



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: 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 acknowledged receipt. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Preliminary Issue:

Some late evidence was submitted by the landlord in which he attempted to increase his claim. As explained to him, the procedure to increase a claim is by amendment which must be served on the other party who under the Principles of Administrative Justice must have an opportunity to reply to any claims against him. This late evidence stamped as provided only 6 days before the hearing (Sept. 14, 2017) is too late to be considered, other than for a significant document of which the tenant already has knowledge. I declined to consider the late evidence other than the copy of the tenancy agreement as requested by the tenant.

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;
- b) To retain the security deposit and pet damage 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 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. They agreed the tenancy commenced June 1,

2009 in this brand new unit, that monthly rent was \$1795 at the end of the tenancy and a security deposit of \$825 and pet damage deposit of \$825 were paid in May 2009. The landlord had forgotten the pet damage deposit and we consulted the lease to refresh his memory. The tenant vacated June 30, 2017 having paid rent to that date and the landlord filed the application on July 7, 2017.

The landlord provided a condition inspection report done at move-in and move-out, invoices and photographs to support his claim. The tenant provided no documents to dispute the claim but provided input into each item claimed in the hearing.

The landlord claims as follows:

1. \$16.74 for damaged weather-stripping on the second floor
2. \$614.98 + \$150+ GST(7.50) for installation and \$25 + GST(1.25) for disposal all based on a damaged microwave; total = \$798.73
3. \$517.67 + GST + \$30 shipping + \$160 installation based on replacing a damaged glass top on the stove. Total = \$733.55

The tenant agrees to the above 3 items. The landlord further claims:

4. \$105 include GST to clean the oven; the tenant said they did clean it as best they could
5. \$262.50 includes GST to repair portions of the laminate floor. The tenant said their chairs did scratch parts of the floor but it was normal wear and tear.
6. \$1386 to repair and paint drywall and \$315.84 for paint. When asked to estimate how much of the charge was for drywall repair and how much for repainting, the landlord said about half. The tenant disagreed and said he had filled in many of the holes and sanded them well. The landlord pointed out that repairs necessitate a primer coat, letting it dry and then application of the two coats of paint. This takes additional time of the painter for which he charges. The tenant thought only one quarter of the painting charge would be logical for repairs.
7. \$346.50 includes. GST for repair of the ensuite bathroom door. The landlord explained that it was pulled off its track and the wall had to be dismantled to repair it.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

I find 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 some damage, some of it caused by the cat, and that most of the damage was beyond reasonable wear and tear. Section 37 of the Act requires a tenant to leave a unit undamaged except for reasonable wear and tear.

I find the tenant violated the Act by leaving damage. He agreed to the cost and liability for the first three items listed above. Accordingly, I find the landlord entitled to compensation for those items as claimed. I find the amount of damage and cost to repair is supported by statements, photographs and some invoices.

In respect to item 4 above, I find the landlord entitled to compensation of \$105 include GST to clean the oven; I find the move out report supports the landlord's claim that the oven was dirty and had to be cleaned. I find the landlord also entitled to recover compensation of \$262.50 include GST to repair portions of the laminate floor. The tenant agreed their chairs did scratch parts of the floor. I find this was beyond reasonable wear and tear as only portions of the floor had to be replaced.

Regarding the costs of \$1386 claimed to repair and paint drywall and \$315.84 for paint, I find at least half of this cost was for the painting. As explained to the parties, Residential Policy Guideline #40 assigns a useful life for elements in rented premises which is designed to account for reasonable wear and tear. I find paint is assigned a useful life of 4 years so this paint was well beyond its useful life. I find the landlord's evidence credible that the cost of labour includes finishing off patches, applying primer

and then applying the paint. I find it probable that this would involve half of the painter's labour charge. Therefore, I find the landlord entitled to recover \$693 for the costs of repair to the walls. Nothing is awarded for repainting or cost of new paint as I find the paint was beyond its useful life. I find the tenant agreed that the ensuite door was pulled off its tracks during the tenancy so I find the landlord entitled to recover \$346.50 including GST for repair.

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:

Damaged weather stripping	16.74
Microwave oven damage	798.73
Glass top stove damage	733.55
Clean of oven	105.00
Repair part of laminate floor	262.50
Repair drywall ready for repaint	693.00
Repair of ensuite door	346.50
Filing fee	100.00
Less security deposit & pet damage deposit (\$825x2)	-1650.00
Total Monetary Order to Landlord	1406.02

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: September 20, 2017

Residential Tenancy Branch