



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38;
- e) An Order that the landlord obey the provisions in the Act; and
- f) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and confirmed receipt of each other's Application for Dispute Resolution. I find the Applications were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant said he considered he had given his forwarding address in writing when he sent his Application to the landlord. I find this was not served in accordance with section 38 of the Act.

Issue(s) to be Decided:

The tenant vacated the unit on January 31, 2015. Has the landlord proved on the balance of probabilities that the tenant caused damage to the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to a refund of twice the security and pet damage deposits and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on November 14, 2013, that rent was \$2850 a month and a security deposit of \$1425 and a pet damage deposit of \$1425 were paid.

The tenant said he considered the serving of his Application for Dispute Resolution to be the provision of his forwarding address to the landlord. He provided no other forwarding address or demand for the return of their deposits.

The landlord described the home and the tenant did not dispute the description. The house was built in 1972 or 1973 and substantially renovated down to the studs in 1999. This included complete bathroom renovations. The landlord lived in the house from 2009 until November 12, 2013 and then rented it to these tenants. It was an amicable relationship and the second bathroom had an issue described as water leaking from the shower door and draining onto the tile floor; the landlord said it was mentioned when he happened to drop by the property and he attended to it promptly by having a repair person attend and use silicone to repair. He said the repair person remarked on the muddy state of the tiles which indicated the problem had existed for some time without being reported.

In December 2014, the landlord said he received an email ending the tenancy as of January 31, 2015 and complaining of mould issues. He provided a photograph sent with the email which shows the master bathroom wall adjacent to the shower with a hole showing insulation and bubbling (which the landlord called 'bloom') on the wall. The landlord states that because of the neglect of the tenant to report this issue in a timely fashion, a great deal of repair had to be done. The tenant submits that he was a good tenant, took care of the property and informed the landlord a number of times about a mould issue in the master bathroom. He said the landlord told him to scrub the mould from the ceiling. The landlord claims these conversations never took place and points to the fact that he immediately addressed the situation in the second bathroom when it was drawn to his attention as evidence that he does handle situations if brought to his attention. He said there was no information to him about the mould until the email on December 29, 2014 ending the tenancy.

The landlord claims \$1364.02 for materials for the repair and \$1940 for labour costs for himself and a journeyman plumber. He supplied many photographs of the work that had to be done and a professional quote for the same work which would have cost \$8,400 for that firm to do it. In the material costs are charges of \$155.16 for grout sealer, tile backer, \$83.45 for tiles, \$241.05 for paint supplies and ceiling fan and \$70

for ducting supplies. \$320 (8 hours) of the costs of labour relates to grout tile, repair fan and painting of ceiling. \$260 of labour (6.5 hours) is also for sealing grout, reinstalling shower door and surround and painting the house.

In evidence is a DVD with photographs of the affected bathroom, invoices for supplies, the labour charges, the move-in and move-out condition inspection reports and the tenancy agreement.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on each applicant to prove on a balance of probabilities their claim. Section 32 of the *Act* requires a landlord to maintain the rental property in a state of repair that complies with health, safety and housing standards required by law and requires the tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. Residential Policy Guideline 1 further sets out the respective obligations for landlords and tenants in rented premises. It notes that landlords are responsible for annual inspection and cleaning of systems such as ducts and the tenant must wipe baseboards etc. to remove dust. If damage is noted, it is the obligation of either party to minimize the loss according to Policy Guidelines 3 and 5.

I find the weight of the evidence is that there was no noticeable damage in the master bathroom at the beginning of the tenancy as the condition inspection report notes no damage. I find the landlord's evidence credible that the damage ('bubbling or bloom') in the tenant's December 2014 email indicates that there had been an ongoing problem with moisture for an extended period and this caused extensive damage due to the tenant's neglect to report it. Although the tenant maintained he had reported mould to the landlord in that bathroom, he had no written reports as evidence and the landlord's

behaviour in addressing another bathroom issue in March 2014 indicates the landlord would have addressed the issue if advised earlier. I find it was an obligation of the tenant to mitigate damages to the unit by reporting moisture issues in a timely fashion and I find insufficient evidence that he did this. I find this neglect of the tenant caused significant damage and loss to the landlord's property.

The Residential Tenancy Policy Guideline 37 assigns a useful life of work done or items purchased in rented premises. I find ventilation systems are assigned a useful life of 20 years, waterproofing membranes a useful life of 15 years, sealers (grout) of 5 years and paint of 4 years. Gypsum board is assigned a useful life of 20 years and tile of 10 years. This renovation was approximately 15 years old at the end of the tenancy (January 2015-1999) so many of the items, although they may have been in good condition had limited useful life remaining. Therefore, I find the landlord not entitled to recover the costs of repainting as the paint was at the end of its useful life. Likewise, the tiles were at the end of their useful life. I find him not entitled to recover \$241.05 (materials) and \$320 (labour) which are shown on his invoice to relate mainly to paint and repair of fan and grout and \$83.45 for tiles and \$155.16 for grout repair (total \$799.21).

The landlord's evidence was that the problem was mainly caused by the tenant not maintaining the ventilation system (ductwork) or using it properly to wick away the moisture in the bathroom. The weight of the evidence shows that portions of the wall and drywall had to be removed to do the repair. Of the remaining portion of his claim, (\$3304.02- 799.21 of \$2504.81, I find him entitled to recover \$626.20 (5/20) for the diminished life of the drywall and other elements plus labour in the master bathroom caused by the tenant's neglect in reporting the problem in a timely fashion. I find the landlord acted quickly to mitigate once the problem was disclosed and repaired the problems in early February 2015.

On the tenant's application, the onus is on him to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. I find the tenant vacated on January 31, 2015 but never provided their forwarding address in writing to the landlord, other than when they made their Application for Dispute Resolution. I find section 38 of the Act requires the tenant to supply their forwarding address and serve it to the landlord. I find providing it on the Application is not the correct procedure. The address on the Application may not be the address to which the tenant wants the deposits to be sent. I find the tenant not entitled to the doubling provision in section 38 of the Act. The deposits will be used to offset the amount owing to the landlord and any balance provided in a monetary order to the tenant.

Conclusion:

I find the parties entitled to monetary awards as calculate below. I find both parties entitled to recover their filing fees as both claims had merit.

Calculation of Monetary Award:

Security and Pet Damage deposits (no interest 2013-2015)	2850.00
Filing fee to tenant	50.00
Less damage award to landlord	-626.20
Less filing fee to landlord	-50.00
Balance to Tenant	2223.80

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: May 07, 2015

Residential Tenancy Branch

