



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit and to recover the fee for filing this Application for Dispute Resolution.

At the outset of the hearing on April 29, 2013 it was clear that the Tenant was having difficulty communicating, which she attributed to a recent surgery. The Tenant indicated that she wished to adjourn the matter until she has had the opportunity to recover. The Landlord did not oppose the application for an adjournment. I determined that it was appropriate to adjourn the hearing to provide the Tenant with an opportunity to fully participate in the proceedings.

Both parties were represented at both hearings. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for repairing kitchen cabinets?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2010; that a condition inspection report was not completed at the start of the tenancy; that the

tenancy ended on August 31, 2012; and that a condition inspection report was not completed at the end of the tenancy.

The Landlord is seeking compensation for repairing the kitchen cabinets. The Landlord stated that when this tenancy began the cabinets did not have handles on the doors and drawers; that the Tenant drilled holes in the doors/drawers and installed handles; that he did not give the Tenant permission to install handles on the cabinets; and that she removed the handles at the end of the tenancy.

The Tenant stated that when she moved into the rental unit all of the cabinet doors and drawers were equipped with white, plastic handles, with the exception of 6 doors, which did not have handles; that the Landlord gave her permission to replace the existing handles with her own hardware and to install handles on the 6 doors that did not have handles; that she did replace the existing plastic handles; that she drilled holes and installed handles on 6 cabinet doors; and that she took the handles with her at the end of the tenancy.

The Landlord submitted a photograph of a female and a cat in the kitchen of this rental unit, in which the cabinets below the sink clearly do not have handles or holes. The Landlord stated that this photograph was provided to him by the individual who occupied the rental unit prior to this Tenant and that this photograph accurately represents the condition of all the cabinets when this Tenant moved into the rental unit. The Tenant stated that the photograph does not accurately represent the condition of the cabinets when she moved into the rental unit, as these cabinet doors had plastic handles on them.

The Landlord submitted a photograph of the rental unit, which was taken by the Tenant at the start of the tenancy. The cabinet above the dishwasher can be seen in the photograph, on which handles have not been installed. The Tenant stated that these are 2 of the 6 doors she installed handles on.

The Landlord submitted photographs of the rental unit, which were taken by the Tenant at the end of the tenancy. Holes for handles are visible on most of the doors/drawers. The Landlord and the Tenant agree that the photographs fairly represent the condition of the cabinets at the end of the tenancy.

The Landlord submitted an unsigned letter, dated April 01, 2013, which declares that the author was a tenant in this rental unit between May 01, 2008 and June 30, 2010; that the kitchen cabinets were a "flush finish style"; and that there were no holes in the cabinets.

The Tenant submitted a letter, dated August 20, 2010, which the Tenant contends was signed by the Landlord. This letter provides the Tenant with written consent to install hardware on the remaining kitchen cabinets that did not already have them.

The Landlord stated that he had not seen the letter dated August 20, 2010 until it was provided to him as evidence for these proceedings. He stated that he did not sign the letter. The Landlord submitted four cheques which bear his signature to demonstrate that the signature on the letter is significantly different from his signature.

The Tenant submitted a letter, dated March 29, 2013, in which the author declares that she was present at the rental unit when the Tenant asked the Landlord to sign the aforementioned letter; that she was present when the Tenant asked the Landlord for permission to install different hardware on the cabinets; that there were white plastic handles on the cabinets prior to the Tenant installing her hardware; that the Tenant removed the hardware she had installed when she vacated the rental unit; and that the Tenant left the plastic handles on the counter, in a clear bag.

The Landlord and the Tenant agree that the Landlord did not file his Application for Dispute Resolution until after a dispute resolution proceeding had been concluded, in which the Landlord had been ordered to return double the security deposit to the Tenant. The Tenant contends that the Landlord has fabricated his claim because she was successful in her claim for the return of the security deposit. The Landlord denies the allegation.

The Landlord and the Tenant agree that on September 24, 2013 the Landlord wrote the Tenant a cheque for \$385.00, which represented the return of the Tenant's security deposit, less \$65.00 for utilities. The Tenant contends that the refund corroborates her claim that she had permission to install handles on the doors, as the Landlord would not have refunded the security deposit if she damaged his property or altered his property without consent. The Landlord stated that he refunded the deposit even though there was damage to the cabinets as he did not realize how much it would cost to repair the cabinets.

Analysis

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the Tenant altered the cabinets in the rental unit without his consent.

In determining this matter I have placed limited weight on the photograph of the female and the cat in the rental unit. I note that the photograph is not dated; that there is no evidence to corroborate the Landlord's testimony that this is a photograph of the person who occupied the rental unit immediately prior to this tenancy; that the Tenant denies that the photograph fairly represents the condition of the cabinets at the start of her tenancy; and that it is entirely possible that handles were installed on the cabinets after this photograph was taken, but before the Tenant moved into the rental unit.

In determining this matter I have placed limited weight on the letter that was allegedly written by the former occupant of the rental unit, because it is unsigned.

In determining this matter I have placed limited weight on the three photographs taken by the Tenant, as they are consistent with the version of events provided by each party.

Although I have no expertise in handwriting analysis, I agree with the Landlord's position that the signature on the letter dated August 20, 2010, which allegedly belongs to the Landlord, is significantly different than the signature on the four cheques the Landlord submitted as evidence. I note, however, that the signature on the letter is not significantly different than the Landlord's initials on page 2 of the tenancy agreement, which was submitted in evidence by the Tenant. In the absence of evidence from a handwriting analysis, I cannot conclude that this letter is not genuine and I cannot, therefore, disregard this letter when determining this matter.

In determining this matter I was influenced, to some degree, by the letter submitted in evidence by the Tenant, dated March 29, 2013. I find that this signed letter corroborates the version of events provided by the Tenant.

In determining this matter I was influenced, to some degree, by the undisputed fact that the Landlord issued a refund of the Tenant's security deposit on September 24, 2013. I find this action is more consistent with the Tenant's position that the rental unit was undamaged than with the Landlord's position that he simply didn't understand how much it would cost to repair the cabinets.

I find that the testimony provided by both parties is plausible and is, to some degree, supported by corroborating evidence. I can find no reason, however, to favor the Landlord's evidence over the Tenant's evidence. I therefore find that the Landlord has failed to meet his burden of proving damages and I dismiss the claim for compensation.

I find that the Landlord's application has been without merit and I dismiss his claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

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: April 30, 2013

Residential Tenancy Branch