



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Only the landlord attended and gave sworn testimony that the Application for Dispute Resolution was served by registered mail. The envelope showing “unclaimed” with the tracking information was provided as proof. I find the tenant is deemed to be served with the Application and evidence on April 20, 2016, the fifth day after their registered mailing, in accordance with sections 89 and 90 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) 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.

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 tenant did not attend the hearing although deemed to be 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 in March 2014, this was a brand new unit, that monthly rent was \$1300 and a security deposit of \$650 was paid. The landlords said that the tenancy was terminated for unpaid rent and on March 29, 2016, they obtained an Order of Possession and a monetary order for \$1000. The tenant has not paid it. The landlord requests that if any security deposit remains after the award for damages, that the balance be applied to the \$1000 still outstanding.

The landlord claims as follows:

\$300 for paint repairs
\$200 for floor repairs

\$50 to replace halogen light bulbs.
\$100 filing fee

The landlord provided no invoices to support the amounts claimed. She explained that her agent had arranged with the contractor and the amounts claimed were his estimated amounts. I allowed her one week to send the invoices to the Residential Tenancy Branch before this Decision is finalized. On September 9, 2016, an email was received showing she paid the contractor \$367.50 for repairs to the unit but the flooring could not be repaired as a matching colour was not available and would require replacement at some point. I note in the email that the landlord told the property manager that I would not accept estimates. This is incorrect. I do accept estimates that are obviously from a contractor. The landlord had only provided a monetary order with her approximate estimates as evidence and was unsure of costs. I requested proof of payment or other proof from the contractor as to her costs.

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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

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 who was the first

tenant in the unit caused the damage to this unit. I find the amount of damage and cost to repair is supported by statements and a cheque paid to the contractor for \$367.50. Despite attempts to obtain it by the landlord, the contractor did not provide a break down of his charges. I find there was some damage to the floor that could not be repaired due to colour matching problems. I allow the landlord \$200 toward this eventual replacement as the estimated portion of the damage caused by this tenant. The landlord's entitlement to a monetary order for damages then is proved to be \$567.50 plus \$100 filing fee. There will be no balance remaining from the security deposit to apply to a previous order for repayment of unpaid rent.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

| | |
|---|--------------|
| Costs to repair unit | 367.50 |
| Allowance for floor damage | 200.00 |
| Filing fee | 100.00 |
| Less security deposit (no interest) | -650.00 |
| Total Monetary Order to Landlord | 17.50 |

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: September 09, 2016

Residential Tenancy Branch