



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRL-S, MNDL-S, FFL, MNSDS-DR, FFT**

Introduction

This hearing was scheduled to deal with monetary cross applications. The landlord applied for compensation for unpaid utilities, damage to the rental unit and cleaning; and, authorization to retain the tenant's security deposit. The tenant applied for return of double the security deposit.

Both parties appeared and/or were represented at the hearing. The landlord also had the agent who represented her during the move-out inspection at the hearing. The parties were affirmed.

The hearing was held over two dates and the Interim Decision issued on August 9, 2023 should be read in conjunction with this final decision.

At the commencement of the reconvened hearing, I confirmed the landlord received the tenant's evidence during the period of adjournment. I heard that it was unnecessary for the tenant to re-serve the evidence as the landlord received the materials that had been mailed to her shortly after the first hearing session.

I admitted and considered the evidence of both parties' in making this decision.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid utilities and compensation for damage and cleaning from the tenant?
2. Is the tenant entitled to doubling of the security deposit?
3. Award of filing fees.
4. Disposition of the security deposit.

Background and Evidence

The tenancy started in March 2019. The tenant paid a security deposit of \$775.00. The tenancy ended on December 31, 2022 pursuant to a tenant's notice to end tenancy.

The landlord prepared a move-in inspection report with the tenant. The landlord's agent prepared a move-out inspection report with the tenant. The landlord's agent altered the move-out inspection report after the tenant left although the agent phoned the tenant to discuss the changes with the tenant. The tenant stated he was agreeable to some changes but not all. The tenant also provided his forwarding address during that phone conversation. The tenant did not consent to any specific amount being deducted from the security deposit.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

Utilities

The landlord seeks pro-rated utilities to December 31, 2022 in the amount of \$156.81. The tenant agreed to compensate the landlord this amount.

Countertop replacement

The landlord seeks a further \$813.75 from the tenant for replacement of the countertop.

The parties were in agreement that during the tenancy, a sub-tenant had burned the Formica countertop with a hot pot, leaving a distinctive burn mark. A contractor recommended by the tenant provided the landlord with a quote to replace the countertop for \$483.00. The tenant paid \$483.00 to the landlord after the landlord confirmed with the tenant that she was going to use the contractor.

The landlord was of the position the contractor that had quoted her \$483.00 could not complete the job in a timely manner because he quoted the job based on a product that he could not get. Then the contractor stopped responding to the landlord when she started to "nail him down" on a timeline. The landlord went with a different contractor and she had the countertop replaced with a quartz countertop at the end of January 2023 at a cost of \$1296.75. Taking into account the tenant already paid her \$483.00, the landlord seeks the remaining cost from the tenant.

Although the landlord acknowledged that quartz is a more superior product than Formica, the landlord argued that the cheapest quote for new Formica was \$1400.00. The landlord was able to find a contractor that had a remnant piece of quartz that would fit the area needed and do it quickly. Since the cost of the quartz countertop was still less than the quote for Formica, the landlord is of the position she is entitled to the entire cost of the quartz countertop.

The tenant was of the position the parties reached an agreement with respect to settling the damage to the countertop and the tenant met his end of the agreement by paying the landlord the agreed upon amount. If circumstances changed and the landlord went with a different contractor and a different material that is not his responsibility.

The tenant submitted that in an email the landlord stated she would pay for the difference if the material was upgraded. The landlord argued that what she meant was that if the job cost more than the least expensive quote of \$1400.00 to install new laminate, she would pay what was in excess of \$1400.00. Since the cost to install the quartz countertop is below \$1400.00 the tenant should be held liable to pay the full amount of the cost to install the quartz.

Both parties pointed me to email exchanges with each other and the original contractor in support of their respective positions.

Stove refinishing

The landlord seeks \$340.00 to refinish the stove. The landlord submitted that at the start of the tenancy the stove looked nearly new but at the end of the tenancy there were nicks and dents that had also rusted, making it look old. The landlord had the stove sanded and repainted.

The tenant acknowledged there was some minor damage on the side of the stove but he considered it wear and tear. The stove was still functional and could have been repaired more inexpensively.

The landlord argued the damage is beyond normal wear and tear and that just painting over the chips would not sufficiently conceal the damage.

Cleaning

The landlord's agent testified that the tenant had performed some cleaning but it was not left in a "move-out clean" condition. The kitchen appliances required further cleaning, as did the cupboards, drawers, toilet and floor which was only half mopped. The agent spoke with the landlord who reminded the agent that the landlord had arranged for cleaners and to add that to the move-out inspection report after the inspection had been completed with the tenant.

The tenant was of the position he sufficiently cleaned the rental unit. The move-out inspection report did not note anything needed cleaning when he and the landlord's agent inspected the unit and no photographs were taken. The tenant was told a cleaning company was coming when he gave his notice to end tenancy but there was no mention that he would have to pay for it.

The tenant was of the position the landlord's agent gave false testimony in stating the rental unit was dirty in certain areas. The tenant stated the agent appeared to be pleased with the condition of the unit at the move-out inspection.

The landlord acknowledged that she provides incoming tenants with an immaculately clean unit and that she expects the same at the end of the tenancy and the tenant agreed to do that. The landlord acknowledged that the only other evidence she has to support her claim for cleaning is the cleaner's invoice as no photographs were taken.

Tenant's application for return of security deposit

The tenant submitted that he provided his forwarding address with his notice to end tenancy on November 30, 2022. The tenancy ended on December 31, 2022 and the landlord made her claim against the security deposit on January 14, 2023 although the proceeding package was not generated for several days after that.

The tenant confirmed that he was not seeking return of double the security deposit but just wanted the single amount returned to him when he filed.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the applications before me.

Tenant's application

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, I am satisfied the landlord made an application to claim against the tenant's security deposit within 15 days of the tenancy ending. As such, the landlord is not required to pay the tenant double the deposit. The single amount of the deposit shall be disposed of under the landlord's application.

I dismiss the tenant's application in its entirety.

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The landlord bears the burden to prove an entitlement to the amounts she seeks from the tenant for utilities, damage and cleaning. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Utilities

The tenant was agreeable to compensate the landlord the amount sought for pro-rated utilities to December 31, 2022 in the amount of \$156.81. Therefore, I award that amount to the landlord.

Countertop

It is undisputed that the tenant took responsibility for the damaged laminate countertop and the tenant e-transferred \$483.00 to the landlord for the damage on December 23, 2022.

It is also undisputed that the landlord ended up using a different contractor and installed a superior material on the countertops rather than having laminate installed by the original contractor who provided a quote. At issue is whether the tenant is liable to pay the difference between the amount originally quoted and the cost incurred for the landlord to install a superior material with a different contractor.

Upon reading several email exchanges submitted into evidence, I find the landlord had communicated to the tenant that she had confirmed with the original contractor that he would do the job and that the laminate would cost \$483.00 and any additional amount to instal a more expensive material would be the landlord's expense. The landlord requested \$483.00 from the tenant and the tenant paid this amount to "wrap up" the countertop issue. I make this finding upon reading a number of emails exchanged between the landlord and tenant on the dates of December 21, 2022 through December 23, 2022:

After getting a quote for laminate countertops from the contractor, the landlord wrote to the tenant [names omitted by me for privacy purposes]:

It turns out that it's hard to locate the exact material as the present counter & given the timing, it will not get done by the time I leave.

██████ had mentioned he could do a stone counter which should be easier to find. If that happens, I will pay the difference between the laminate one & the stone one. However this will likely happen when I'm back Jan. 23, 2023.

██████ original quote was for the 1 longer counter at \$425.25 plus (since there's no matching colour) another \$85 for the other smaller counter. This totals \$483.00 tax included.

I like ██████ & he seems competent however, as you have seen, his price is about 1/4 the price of the rest of the quotes. My concern is that if for whatever reason, he's unable to change the counter on a timely basis, then I'll have to resort to the other much more expensive quotes. I promised my new tenants that I would take care of it as soon as possible.

██████ are you ok with paying me the \$483 when I get an assurance from ██████ that he can do it for sure? If so, we can wrap up the counter issue before I leave.

██████, if ██████ isn't amiable to the above, are you ok with me holding on to your deposit until I get back & ██████ replaces the counter?

I wish this was all taken care of already but it's the most challenging time of the year to get services & business done. I'm still hoping it can be wrapped up by the new year.

Let me know your thoughts.

The tenant responded to the landlord later the same day, in part:

'Thanks for this final update. Once [name of contractor] can confirm that he can do the job for sure, I'm ok in paying \$483 for the job to be done so as to wrap the counter issue before you leave...'

The landlord responded the following day on December 22, 2022, in part:

"... I talked to [name of contractor] & he assures me he can do the job. Please let me know when you intend to transfer the funds?"

The landlord sent the tenant another email on December 23, 2022 stating, in part:

"Please transfer the money today. Remember to input what it's for in the memo line with the transfer. I will let [landlord's agent] know & he will mark it paid on the condition inspection report that you will both sign."

The tenant proceeded to send the landlord payment of \$483.00 on December 23, 2022 and the landlord's agent reflected "Already paid for fixing" on the move-out inspection report next to the countertop damage that was recorded and "Countertop paid" in the section that describes damage at the end of the tenancy or which the tenant is responsible.

It is clear to me that at the end of the tenancy the parties considered the countertop damage issue to be resolved by way of the tenant's payment of \$483.00.

After the tenancy ended, in January 2023, the landlord submits that the contractor stopped communicating with her when she tried to get confirmation of the dates the contractor would perform the work. The landlord submitted copies of a couple of communications sent to the contractor as evidence of this. However, the tenant reached out to the contractor in March 2023 and the contractor claimed that the landlord went with a more expensive material. It is not upon me to make a finding as to whether the landlord or the contractor breached their agreement for the countertop replacement as that is an issue between the landlord and the contractor and I do not have jurisdiction to resolve such disputes.

If the landlord is of the position the contractor failed to perform the contract, and that failure caused her to incur damages, the landlord's remedy is to pursue the contractor for damages for breach of her contract in the appropriate forum. However, it is not the tenant's responsibility to compensate the landlord for the contractor's failure to perform, if that's what happened. Therefore, I uphold the agreement the parties already reached with respect to the countertop damage and I deny the landlord's request for further compensation from the tenant.

Stove refinishing

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

The move-in inspection report shows the stove as being in good condition at the start of the tenancy. The move-out inspection report indicates there is rust on side door although the tenant and the landlord's agent agreed in the subsequent phone call that it was not on the door but on the side of the stove. The tenant did not deny that there were chips and rust on the stove at the end of the tenancy but was of the view it was more in keeping with wear and tear.

Upon review of the photographs of the stove, I note that there are three rusty areas on the side of stove where the side panel meets the top panel, one large and two small, plus one chip on the top of the stove that is not rusty.

From the photographs, the finish of the side panel is different than the top panel. The side panel has more of a dull "orange peel" finish whereas the top is very smooth and shiny. It appears that the side panel may not be designed to handle the amount of wear and tear that the top panel would given its rougher texture and its propensity to rust when I consider the chip on the top of the stove did not rust.

I also note that the height of the stove compared to the height of the countertop is unusually high, and I find the extra height would result in more than typical exposure of the side panel. I find it likely that the high side panel, compared to the countertop height, would expose the side panel to being hit by items moved on the countertop and water from wiping down countertop than a side panel would normally be exposed to. As such, I find the construction of this kitchen and its unusual height of the countertop and stove likely contributed to the chipping and rusting of the side panel.

The two smaller chips on the side panel are more in line with wear and tear and I find a reasonable remedy would be to apply touch up paint to those areas. The larger rusty chip on the side has obviously been left too long and would likely need some sanding and repainting.

When I turn to the invoice for the stove repair I note that it is dated June 26, 2023 which is six months after the tenancy ended and after new tenants had moved into the rental unit. The invoice does not provide details as to what was repaired specifically so that I can compare it to the damage that existed as of December 31, 2022. As such, it leaves a question as to whether the refinishing was limited to damage that existed on December 31, 2022.

Taking into consideration wear and tear of the two smaller chips, the excessive exposure of the side panel, and the six month time that elapsed before the stove was refinished, I deny the landlord's request to recover the entire cost to sand and refinish the stove from the tenant. However, I find the landlord entitled to some compensation for the larger and more obvious chip that are beyond wear and tear and would likely diminish the value of the stove. Therefore, I approximate the landlord's loss due to damage for which the tenant is responsible to \$100.00.

Cleaning

Section 37 of the Act requires that a tenant leave a rental unit “reasonably clean” at the end of the tenancy. Reasonably clean is a standard that is less than perfectly clean or impeccably clean and it may be less than a standard the landlord provides to an incoming tenant. Where a landlord seeks to bring the rental unit to a level of cleanliness that exceeds “reasonably clean” the tenant is not responsible for the cost to do so.

The move-out inspection report does not indicate that further cleaning is required. Also, in reading the email communications, it is clear the landlord booked the cleaning company well before the tenancy ended and the tenant had the opportunity to clean. The landlord also acknowledged in her testimony that she strives to provide incoming tenants with an impeccably clean rental unit. While that is commendable and likely appreciated by incoming tenants, that does not create a legal liability for the outgoing tenant.

In light of the above, I am not satisfied the tenant failed to leave the rental unit “reasonably clean” and the cleaning costs are to bring the rental unit up to the standard of “reasonably clean”. Therefore, I dismiss the landlord’s claim for cleaning costs against the tenant.

Filing fee

The tenant’s application was unnecessary and I make no award for recovery of the filing fee he paid.

The landlord was only marginally successful and I note the tenant was agreeable to pro-rated utilities and the rust on the stove “was to be discussed” on the move-out inspection report. Therefore, I consider the landlord to be only marginally successful in her application and I make no award for recovery of the filing fee for the landlord’s application.

Security deposit and Monetary Order

I authorize the landlord to deduct the following amounts from the tenant’s security deposit and I order the landlord to return the balance of the deposit, plus accrued interest, to the tenant without further delay:

Security deposit	\$775.00
Accrued interest to today's date	12.31
Less: pro-rated utilities	(156.81)
Less: partial award for stove damage	<u>(100.00)</u>
Net amount to be refunded to tenant	\$530.50

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenant with a Monetary Order for the amount of \$530.50 to ensure the landlord makes payment as ordered.

Conclusion

The landlord is authorized to deduct \$256.81 from the tenant's security deposit and the landlord is ordered to refund \$530.50 to the tenant without further delay. The tenant is provided a Monetary Order in the amount of \$530.50 to ensure payment is made.

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: October 24, 2023

Residential Tenancy Branch