

Claim No: 430595

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
ON APPEAL FROM AN ORDER OF THE  
DIRECTOR OF RESIDENTIAL TENANCIES**  
Cite as: Palem v. Kamal, 2014 NSSM 60

BETWEEN:

BALA PALEM and KARTIK PALEM

Tenants (Appellants)

- and -

KAMAL KAMAL

Landlord (Respondent)

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**REASONS FOR DECISION AND ORDER**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 25, 2014

Decision rendered on November 27, 2014

**APPEARANCES**

For the Tenants (Appellants)                      self-represented

For the Landlord (Respondent)                  Leah Sinnott, rental agent

## **REASONS FOR DECISION AND ORDER**

[1] The Tenants appeal from a decision dated September 9, 2014 of the Director of Residential Tenancies, who allowed the Landlord two items of compensation to be deducted from the damage deposit that was otherwise due to be returned to the Tenants at the end of his tenancy. The net order in favour of the Tenants was \$203.25.

[2] The items in question were \$130.00 for cleaning and \$100.00 for damage allegedly done to a counter top.

[3] The Tenants insist that the unit was left in a clean condition, and that the counter top was already damaged before the Tenants took occupation in September 2013.

[4] The Landlord was not present in court as he lives out west. He was represented at the hearing by his rental agent, Ms. Sinnott. A previous tenant was also called as a witness.

[5] The Landlord (through Ms. Sinnott) says that there was a new tenant lined up to rent the property on June 1, 2014, and that the Tenants were supposed to have vacated on May 31, so there would have been time to do a thorough cleaning. Instead, the Tenants did not leave until about 10:00 a.m. on the morning of June 1, while the new tenant was already in the process of moving in. Ms. Sinnott was not satisfied with the cleaning job that the Tenants had done, with the result that the new tenant was given a \$400.00 rental reduction from his first month's rent. The Residential Tenancy Officer allowed the Landlord \$130.00, approximately 1/3 of the reduction, as compensation.

[6] The Tenants showed a video (on a cell phone) that was taken literally minutes before they moved out. The ostensible purpose of shooting the video was to show that the property was being left in a good condition. The Landlord showed the court some photos which purported to show some areas that were left dirty.

[7] My impression of all of this evidence is that the Tenants did a reasonable job of cleaning before they left. It is understandable that landlords may wish to have a place more thoroughly cleaned than that, in order to start off on the right foot with a new tenant, or that some new tenants might be more fussy than others, but that does not mean that the outgoing tenant can be charged for that. In the absence of something specific in a lease, the obligation of a tenant is for the “ordinary” - not extraordinary - cleanliness of the premises, as per statutory condition 4:

4. Obligation of the Tenant - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises.

[8] The evidence of the Tenants was to the effect that the premises was no cleaner when they took it over than it was when they left. I accept that position. The Landlord has not established to my satisfaction that the Tenants should be responsible for additional cleaning. The only item of concern was the state of the stove top. I accept that the Tenants probably could have done a better job of cleaning it, but this is a relatively trivial item. All that was probably needed was a razor blade to scrape off some accumulated grease or burned on food, which would have taken someone barely a few minutes to accomplish.

[9] I was also left with the impression that the rental rebate to the new tenant had a lot more to do with the fact that the previous tenants were still in possession on the morning of June 1, than it did with the cleanliness, and this particular tenant had been in a rush to get moved in. The rebate may have been a smart goodwill gesture, but it has not been established to my satisfaction that the Tenants here bear any responsibility for overholding, as there was evidence that the Landlord agreed, albeit reluctantly, to the timetable for the Tenants moving out.

[10] The counter top issue concerns some apparent nicks or gouges. The evidence seems clear that these flaws were there at the outset of the lease, although they probably got worse over the course of the tenancy. Had the Landlord fixed the counter top before the Tenants took occupancy, that likely would have halted the deterioration. I accept that any worsening was simply ordinary wear and tear.

[11] In the end, I believe the Residential Tenancy Officer erred in awarding the Landlord the \$230.00 in deductions. There were other deductions which were not appealed, as the Tenants acknowledged their validity. In the result, the Tenants are entitled to have the sum of \$433.25 returned to them, and the order of the Director dated September 9, 2014 is varied accordingly.

**Eric K. Slone, Adjudicator**