



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:

Both parties attended and gave sworn testimony. The landlord said they served the Application for Dispute Resolution on the tenant by registered mail and the tenant agreed he received it. I find the documents were served pursuant to section 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 Sections 7, 46 and 67 for unpaid rent and 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 there is unpaid rent and 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:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The landlord stated that the tenancy commenced March 24, 2016, that monthly rent was \$1999 and a security deposit of \$999.50 and a pet damage deposit of \$999.50 were paid. The landlords said that the tenant did not pay rent for February and a previous decision resulted in an Order of Possession and a monetary order for unpaid rent for February 2017. It is undisputed the tenant vacated on March 4, 2017.

Although the tenancy agreement in evidence states that rent is payable on the 24th of the month, both parties agreed that they made a subsequent arrangement that the tenant paid rent for the last 7 days of March 2016 and thereafter rent was due on the 1st of each month.

The landlord claims as follows:

\$1999.00 (Feb. rent) + \$1999 (March rent)
\$230.98 for swivel bar stools
\$379.98 + GST for black leather club chair
\$84 for bosch microwave grill cover

\$523.93 for a stainless steel bottom ?

\$100 for a parking pass –missing

\$210 for general house cleaning.

The tenant agrees he did not pay rent for March 2017 but the landlord obtained a monetary order for February's rent at the previous hearing. He agrees he owes \$100 for a missing parking pass but denies responsibility for all of the other claims. He said he did a condition inspection report at move-out and everything was satisfactory. He referred to a link to a video to show the condition on move-in. The condition inspection report is in evidence. The female noted as a landlord on the application agreed and said the male landlord had done the inspection report with the tenant but she went through the unit subsequently and noted the damage as listed. The tenant said his tenancy agreement is with the male landlord, not with the female. The agreement is in evidence. Some photographs and estimates are also provided for evidence. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

I find that there is rent owed in the amount of \$1999.00 for March 2017. I find the landlord already obtained a monetary order for \$1999 for rent for February 2017 and he is not entitled to this twice so I dismiss his claim for February rent.

Awards for compensation for damages 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 has not satisfied the onus. I find the weight of the evidence is that this tenant caused no damage as the move-out condition inspection report states walls and trim are scratched at move-in and move-out and notes no further damage. I find a list of damages due to a subsequent inspection by the female witness does not have the evidentiary weight of the move out report signed by the landlord himself and the tenant. I also find the photographs supplied do not support the landlord for I cannot see any damage on them, nor do I note any cleaning needed. For the above reasons I dismiss the landlord's claim for damages with the exception of the \$100 charge for the parking pass to which the tenant agreed.

As the tenant stated, I find the female witness is not a landlord listed on the tenancy agreement. I also find in the previous hearing in March 2017, she is not listed as a landlord. Therefore I issue the monetary order in favour only of the male landlord.

The landlord queried how to collect his previous monetary order. I note the previous Decision states the order may be filed and enforced through the Small Claims Court. The RTB website also gives directions on how to collect a monetary order.

Conclusion:

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

Calculation of Monetary Award:

March 2017 rent	1999.00
Missing parking pass	100.00
Filing fee	100.00
Less security and pet damage deposits	-1999.00
Total Monetary Order to Landlord	\$200.00

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 23, 2017

Residential Tenancy Branch