



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on December 17, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38;
- to recover the cost of the filing fee.

Both parties attended the hearing and provided testimony. The Landlord was granted permission to serve the Tenant by email (substituted service order). Subsequently, the Landlord sent her Notice of Hearing and evidence to the Tenant by email. The Tenant acknowledged getting this package by email and did not take issue with the service of those documents. The Tenant did not present any documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to recover the cost of the filing fee?

- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested?

Background and Evidence

Both parties agree that the tenancy began on December 1, 2019, and ended on August 31, 2020, and the rental unit consisted of a furnished dwelling. The Landlords hold a security deposit in the amount of \$1,425.00. Several different signed tenancy agreements were provided into evidence, and it appears the parties signed several sequential fixed term tenancy agreements between the start of the tenancy and the end. The most recent tenancy agreement was signed on April 29, 2020, and monthly rent was set at \$2,850.00 due on the first of the month.

The condition inspection report provided into evidence contains both a move-in inspection as well as a move-out inspection component. The parties agree that a move-in inspection was done at the start (December 1, 2019) and there does not appear to be any dispute over the condition of the suite or the contents indicated at the start of the tenancy.

The parties met on August 31, 2020, to do a move-out inspection. The Landlord completed the move-out portion of the condition inspection report at that time, and both parties signed the report. The parties also both agreed to a deduction of \$370.00 from the security deposit, for the issues identified on the report itself.

The Tenant believed the deduction was for all matters and issues left behind, and for a few broken items (dishes etc), plus for some cleaning costs. However, the Landlord stated this was just an estimate at the time the inspection was done, and cleaning costs were much more than this, plus the counter damage was not visible because of how dirty the unit was. As such, the Landlord did not see the counter damage at the time the move-out inspection was completed. The Landlord stated after they had the unit cleaned, they saw that there were stains and etches on the natural stone counter, which warrant its replacement.

The Landlord is seeking compensation for the following two items:

- 1) \$852.60 – Cleaning Fees

The Landlord pointed out that the Tenant agreed, as part of his tenancy agreement, that he would have the unit professionally cleaned at the end of the tenancy, and when he

left he didn't do any cleaning, let alone having it done professionally. The Landlord stated that there was a film of oil, debris, handprints, food, and debris over the counters, the floors, the walls, inside the oven, and the washroom. The Landlord pointed to the condition inspection report to show that almost every room had several items that were listed as "needs cleaning". The Landlord pointed out that the Tenant signed the report and agreed that the report "fairly represents the condition of the rental unit".

The Landlord provided a receipt for this item, and had cleaners come in for 14 hours total, on September 1, 2, and 3rd.

The Tenant does not dispute that he signed the move-out portion of the condition inspection report. The Tenant stated that he feels the unit was clean enough, and the Landlord's costs on this item are not reasonable. The Tenant stated that he agreed to a \$370.00 deduction at the time of the move-out inspection for a little bit of extra cleaning, and a couple small damaged items. The Tenant feels that since they came to an agreement on the amount, the Landlord should not be able to depart from that and obtain more for cleaning costs.

2) \$3,659.25 – Countertop replacement Quote

The Landlord stated that at the time of the move-out inspection, they could not see the countertop damage because of all the debris and stains on the countertops left behind by the Tenant. The Landlord stated that the countertop damage was not included in the move-out report because it was not known about until the countertops were cleaned a few days later. The Landlord stated that after the unit was cleaned up, there were many stains, and marks on the kitchen and bathroom granite countertops. The Landlord stated that these blemishes warrant the replacement of the countertop. The Landlord obtained a quote from a local company to install a different (less expensive) type of stone on the countertops.

The Landlord took several photos of the countertop blemishes around September 6, 2020, which is after the cleaning was finished. The landlord provided a written estimate from a countertop supply company for the above noted amount. The Landlord stated that the countertops were new in May of 2017.

The Tenant stated he hardly used the countertops, and he does not feel it is possible that he did so much damage to the counters. The Tenant stated that if the counters were so damaged, then why wasn't it pointed out at the move-out inspection. The Tenant stated that the Landlord may have damaged it after he left.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence (condition inspection report, photos and invoices) and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the *Act* states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. 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.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

I note both parties participated and signed off on both the move-in and move-out condition inspection report (the “report”). Both parties signed the move-out portion of the report, and agreed that the report fairly represented the condition of the rental unit. Under the “End of Tenancy” damage section on page 3 of 4, it was noted that there were cleaning issues, broken glasses, and dishes. Below this, the Tenant agreed to the Landlord retaining \$370.00 at the time of the move-out inspection. Since no damage to

the countertops was noted on the report, I accept that this \$370.00 was a deduction to pay for some additional cleaning, and some minor damage to things such as glasses, and dishes.

Having reviewed this matter, I note the parties are not required to come to an agreement at the time of the move-out inspection as to what deductions are authorized from the security deposit. It appears the Landlord put an estimate for the issues of \$370.00. Subsequently, the Tenant agreed to a deduction of \$370.00, and signed his name next to this amount. I find this represents an agreement between the Landlord and the Tenant for the damages that were noted on the report (cleaning, and broken dishes/glasses). Since no countertop damage was noted on the report, I find the agreement to retain \$370.00 from the security deposit did not include this issue.

The Landlord was under no obligation to present an amount for the Tenant to pay to compensate for the cleaning issues and the broken dishes, at the time of move-out. However, the Landlord chose to do this, and the Tenant accepted and acknowledged \$370.00 as a reasonable deduction. I do not find the Landlord is able to retract that agreement, even if it was just an estimate, and add to it. The Landlord should not have presented an amount for the Tenant to pay for cleaning and minor damage at the move-out inspection, if she wanted to retain the ability to claim for a higher amount later for these same items.

I find this portion of the move-out condition inspection report can reasonably be interpreted as an agreement between the parties to cover some extra costs related to items on the report (cleaning and dishes). Although the Landlord is seeking \$852.60 for cleaning, I find the Landlord is only entitled to a maximum of \$370.00 for cleaning and broken dishes, as this is what was discussed, and signed by the parties at move-out. With respect to item #1 of the Landlord's claim (cleaning costs), the Landlord is granted \$370.00.

With respect to item #2 above, I note the Landlord is seeking \$3,659.25 as this is the estimate they obtained to have the stone countertops replaced. I note the countertop damage was not indicated on the move-out portion of the report. Having considered this matter, I accept that the unit was not sufficiently cleaned at the time the Tenant moved out, and I accept that there was a lot of debris, and dirt on many surfaces in the home, as per the report. There is no preponderance of evidence to the contrary to satisfy my that the unit was not dirty, as laid out on the report. Given all of this, I find it is reasonable to expect that some of the counter spots, etches, and stains would not have

been as evident, had the unit been fully and properly cleaned when the Tenant moved out.

I accept that some of the marks on the countertop were not apparent until the cleaners had left. This appears to have happened a couple of days after the move-out inspection was done. Although the Tenant feels the Landlord could have damaged the counters, since it was not noted on the report when he signed it, I note the photos taken by the Landlord were from a couple days after the Tenant moved out, and before anyone else took possession of the unit. I find the photos taken after cleaning are a sufficiently reliable indicator of the condition of the countertops and was likely the same as when the Tenant moved out a couple days prior. I accept the cleanliness and debris made it difficult to see what the actual stains were.

According to the condition inspection report, the countertops were in “good” condition at the start of the tenancy. No damage was noted. According to the photos taken shortly after the Tenant moved out, there are multiple stains and spots on the counter. I note there does not appear to be any structural damage. It appears most of the damage is cosmetic and would have little bearing on the useful life expectancy of the counters. I note the photos are taken at an angle as to maximize visibility. Although there does appear to be some staining, and marking on the counters, that were likely due to the Tenant’s use/misuse, I find the Landlord has not sufficiently demonstrated that the damage was such that it warrants full replacement of the countertops. The Landlord did not explain whether they inquired about refinishing, or spot treatment of the affected areas.

Ultimately, I find it more likely than not that the Tenant caused some damage to the surface of the counters. I find the number of stains and marks goes beyond what would be considered normal wear and tear, and I find the Tenant is liable for some of the damage. However, I am not satisfied that the damage is sufficient to warrant the replacement of the counters for what appears to be aesthetic damage.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, the aesthetic nature of the damage makes it difficult to determine the overall significance of the damage and any subsequent loss. In this case, I find a nominal award is more appropriate. Rather than replacing the counters at a cost of \$3,659.25, I award a nominal award of \$630.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with the application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlords are entitled to the following monetary compensation, as outlined above:

Item	Amount
1. Cleaning Costs	\$370.00
2. Countertops - Nominal	\$630.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$1,100.00
LESS: Security Deposit	\$1,425.00
Total Amount	(\$325.00)

After authorized deductions, the Landlord still holds \$325.00 in security deposits, and I order this amount to be returned to the Tenant. The Tenant is granted a monetary order for this amount.

Conclusion

The Tenant is granted a monetary order in the amount of **\$325.00**, as specified above. This order must be served on the Landlord. If the Landlord fail to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: December 18, 2020