



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on March 18, 2022 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on April 4, 2022 for:

1. An Order for the return of the security deposit - Section 38;
2. An Order for the recovery of the filing fee - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other's evidence and that no recording devices were being used by them for the hearing.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled return of the security deposit?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed facts: the tenancy started on March 3, 2021 and ended on February 28, 2022. Rent of \$1,575.00 was payable on the first day of the month. At the outset of the tenancy the Landlord collected \$775.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenants. The Landlord offered a move-out inspection two days after the Tenants moved out of the unit. The Parties met on March 2, 2022 and mutually conducted a move-out inspection with a completed report however the Tenants did not agree with the report. The Landlord received the Tenants' forwarding office on March 2, 2022.

The Tenant states that they cleaned the unit to a reasonable standard except for behind the stove. The Tenant states that at the move-out inspection the Landlord was not happy with the cleaning done by the Parties agreed that the Tenants would return the next day to complete more cleaning and that they would then sign the move-out report. The Tenant states that just before the Tenant was to arrive to the unit the Landlord informed the Tenants that they could not return to the unit to clean the unit and that they could only sign the move-out report. The Tenants did not return to sign the move-out report.

The Landlord states that the Tenants left the unit unclean and claims \$379.89 as the cleaning costs. The Landlord did not provide a receipt or invoice for this claim and the Tenant confirms that no such invoice was provided in the Landlord's evidence package. The Tenant state that despite the agreement to return to do more cleaning they left the unit reasonably clean. The Tenant states that the stove could not be moved as it was not on wheels. The Landlord states that the stove is on wheels and is easily moved. The Landlord states that the photo of the stove shows the wheels.

The Landlord states that the Tenants left two burn marks on the downstairs countertop. The Landlord claim \$500.00 as half the replacement cost. The Landlord states that this amount is based on an oral estimate from a store employee. The Landlord states that

the countertop has not been replaced. The Landlord subsequently rented the unit two months later at a monthly rental rate of \$1,750.00.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. As the Landlord did not provide any supporting evidence of the cleaning costs being claimed I find that the Landlord has not sufficiently substantiated these costs. I also note that the Landlord's photos of everything other than the stove show reasonably cleanliness. Although it is undisputed that the Tenants failed to clean under the stove, given the photos, it would appear likely that the stove would have wheels. However, given the undisputed evidence that the Landlord refused to allow the Tenants to return for further cleaning, I find that the Landlord failed to mitigate the losses being claimed. I note that the Landlord gave no evidence as to why the Tenants could not return to do further cleaning. For these reasons I dismiss the Landlord's cleaning cost claim.

As the Landlord did not provide any evidence of having incurred any cost to repair the countertop and I note that the subsequent rental evidence does not show any rental income loss from the damage on the countertop I find on a balance of probabilities that the Landlord has not substantiated that the costs claimed have either been incurred or established. I therefore dismiss the countertop claim. As the Landlord has not been successful, I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord made its application within 15 days receipt of the Tenants' forwarding address, I find that the Landlord is not required to pay the Tenants double the security deposit. The Landlord however must return the security deposit plus zero interest of **\$775.00** to the Tenants forthwith.

As the Tenants have been successful with their claim for return of the security deposit, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$875.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$875.00**. If necessary, this order may be filed in the Small Claims Court and 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 Act.

Dated: November 22, 2022

Residential Tenancy Branch