



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNDC MNSD FF

Introduction:

Agents for both parties attended the hearing and gave sworn testimony. The tenant's agent said the Application was served by registered mail and the landlord's agent confirmed receipt. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 38, and 67 for the return of the security deposit and 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 landlord through act or neglect caused him to incur expenses for which he is entitled to be reimbursed? Is he entitled to a refund of double his security deposit and to recover the filing fee?

Background and Evidence:

Agents for both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The parties have had hearings under three previous files. In the first cross application, the tenant was successful in getting a monetary order for double his security deposit and the filing fee (\$4100 total). The landlord had not served the tenant and was unsuccessful on his claim. In a subsequent application, the landlord obtained a monetary order for \$5160 and the tenant had not attended that hearing.

In the application today, the agent said the tenant had been hoping to review the landlord's application. I advised her that there was a procedure to request a review and I had no authority in this hearing to change another arbitrator's decision and order. She said the tenant may seek a review.

The tenant is requesting a monetary order today for repairs and professional painting of walls, and trims costing \$500. He also requests compensation of \$250 for carpet cleaning. He submitted invoices to support his claim. He said the landlord made him do these things. He asks further for reimbursement for an agent fee, a mailing fee and to collect the previous monetary order of \$4100 which he received. 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.

As explained to the parties in the hearing, section 37 of the Act requires the tenant to leave the unit reasonably clean and undamaged. I find the evidence is that the painting and carpet cleaning done by the tenant was his effort to comply with section 37. I find the Act does not require a landlord to reimburse a tenant for doing repairs necessitated by the tenant's use of the premises. I find insufficient evidence that any act or neglect of the landlord caused these expenses to the tenant. I dismiss this portion of his claim.

As also explained to the parties, reimbursement for the costs of the process of dispute resolution is limited by section 72 of the Act to recovery of the filing fee if successful.

Therefore, I find the tenant not entitled to compensation for an agent fee and a mailing fee.

Regarding his claim for \$4100, I find the tenant already was given a monetary award for this amount on September 13, 2016. The residential tenancy branch does not collect

these amounts for parties and does not issue a second monetary order for a previously awarded amount. I advised the agent to apply to the Small Claims Court which enforces monetary orders. I dismiss this portion of his claim.

Conclusion:

I dismiss the application of the tenant without leave to reapply and find him not entitled to recover filing fees 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: August 30, 2017

Residential Tenancy Branch