



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:

Both parties made Applications and both attended the hearing and confirmed they had received the Applications for Dispute Resolution although there was some dispute about the landlord's service address being that of his tenant. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

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 pursuant to the Act) for orders as follows:

- d) 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 damages 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 the 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 in June 1, 2015, that rent was \$850 a month and a security deposit of \$425 was paid. The lease was unusual as it stated the tenant agreed to feed some animals including a

neighbour's horse and some wild animals. The landlord said it was just some fun and the tenant agreed. The tenant said he vacated on December 24, 2016 but provided no Notice to End his tenancy as he had no address other than his own address as a service address for the landlord. He said he posted the Notice on the door but the landlord said there was no notice on the door which the Police confirmed when they attended. When questioned, the tenant said the address in question is a box number and the landlord had a key to the box but the landlord was not within city limits to collect his mail so a notice would not have been effective. The landlord pointed out on the lease there is a contact person's telephone number but the tenant never contacted her but just moved out. He said the tenant also had his telephone number but never informed him.

The landlord said when he visited the premises; he was shocked to find the windows broken and doors kicked in. The Police attended and confirmed in a report in evidence that it was not an apparent break and enter. The tenant said he did not damage the property but a person who had a restraining order against them likely did the damage. When questioned, he said the person was his wife. She had lived in the property with him initially and been part of the lease but after the end of September, she was not supposed to be there or within 500 feet of the residence. He said she damaged the property, not him and he is not responsible. He said he had issues with mould and sewage going on the neighbour's property so he left. After he left, he said the wife had moved in and had to be removed by the Police.

The landlord claims as follows:

\$1800: to replace main front window. Likely same age as house (1970s?) Tenant said more likely 1950s as single pane glass.

\$1650: to replace back and front doors. The front door was likely 10 or fewer years old while the back one may have been as old as the house.

\$850: to replace two small windows: same age as other window.

\$400: to repair axe holes in wall

\$850: January 2016 rent as no Notice to End Tenancy

\$190: carpet cleaning. The tenant said they were filthy at the beginning of the tenancy and no move-in or move-out reports were done.

The tenant claims twice his security deposit refunded. He vacated the house on December 24, 2015 and sent his forwarding address in writing to the landlord on September 28, 2016. None of it has been returned and he gave no permission to keep it.

In evidence are the claims of the parties, a dismissed Small Claims Court case on this matter, the letter with the forwarding address, invoices for all the work claimed by the landlord, offers and counter offers between the parties (no acceptance), a realtor's letter which noted she saw the damage on January 8, 2016 and Police Reports.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, 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.

Section 32 of the Act requires a tenant to repair damage that is caused by actions or neglect of the tenant or a person permitted on the residential property by the tenant. I find the tenant violated the Act and the tenancy agreement by vacating the unit which allowed his wife to significantly damage the unit. Although the tenant contended he was not responsible as there was a restraining order against her, I find he admitted in the hearing that she was part of the original tenancy agreement and occupied the home until September 2016 so she was a person permitted on the rental property by him. He admitted she damaged the unit and I find it most probable that this was due to a breakdown in their relationship and him moving out of the property and not arranging to protect it. I find the tenant responsible to compensate the landlord for his damages, less reasonable wear and tear.

The Residential Policy Guideline 43 assigns a useful life to elements in rented premises which is designed to account for reasonable wear and tear. The Guideline assigns a useful life to windows of 15 years and to doors of 20 years. I find the weight of the evidence is that the windows were beyond their assigned useful life being estimated at minimum as built in the 1970s so I find the landlord not entitled to compensation for replacing the windows. I find the evidence is that the front door was about 10 years old but the other door was much older. I find the landlord entitled to recover 50% of the cost of replacing the front door as I find it had 10 years of useful life remaining. I estimate the front door cost to be \$825 which is half the cost of both doors as the contractor's invoice was not broken down. I find the landlord therefore entitled to recover \$412.50 for 50% of the cost of replacement of the front door and nothing for the back door as it was beyond the end of its useful life. I find in addition the landlord entitled to recover \$455 as invoiced for the labour of replacing the doors.

I find the landlord also entitled to recover \$400 for repairing the axe holes in the drywall. Although the tenant alleged this was too much, I find he provided insufficient evidence to show a professional could do this less expensively. In respect to the \$190 claimed for carpet cleaning, I find insufficient evidence that this was a responsibility of the tenant. No move-in report was done and the tenant alleged it was dirty when he moved in and he cleaned it before leaving.

Although there was much argument about the landlord not providing an address to the tenant, I find the landlord had provided an address which was the box number of the tenant to which they both had keys and both used. The tenant admitted he never served a Notice to End his tenancy. I find insufficient evidence that the tenant posted it on his door as he alleged as the landlord said the police did not see it and his local contact did not see one; also the tenant never called the local contact to inform her he was leaving. Sections 44 and 45 of the Act provide the tenancy ends when a tenant serves a one month Notice to End his tenancy. I find the landlord entitled to recover one month's rent from the tenant as the tenant violated the Act by not providing notice and the landlord suffered rental loss of \$850.

In respect to the tenant's security deposit, I find he vacated December 24, 2016 and provided his forwarding address in writing on September 28, 2016. Section 38 of the Act provides that a landlord has 15 days from the later of these dates to either return it or file an Application to claim against it. I find the landlord filed his Application on September 29, 2016 so is in compliance to avoid the doubling provision of section 38. The tenant's security deposit will be used to offset the amount owed to the landlord.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application.

I find the landlord entitled to a monetary order as calculated below and to recover his filing fees for this application.

Calculation of Monetary Award:

Rent for January due to no Notice to End Tenancy	850.00
Allowance for door replacement	412.50
Labour costs to replace doors	455.00
Repair of drywall	400.00
Filing fee	100.00
Less security deposit	-425.00
Total Monetary Order to Landlord	1792.50

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: December 15, 2016

Residential Tenancy Branch