



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELIZABETH MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND MNDC MNSD FF

Introduction:

Only the landlord attended this hearing. Their application pursuant to the *Residential Tenancy Act* (the Act) is for orders as follows:

- a) A monetary order pursuant to Sections 7 and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

The landlord gave sworn testimony that they served the Application for Dispute Resolution by registered mail on August 29, 2015. It was verified online that the Postal Service attempted delivery and it was refused by one of the tenants. One other tenant failed to pick up their copy so it was returned to the landlord after Notices were left and it was unclaimed after 10 days. I find the tenants are deemed to be served with the Application/Notice of Hearing pursuant to section 90 of the Act.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

The tenants did not attend the hearing although served with the Application/Notice of Hearing. The landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The landlord stated that the tenancy commenced February 15, 2013, that monthly rent was \$750 and a security deposit of \$375 was paid February 15, 2013. The landlord said the tenants left a water tap running when they were not home. As a result, water came through two other suites and damaged them. They provided evidence of a maintenance person's report who responded to complaints of water coming through a ceiling and upon investigation found the hot water tap running in the tenants' suite when they were not home. This had gone down to fill the lights in the unit below and then gone further into the unit below that. Maintenance staff immediately tried to minimize the damage by cleaning up the water. They charged \$140 for four hours of cleaning up water.

The landlord got three quotes for the restoration of the units and engaged the contractor with the most competitive price. An invoice was provided for \$8,400 for this restoration work. The landlords served a copy of the damage cost to the tenants' door but the tenants left without

notice and without paying anything. The landlord said their insurance for floods has \$10,000 deductible so they have received no funds to cover the damage caused by the tenants. They request compensation of \$8400 + \$140. The landlord said they had suffered rental loss also and had to get rid of items left behind by the tenant but they had no documentary evidence or calculations of this cost yet.

The landlord described the cabinets that had to be replaced as being new in February 2013, the drywall was about 3 years old as they had a fire and replaced this, the paint was new in 2013 and the laminate floors were one year old in one unit and about 2 months old in the other.

In evidence are the registration receipts, the letter from the landlord, photographs, invoices and the tenancy agreement.

The tenant provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

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 the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused the water damage as it was documented at the time by the maintenance person who was responding to a complaint of dripping water. I find the evidence credible that the flood damage was beyond reasonable wear and tear and the invoiced cost to cure the damage. I find the landlord acted immediately to minimize the loss by having staff mop up as much as possible. I find the amount of damage and cost to repair is supported by statements, photographs and some invoices and the tenant has not disputed the claim.

I find the landlord entitled to recover his loss to date. The Residential Policy Guideline provides for a useful life of building elements in rented premises which is designed to account for reasonable wear and tear. Since cupboards are assigned a useful life of 25 years and these cupboards were mainly about two years old, I find the landlord entitled to recover 92% of the cost of their replacement. This is \$2392 of the \$2600 claimed for the originating unit. The unit underneath had drywall and floor damage. Drywall and hardwood flooring are each assigned a

useful life of 20 years in the Guidelines. The drywall was about 3 years old so the landlord is entitled to recover 85% of the cost of replacement and the flooring was one year old so I find the landlord entitled to recover 95% of that cost. As the contractor gave a lump sum for these two items, I find the landlord entitled to recover the average of 90% of the cost of replacement in this unit ((90% of \$2700) which is \$2430. I find the lowest unit also had mainly drywall and flooring damage but the floor in it was almost new. I find the landlord entitled to 85% of the drywall replacement and 100% of the flooring replacement in that unit for an average of 92.5% of the total cost of \$2700 or \$2497.50. I find the landlord entitled to recover GST on these amounts.

I find the landlord also entitled to recover \$140 for the cost of minimizing the damage by cleaning water up immediately. I give the landlord leave to reapply for rental losses and other damages within the legislated time limits.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit with interest to offset the amount owing. I find the landlord is also entitled to recover filing fees of \$100 paid for this application. I also give the landlord leave to reapply for rental losses and other damages within the legislated time limits.

Calculation of Monetary Award:

First Unit cost as assigned	2392.00
Second Unit cost as assigned	2430.00
Third Unit cost as assigned	2497.50
GST on above amounts	365.98
Cleanup cost	140.00
Filing fee	100.00
Less security deposit (no interest 2013-15)	-375.00
Total Monetary Order to Landlord	7550.48

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 10, 2015

Residential Tenancy Branch

