



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:

Both parties attended the hearing and confirmed service of each other's Application. The landlord noted he had amended their Application to delete the second tenant's name for he had been unable to serve her. 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.

The tenant applies for a return of twice the security deposit pursuant to section 38 and 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 an original tenancy commenced September 4, 2013 and a new tenancy agreement was made November 1, 2014 when the tenant who attended today commenced living in the unit with the previous tenant whom the landlord has been unable to serve. The landlord was the landlord of both tenants. Rent was \$1600 a month and a security deposit of \$800 was

paid. The tenant vacated on August 31, 2015 and provided her forwarding address in writing on September 3, 2015. The landlord filed this Application on April 6, 2016.

The landlord claims as follows:

\$236.25 for cleaning. The tenant said she cleaned the unit but the landlord pointed out she moved out 3 days prior and it was the other tenant who signed the move-out report showing some dirty areas.

\$210.00 for cleaning and repairing smoke damaged blinds

\$150.00 for wall repairs and painting. The paint was two years old.

\$2665.67 for water damage dated July 18, 2014 (less \$750 forfeit original security deposit).

\$1,621.62 for water damage dated November 21, 2014

The tenant noted that the first invoice for flood damage predated her tenancy. She denied responsibility for the second one, saying there was no water in their unit. They called the landlord on July 9, 2016 because of a running toilet and he said he came in on July 10, 2016 to fix it. When the alleged flood occurred, the tenant said they were all away for the weekend so they did not cause any flood. It must have been defective plumbing or something which it is the landlord's responsibility to fix. She said the other damages claimed by the landlord are normal wear and tear and they should not be responsible.

The tenant said she gave no permission to withhold any of the security deposit. She was not able to be present at move-out inspection and it was done by her co-tenant.

In evidence are move-in and move-out condition inspection reports, the tenancy agreement, bills from a restoration company for flood damage and emails between the parties. 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 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 him to incur a cleaning bill for \$236.25 as invoiced, \$210 to clean and repair blinds and to incur painting costs. Residential Policy Guideline #40 assigns a useful life to elements in rented premises which are designed to account for reasonable wear and tear. Paint is assigned a useful life of 4 years. Since the paint in the unit was 2 years old and was damaged according to the move-out report, I find the landlord entitled to recover 50% of the cost or \$75 for repair and painting. I find the invoices and move-out report supported the landlord's evidence. Although the tenant contended she did not sign it, I find her co-tenant did sign it and acknowledged the damages. As a co-tenant, I find she is jointly and severally liable for any damage costs.

In respect to the claim for the two floods, I find this tenant is not responsible to compensate for the flood that occurred when she was not a tenant. I dismiss the claim of the landlord to recover \$2665.67 for the first flood and give him leave to reapply to claim against the tenant who admitted her responsibility (according to him). Regarding the second flood, I find this tenant was in residence. Although she denies anyone caused some water to overflow in their unit and pointed out that no water was found in their unit, I find the Restoration Company determined the flood to have been caused by a "toilet overflow" in the subject unit. I find the tenant did not provide any other professional evidence to support her assertion that the flood was not caused by a toilet overflow from their unit. I find the landlord entitled to compensation of \$1621.62 for repairs charged to him for the second flood. I find him also entitled to recover \$1103.53 as compensation for the additional amount he had to pay the insurer for repairs to the unit below.

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 August 31, 2015 and provided her forwarding address in writing on September 3, 2015. I find the landlord has not refunded the tenant's security deposit and they filed their application on September 6, 2016 which is well beyond the 15 day limitation set out in section 38 of the Act. However, I find the co-tenant signed the move-out report and wrote on the section agreeing to deductions "tba" (meaning 'to be arranged'. I interpret this (and the landlord did also) that the tenant was agreeing to the landlord withholding amounts to be arranged from the security deposit. Therefore, I find the co-tenant gave permission to retain some amounts from the

security deposit. Therefore, I find the doubling provisions of section 38 do not apply. I find the \$800 original security deposit remains in trust to offset amounts owing.

Although the landlord removed the co-tenant's name from the application because he was unable to serve her, I find this tenant knows her co-tenant's new address and is in contact with her. I find as co-tenants, they are jointly and severally liable to the landlord for the damages so it would be unfair to this tenant to have the monetary order against her only. A monetary order in favour of the landlord will be issued against both tenants. This tenant may wish to claim over against her co-tenant for the amount she is owed.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find she is not entitled to recover filing fees for her application. I find the landlord entitled to a monetary order as calculated below and to recover his filing fee. I find he is entitled to retain the security deposit to offset the amount owing.

Calculation of Monetary Award:

Housecleaning	236.25
Blinds clean and repair	210.00
Allowance for repaint walls	75.00
Compensation for water damage to Insurer	1103.53
Compensation for water damage to Restoration Co.	1621.62
Filing fee	100.00
Less security deposit	-800.00
Total Monetary Order to Landlord	2546.4

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 22, 2016

Residential Tenancy Branch