Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Landlord filed an Application for dispute resolution on June 26, 2023, seeking compensation for damage in the rental unit, and recovery of the Application filing fee.

The Tenant filed an Application on July 13, 2023 for the return of their security deposit, and recovery of the Application filing fee. With the Landlord's Application already in place, the Tenant's Application was crossed to that of the Landlord.

The matter proceeded to a hearing as per s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on December 29, 2023. Both the Landlord and the Tenant attended the hearing. Each party acknowledged the service of the other's Notice of Dispute Resolution Proceeding, and document evidence.

Issues to be Decided

- Is the Landlord entitled to compensation for damage in the rental unit?
- Is the Landlord entitled to recovery of the filing fee for their Application?
- Is the Tenant entitled to a return of the security deposit?
- Is the Tenant entitled to recovery of the filing fee for their Application?

Background and Evidence

The Tenant provided a copy of the tenancy agreement that they had in place with the Landlord. The tenancy started on July 10, 2021 for a fixed term ending on July 9, 2022. The tenancy continued on a month-to-month basis past that point. The monthly rent amount was $3,200. The agreement shows that the Tenant paid a security deposit of $1,600.

In the hearing, the Tenant presented that they did not have a meeting at the start of the tenancy together with the Landlord to inspect the condition of the rental unit. There is no document in the evidence that attests to the condition of the rental unit at the start of the tenancy.

In the hearing, the Landlord confirmed this point from the Tenant about an inspection and the condition of the rental unit at the start of the tenancy. The Landlord presented that that the rental unit was 5 years old, with this tenancy in place for 2 of those years.

The tenancy ended on June 4, 2023. As the Tenant stated in the hearing, the new tenants moved in on that same date. The Tenant provided their forwarding address to the Landlord on June 18, as the Landlord acknowledged in the hearing. The Landlord acknowledged this on June 20 via instant messenger, and on June 21 with an email, as shown in the evidence.

The Landlord completed their Application for compensation on June 26, 2023. On their Application, they wrote the following, to claim the amount of $2,061.69:

> i am requesting compensation for damage that was caused by the tenant to the bathroom countertop and den table countertop washroom countertop has excess water sinking into the laminate material , caused the material to become thicker, in turn the door will not close and has suffered mold within and also has water stains. according to professional advice, it is unrepairable and needs to be fully replaced Den table countertop multiple scratches resulting from sharp objects and color stains.

For evidence, the Landlord provided the following:

- a photo showing the state of the den table countertop as of the end of the tenancy, showing markings all over
- a distorted/warped bathroom countertop, apparently owing to the Tenant's installation of cabinet handles too close to the countertop, leading to water damage because of absorption – the countertop 'swelled' preventing doors from opening – this is set out in a detailed explanation email dated June 29 from a contractor
- a quote for washroom countertop replacement, at $1,379.19, and an updated amount of $1,519.4, owing to fluctuating material prices (the former price was the basis for the Landlord's claim for compensation)
- a quote for the tabletop removal and replacement, at $682.50
- an email string starting in June, wherein the Landlord re-stated the Tenant's apparent early willingness to admit to damage, only to withdraw that when the

cost thereof became known – the Landlord proposed using a portion of the security deposit – the Tenant responded to say they take full responsibility for the tabletop, questioning the need for countertop replacement
- instant messaging strings that the Landlord submits show the Tenant admitted damage to the washroom counter and den tabletop

In the hearing, the Landlord stated that they did not have work completed based on the quotations. They pointed to one instant message they provided in the evidence, from June 4, wherein the Tenant stated "I'll definitely find someone to check the upstairs washroom and the den downstairs, I understand that's my responsibility."

The Tenant acknowledged scratches made in the den table, by their family member. They offered the Landlord $500 for this damage and the Landlord did not accept.

The Tenant disagreed with the damage in the washroom. They claimed to have no idea about the washroom countertop situation, and any damage claimed by the Landlord just arose through normal use. This constitutes wear and tear through normal use.

Analysis

The following sections of the *Act* apply to this situation:

- s. 23: landlord/tenant together must inspect the condition of the rental unit upon move-in, and this must be documented in a report signed by the landlord/tenant

- s. 35: landlord/tenant together must inspect the condition of the rental unit at the end of a tenancy, this must be documented in a report signed by the landlord/tenant

- s. 36(2): the right of a landlord to claim against the security deposit is extinguished if the landlord does not provide an opportunity for inspection as per s. 35, or does not document an inspection

- s. 38(1): 15 days after the end of the tenancy, or a tenant providing a forwarding address (whichever is later), a landlord must either repay the deposit or make an application for dispute resolution claiming against the deposit

- s. 38(6): if a landlord does not comply with s. 38(1), they may not claim against any deposit, and must pay a tenant double the amount of each deposit

Specific to the fact scenario in this tenancy, I find as follows:

- the Landlord did not complete an initial or final condition inspection meeting with the Tenant as required

- there is no documented report of the condition of the rental unit either at the start or end of the tenancy

- because of these two points, the Landlord may not claim against the security deposit, even though they made their Application on June 26, within 15 days of the Tenant providing their forwarding address on June 18

- the Landlord made their Application within 15 days, therefore s. 38(6) does not apply in this scenario and there is no doubling of the security deposit amount

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

- that a damage or loss exists;
- that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- the value of the damage or loss; **and**
- steps taken, if any, to mitigate the damage or loss.

In the hearing, the Landlord provided that the estimate for damage to the tabletop was a "suggestion" and instructed me to ignore this quote for the tabletop replacement. The Tenant offered $500 for this damage; however, the Landlord did not accept that offer. Minus any definitive proof of the cost of replacement, I find the Tenant's offer was generous, and there was no reason for the Landlord not accepting that offer. In line with this, I grant the Landlord $500 for the tabletop replacement, given that the Tenant admitted this was damage and made a reasonable offer to rectify the matter.

Regarding the bathroom countertop damage, I find the Landlord did not provide evidence that shows conclusively this was damage that arose from the negligence or other improper usage of the bathroom from the Tenant. It is a bathroom countertop, yet appears to be susceptible to some form of damage from water. One repair assessment (June 29, 2023) I find refers to the material used for the underlay of the countertop, requiring special instructions on wiping up water when used, which is unreasonable, minus any evidence of this special consideration being made explicit to the Tenant during the tenancy.

I also find there is no evidence the Tenant altered the counter in any way. One communication to the Landlord alluded to this, but it is not borne out by evidence from the Landlord.

I cannot attribute damage to the countertop in the bathroom to any unreasonable use by the Tenant during the tenancy. I find it more likely this was a design flaw in a high water-use area in the rental unit.

As well, I find the Tenant credible on their statement that they were not aware of damage to the bathroom countertop area. This was not identified in a proper end-of-tenancy inspection.

For the reasons set out above, I dismiss the Landlord's claim for compensation for this bathroom countertop.

I grant the Landlord compensation in the amount of $500 for what the Tenant admitted was damage to the tabletop.

I find the Landlord was moderately successful in this Application; therefore, I grant $100 of the Application filing fee as recovery to them.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord here has established a claim of $600 in total. After setting off the security deposit, there is a balance of $1,000. I order the return of the security deposit balance to the Tenant.

I acknowledge the Tenant had to bring their own separate Application to have the matter resolved. I reduce the amount of the $600 compensation to the Landlord by the

amount of $100, to grant recovery of some amount of filing fee recovery to the Tenant. Effectively, the amount of compensation to the Landlord is $500.

I grant compensation to the Tenant of $1,200, minus the $100 Application filing fee. This is $1,100 returned to the Tenant. I grant a Monetary Order for this amount.

Conclusion

I grant the Landlord compensation in the amount of $500 in total. I dismiss the other pieces of the Landlord's Application, without leave to reapply.

I provide the Tenant with the Monetary Order for $1,100 in the above terms and the Tenant must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 2, 2024

Residential Tenancy Branch