

## DECISION

Dispute Codes MNR, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for monetary orders for damage to the rental unit and compensation under the Act and the tenancy agreement, and an order to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

This was the second hearing for these parties. In an earlier Decision the Tenant was granted double her security deposit back.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on or about February 1, 2009. The Tenant vacated the rental unit on or about July 27, 2009.

The Landlord claims that the Tenant scratched the granite countertop in the rental unit kitchen and did not repair it before she vacated. The Landlord also claims \$120.00, for cleaning the rental unit when the Tenant left.

The Landlord claims the Tenant put two 5 to 6 centimetre scratches in the granite countertop, and there is a circular stain from a hot pot placed on the counter. The Landlord alleges the Tenant admitted doing this and promised the Landlord she would pay for the repair.

The Landlord has provided an estimate which states the countertop has to be replaced and will cost \$2,000.00.

The Landlord also claims for a loss of rent for August, September and October of 2009, as she alleges she could not rent out the unit with the scratched countertop. She alleges she was waiting for the Tenant to come in and repair the countertop.

Later in the hearing, the Landlord testified that in September or October of 2009, she began to do renovations to the rental unit. Later in the hearing the Landlord testified the renovations began in October or November of 2009. Following this testimony the Landlord explained she had sold the rental unit in March of 2010, although she did not repair the countertop before the sale. The Landlord claims she had to reduce the selling price of the rental unit due to the scratched countertop, although she has no documentary evidence to submit to support this.

The Tenant testified that she had not scratched the countertop and she had told the Landlord that the scratches existed when she moved into the rental unit. A few days after the tenancy ended the Landlord cancelled the cheque she had provided to the Tenant for the return of her security deposit and told the Tenant she was keeping it due to the scratches in the counter and for the cleaning that had to be done. According to the testimony of the Tenant, the Landlord refused to let her back into the rental unit to see the scratches or the required cleaning.

The parties agree there were no written condition inspection reports done in accordance with the Act, either at the start or end of the tenancy.

### Analysis

Based on the above, the testimony and evidence, and a balance of probabilities, I find that the Landlord has insufficient evidence to prove her claim.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, here the Landlord, has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the Landlord has insufficient evidence to prove it was the Tenant who breached the Act or Tenancy Agreement and scratched the countertop, or that she did not clean the rental unit.

I find that much of the Landlord's evidence was inconsistent. For example, the Landlord claims for a loss of rent for the rental unit, yet there was no evidence she tried to re-rent the unit, and her own testimony was that she renovated it and sold it.

Therefore, having found the Landlord did not have sufficient evidence to prove her claims, I order that the Landlord's Application be 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: May 31, 2010.

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Dispute Resolution Officer