



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNDC FF

Introduction:

Both parties attended and gave sworn testimony. The landlord said he served the Application for Dispute Resolution and documents for evidence on the tenant by registered mail. The tenant said she got the Application and the Monetary Order list but no other evidence. The landlord said he sent everything at the same time. I find the landlord more credible than the tenant as the documents in file show they were submitted at the same time as the Application and the registration number shows the tenant was served. I find it improbable that the landlord did not include the full package as he claimed. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for damages; 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 the tenant damaged the property, that it was beyond reasonable wear and tear 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. This was a difficult hearing for it appeared the relationship between the parties had broken down over the years and the landlord has had to get a restraining order against the tenant. As a result, the tenant did not want to cooperate to help calculate the age of items that the landlord was claiming. The landlord confirmed that most items in the unit had not been replaced since 1996.

It is undisputed that the tenancy commenced December 1, 1996, rent was \$1100 a month when the tenant vacated in August 2016 and the tenant had paid a security deposit of \$387.50. It is undisputed that the security deposit plus interest was refunded to the tenant. The landlord claims:

- \$343.24 to replace damaged door locks. Never replaced since 1996
- \$257.22 to repaint soiled walls throughout. Last painted 2009 -2011

- \$218.38 to replace a damaged sink/faucet: The kitchen faucet was last replaced in 2011-2012.
- \$1814.34 to replaced damaged counter tops – never replaced since 1996
- \$1918.64 to replace damaged, soiled floors- never replaced since 1996

The tenant pointed out that she had been evicted for the landlord wanted to do substantial renovations. She said she should not have to pay for his renovations. She said there was nothing wrong with the kitchen faucet but the counter had been collapsing for years due to leaks. The landlord agreed the faucet was still working but said he replaced it 'for it was not up to his standard'. The tenant said the faucet in the unit was a cheap faucet and she should not have to pay for an expensive replacement if there is no evidence she broke the faucet.

The tenant provided many documents including photographs to dispute the claim. The landlord also provided documents such as invoices, the condition inspection report, the tenancy agreement and photographs. On the basis of the documentary and solemnly sworn evidence, 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.

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. As explained to the parties in the hearing, Residential Policy Guideline #40 assigns a useful life for elements in rented premises. This is designed to account

for reasonable wear and tear. I find most of the items claimed by the landlord were at least 20 years old. I find locks are assigned a useful life of 20 years, paint is assigned a useful life of 4 years, carpets are assigned a useful life of 10 years and floors 10 to 20 years. I find all of these items claimed by the landlord were beyond the end of their useful life and I find he is not entitled to compensation for their replacement.

I find countertops are assigned a useful life of 25 years in the Guideline. However, I find the weight of the evidence is that the tenant had been complaining of a leak around the sink for a number of years which was causing deterioration of the countertop. I find the landlord did not mitigate his loss by making a timely repair as required by section 7 above so I find him not entitled to compensation for the few remaining years of life which the counter may have had if maintained by him. I also find the move out report in evidence noted no damages done by the tenant.

Regarding the claim for the kitchen faucet, I find faucets are assigned a useful life of 15 years in the Guideline. However, I find the weight of the evidence is that the tenant did not break the faucet. The landlord said he wanted to replace it for "it was not up to his standard". I find the landlord not entitled to compensation for replacement of the faucet as there is insufficient evidence that the tenant broke the faucet and cause the loss.

Conclusion:

In summary, I find the landlord not entitled to compensation as claimed for the reasons stated above. I note he ended the tenancy to do renovations and most of the items claimed were the result of reasonable wear and tear. I find the Act does not provide for a tenant to compensate a landlord for items he chooses to renovate unless the tenant has caused the damage or loss and it is beyond reasonable wear and tear. I dismiss the claim of the landlord in its entirety without leave to reapply. I find the landlord not entitled to recover filing fees paid for this application due to lack of success.

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: June 27, 2017

Residential Tenancy Branch