



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL – S, FFL

Introduction

This hearing dealt with a landlord's application for compensation for damage to the rental unit and authorization to retain the tenant's security deposit.

The landlord was represented by a property manager. There was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the hearing materials upon the tenant.

The property manager stated the proceeding package was sent to the tenant via registered mail on July 22, 2022 and was successfully delivered to the tenant's forwarding address. The registered mail receipt, including tracking number, was submitted as proof of service. I was satisfied the tenant was duly notified about this hearing.

The landlord sent evidence to the tenant at the forwarding address via registered mail on February 9, 2023 but that package was returned to sender. The landlord also had a tracking number that he was prepared to provide orally. Section 90 deems a person to be in receipt of documents five days after mailing, even if the recipient refuses to accept or pick up their mail. Under section 90 of the Act, I found the tenant to be served with the evidence and I admitted the evidence for consideration in making this decision.

The property manager stated that he spoke with the tenant just before the hearing and the tenant was in agreement the landlord may retain the security deposit for the damage caused. Since the tenant did not appear to make such a statement in front of me and I did not have such an agreement in writing, I proceeded to hear this claim.

Issue(s) to be Decided

1. Is the landlord entitled to compensation equivalent to the security deposit?
2. Is the landlord authorized to retain the security deposit?
3. Award of the filing fee.

Background and Evidence

The parties entered into the initial tenancy agreement that commenced on January 1, 2020. The parties entered into a subsequent tenancy agreement that commenced on January 1, 2021. The tenancy ended on June 30, 2022. The tenant was required to pay rent of \$1550.00 and paid a security deposit of \$775.00.

The property manager performed a move-in and move-out inspection report with the tenant.

At the end of the tenancy the countertops were found to be stained multiple times, as described in the condition inspection report, and as seen in the landlord's photographs.

The countertop stains were determined to be not repairable and a replacement countertop would be several thousand dollars so the landlord is seeking to retain the security deposit as compensation for diminished value.

The property manager stated the landlord would be satisfied to retain the security deposit for any and all claims, including the filing fee, and will not pursue the tenant for anything beyond the security deposit.

Analysis

Based on the unopposed evidence before me, I provide the following findings and reasons.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted

on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

The condition inspection report and the photographs provided to me show stains on the countertop. I accept that the staining is not likely repairable as the countertops appear to be solid surface and the staining appears to be from hot pots or pans scolding the countertops and this is beyond normal wear and tear. Accordingly, I find the countertops have suffered diminished value due to the staining and the tenant is liable to compensate the landlord for the landlord's losses. I find the landlord's request to retain the security deposit of \$775.00 for the damage and the filing fee to be within reason and I grant the request.

By way of this decision, the landlord is authorized to retain the tenant's security deposit.

Conclusion

The landlord is authorized to retain the tenant's security deposit.

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 30, 2023

Residential Tenancy Branch