for the cost of a return ferry trip which he took to repair a chip in the laminate flooring and \$16.79 for the cost of glue for the repair work. The landlord submitted before and after pictures of the flooring illustrating a key size chip in one of the laminate boards. The landlord also submitted a quote from a flooring contractor which came in higher than the landlord's claim. The landlord testified that it was cheaper for him to take the ferry to the Island and do the repair work himself which saved the tenant's some money.

The tenant A.K. testified that the damage to the countertop was only a 1-2 cm chip which is normal wear and tear and the way the countertop is built over top the sink makes it susceptible to such damage. The tenant testified that he tried to repair it himself. The tenant submits that the chip in the flooring was also just a small chip and

normal wear and tear. The tenant submits that he was not there for the walk thru so cannot confirm if the pictures are even from their unit.

In reply, the landlord submits that it would take sizeable impact to damage the otherwise sturdy quartz countertop, so this is beyond normal wear and tear. The landlord submits that the damage to the laminate was also not normal wear and tear and that if left unattended the chip could cause additional damage.

Analysis

Before addressing the merits of the landlord's claim for damages I will address whether the landlord's right to claim against the security deposit had been extinguished.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

Pursuant to section 35 of the Act, the landlord and tenant must together inspect the condition of the rental unit at the end of the tenancy and the landlord must offer the tenant at least 2 opportunities, as prescribed in the Regulation, for the inspection. The landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. The landlord may make the inspection and complete and sign the report without the tenant if the landlord has provided 2 opportunities, as prescribed, and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit.

Pursuant to section 36 of the Act, unless a tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer two opportunities for an inspection as per section 35 or having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Although the landlord did make a claim against the security deposit within 15 days of the end of the tenancy, I find the landlord's right to claim against the deposit for damages was extinguished as the landlord failed to provide the tenants with two opportunities for a move-out inspection. The landlord proceeded to do the move-out inspection without the tenant after being advised by the tenant the day before that she would not be able to attend. There was no evidence that the landlord scheduled a second opportunity. Simply stating the tenant could have inspected when she came to pick up belongings does not meet this requirement and shifts the onus to the tenant rather than the landlord. The tenants' security deposit was not refunded within 15 days as required by section 38 of the Act; therefore, the doubling provisions of section 38 apply.

The tenants are awarded an amount of **\$1,586.19**, which is double the original security deposit less the amount already returned to the tenants [$(\$875.00 \times 2) - 163.81$].

I will now address the landlords claim for damages and any amount awarded to the landlord will be offset against the above award made to the tenants.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires 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.

I find that the damage caused to both the countertop and the laminate flooring was beyond normal wear and tear. This is supported by the picture evidence submitted by the landlord. The chips in both the countertop and flooring do not appear to be of an insignificant size and are big enough to diminish the value of their otherwise good condition. I find this damage was caused by the tenants as proven by the before and after pictures as well as the fact this damage was not reflected in the move-in inspection report. While I understand the tenant's argument that the pictures of the flooring could be from anywhere as they were not present for the move-out inspection I find this argument was not supported by any evidence.

I find the landlord has submitted sufficient evidence to support the amounts claimed for the above damages. The landlord submitted an invoice to reflect the cost of repairing

the countertop. I accept that even a small chip could be costly to repair in a quartz countertop. I also accept the landlord's claim for the ferry trip and cost of glue used to repair the flooring. While I would normally consider the cost of transportation a cost of doing business for the landlord, in this case the landlord did the work himself for a lesser amount as compared to the quote from the flooring contractor. I think it is fair for the landlord to be reimbursed for these costs.

The landlord is entitled to an award for damages as claimed in the amount of **\$611.19**.

As the landlord's right to claim against the deposit for damages was extinguished and the landlord proceeded to still retain the deposit and claim against it, I make no award for the filing fee.

Offsetting the monetary award of **\$611.19** in favor of the landlord against the **\$1,586.19** award in favour of the tenants, the tenants are entitled to a monetary order of **\$975.00**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of **\$975.00**. 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: June 09, 2022

Residential Tenancy Branch