



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

Both parties attended the hearing and confirmed receipt of each other's Application for Dispute Resolution. The tenant said she delivered her forwarding address on January 11, 2016 to the landlord's mailbox and her witness said they drove up together and she saw the tenant putting her forwarding address into the landlord's mailbox. I find the weight of the evidence is that the tenant legally served the landlord with her new address according to section 88(f) of the Act.

The landlord applies 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; and
- f) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant damaged 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 twice her security deposit refunded 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 May 4, 2014, that rent is \$700 a month and a security deposit of \$350 was paid on May 3, 2014. It is undisputed that the tenant vacated January 3, 2016 and the landlord did a condition inspection at that time and found the paint cracked off the ceiling of the bathroom. The landlord said it was just the paint and speculated it was caused by moisture because the bathroom fan was not used. No condition inspection report was done at move-in but the tenant said she did not notice if the

paint was cracked at that time. The landlord claims \$800 to repair and repaint the bathroom ceiling and provided the invoice as evidence.

The tenant's witness said some of the landlord's relatives lived on another floor and they had cracked paint in their bathroom too. She said the other rooms did not have cracked paint on their ceilings. She described how three of them drove up on January 11, 2016 and delivered the tenant's forwarding address to the mailbox of the landlord.

In evidence are photographs showing the cracked paint and finished repair, the invoice, statements of the parties, proof of the purchase of the home in May 2014 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.

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 caused some damage possibly due to the tenant not operating the bathroom ventilation to remove moisture from the bathroom. However, Residential Tenancy Policy Guideline #40 assigns a useful life for building elements which is designed to account for reasonable wear and tear. I find paint has a useful life of 4 years (48 months) and this bathroom paint was 19 months old at move-out if the paint was new at move-in as the landlord asserts. The paint had 29 months or 60% of its useful life remaining. Therefore I find the landlord entitled to recover \$483.33 of the cost of \$800.

On the tenant's application, the onus is on her 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 2, 2016 and provided her forwarding address in writing on January 11, 2016. Although the landlord denied receipt of the address, I find the weight of the evidence is the tenant served it legally on them according to section 88(f) of the Act. I found her testimony and her witness credible as they recounted how they drove together with another friend to the landlord's home and she deposited it in their mail box. Section 38 of the Act provides the landlord must either refund the tenant's security deposit or make an Application to claim against it within 15 days of the later of the tenant vacating and providing their forwarding address in writing. I find the landlord has not refunded the tenant's security deposit and they filed their application on May 30, 2015 which is well beyond the 15 day limitation set out in section 38 of the Act. I find the tenant entitled to twice her security deposit refunded.

Conclusion:

I find the landlord entitled to recover \$483.33 of the cost of paint repair for the reasons stated above. I find them entitled to recover filing fees also. This will be offset against the compensation to the tenant as calculated below.

I find the tenant entitled to a refund of twice her security deposit and to recover her filing fee.
Calculation of Monetary Award:

Original Security deposit (350) x 2	700.00
Filing fee to tenant	100.00
Compensation allowed to landlord for ceiling paint	-483.33
Filing fee to landlord	-100.00
Balance to Tenant in Monetary Order	216.67

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 15, 2016

Residential Tenancy Branch