



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ENF HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

Only the landlord attended the hearing and gave sworn testimony. She stated that they had obtained an Order of Possession on January 26, 2015 but only received the tenant's forwarding address on November 7, 2016. They filed this Application on November 17, 2016 and served the Application for Dispute Resolution by registered mail (number provided). The landlord said the Application was returned unclaimed. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. Pursuant to section 90 of the Act, the Application is deemed to be received by the tenant five days after it was mailed. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67; and
- b) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to a Monetary Order and filing fee?

Background and Evidence:

Only the landlord attended although the tenant is deemed to have received the Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced May 1, 2012, a security deposit of \$715 was paid and rent was \$466 a month as subsidized. The tenant vacated on February 20, 2015 after the landlord attended Supreme Court and obtained a Writ of Possession. The landlord claims as follows:

\$466 rent for February 2015 (a previous monetary order was obtained for \$466 for Jan.)
\$283.50 for suite cleaning
\$105.40 to replace 2 broken smoke detectors that were about 2 years old.
\$324.92 to replace or repair doors that were original from 1998
\$734.90 to replace broken blinds that were 5 years old

\$420 to repaint a colour change made without consent (\$150 for wall repair and \$250 to change the colour back to neutral.

\$105 for yard cleanup

\$788.55 for garbage removal from suite

\$661.55 to replace a bathroom countertop that was original in 1998

\$545.04 to replace missing light fixtures, bulbs and repair broken receptacles

\$50 for filing fee for previous application to obtain Order of Possession

\$120 for cost of obtaining Writ of Possession from Supreme Court. The landlord said the tenant refused to move when served with the Order of Possession and they had to obtain the writ and were at the point of getting a bailiff when she finally moved.

\$100 for filing fee for this application.

The tenant submitted no documents to dispute the amount owing and did not attend the hearing. In evidence are copies of the mail registration, invoices to support all items claimed and the Writ of Possession. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order

I find that there is over holding rent in the amount of \$466 for February 2015 and the landlord is entitled to recover this.

In respect to the claim for damages, 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 the damage, that the damage was beyond reasonable wear and tear and the cost to cure the damage. I find the amount of damage and cost to repair is supported by invoices and the tenant has not disputed the claim.

Section 37(2) of the Act provides that when a tenant vacates a unit, they must leave in reasonably clean and undamaged except for reasonable wear and tear. I find the landlord's evidence credible that the tenant did not comply with section 37 of the Act and much cleaning and repair was needed. I find the landlord entitled to compensation of \$283.50 for suite cleaning, \$105 for yard cleanup, and \$788.55 for removal of garbage from the suite which included a mattress disposal fee. I find these amounts are well supported by the detailed invoices provided.

The Residential Policy Guidelines #40 assign a useful life to elements in rental premises. These are designed to account for reasonable wear and tear. I find smoke detectors are assigned a useful life of 15 years so I find the landlord entitled to recover \$91.34 for the 13 years of useful life remaining in the broken smoke detectors. I find wooden doors are assigned a useful life of 20 years. Since the broken doors dated from 1998, I find they had only three years of useful life remaining at move-out so I find the landlord entitled to recover \$48.74. Blinds are assigned a useful life of 10 years so I find the landlord entitled to recover 50% of the replacement cost of these 5 year old blinds for a total of \$367.45. Lighting fixtures are assigned a useful life of 15 years. However, I find the landlord's evidence credible that the tenant had removed the fixtures and broke receptacles and outlet covers which required a lot of electrical work; her evidence is supported by the detailed invoice provided in evidence. Therefore I find the landlord entitled to full compensation for the repairs to the electric system and replacement of some fixtures for the cost of \$545.04. I find the landlord also entitled to recover the cost of plaster repair and paint to cover a colour change back to a neutral colour for a cost of \$420. Counters in baths and kitchen are assigned a useful life of 25 years. I find the bathroom countertop in this unit was 17 years old at move-out so I find the landlord entitled to recover \$211.70 for the 8 years of useful life remaining.

I find the landlord entitled to recover filing fees pursuant to section 72 of the Act in the amount of \$50 for the January 2015 Application and \$100 for this Application. I find the landlord also entitled to recover the \$120 fee paid to the Supreme Court for the Writ of Possession. I find this cost was incurred due to the tenant's violation of the Act in not vacating in response to the Order of Possession which was legally granted for 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:

Over holding rent February 2015	466.00
Suite cleaning	283.50
Yard cleanup	105
Garbage removal from suite	788.55
Smoke detector allowance	91.34
Door allowance	48.74
Blind allowance	367.45
Electrical work, outlets and fixtures	545.04
Plaster repair and paint	420.00
Bathroom counter allowance	211.70
Writ cost	120.00
Filing fees (2)	150.00
Less security deposit (no interest 2012-17)	-715.00
Total Monetary Order to Landlord	2882.32

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: May 24, 2017

Residential Tenancy Branch