



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX PROFESSIONAL RENTAL MANAGEMENT
and [tenant name suppressed to protect privacy]

REVIEW DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended and gave sworn testimony. The landlord confirmed they were served by the tenant with the Notice of Hearing. 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 as total compensation for 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:

An original Decision and Order were issued to the parties on November 20, 2017. The tenant did not attend that hearing and the landlord was allowed to retain the security deposit to compensate them for proven damages and was awarded a monetary order for \$100 for the filing fee. The tenant applied for Review Consideration on the grounds they were not able to attend the original hearing as the hearing time had been changed without notification to them. They were granted a Review Hearing for today and they served the landlord with the Notice of Hearing as required. The original Decision and Order dated November 20, 2017 were suspended pending this Review Hearing.

Both parties attended and were given opportunity to be heard, to provide evidence and make submissions. All evidence was considered although not all is referenced in this Decision. It is undisputed that the tenancy commenced March 1, 2015 and that during the tenancy, many of the major water pipes were replaced by the strata. Rent was \$1295 and a security deposit of \$647.50 was paid. The tenant said there was leaking, especially in the master bedroom closet and this caused a lot of mould which was dangerous to health and safety. She said she did not file an application to have this repaired or obtain compensation. Photographs were supplied as evidence.

The landlord provided a list of damages and a professional estimate for fixing the damages totalling \$7,076.50. However he said they were willing to waive any monetary claim over the amount of the security deposit. The tenant contended strenuously that she was not responsible for listed damages. She said she cleaned the unit, professionally cleaned carpets and the mould was caused by the leaking so she should not be responsible for remediation. A condition inspection was done at move-in and move-out. The tenant said she did not see the damaged items such as blinds at move-in but they were broken. 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.

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 certain damage and so violated the *Act* (s. 37(2)) and the tenancy agreement which require a tenant to leave the unit clean and undamaged, except for reasonable wear and tear. I find the move-in and move-out report supports the landlord's claim and credibility that the damage was caused by the tenant and was beyond reasonable wear and tear. However, in respect to the mould issue, I find it likely that it was caused or accelerated by leaking pipes and plumbing work in the building so I find the landlord not entitled to compensation for mould remediation.

However, even in disallowing any costs claimed for mould repair and painting, I find the landlord established a claim as follows:

1. \$200 - Clean and replace blinds. I find the move-in and move-out reports and photographs showed this damage did not pre-exist and was there at move-out. Although the tenant contended she just did not see it at move-in, I find it is up to the tenant to inspect the condition of the unit at move-in and the landlord may rely on this inspection.
2. \$120 : Replace bulbs. I find Policy Guideline 1 of the Residential Policy Guidelines provides a tenant is responsible to replace bulbs as they burn out.
3. \$100: allowed to replace broken front door passage set. I find the closet door had been repaired in the past and was beyond repair so it was likely beyond its useful life of 20 years which is assigned in Policy Guideline 40 to account for reasonable wear and tear. The building was about 30 years old as stated.
4. \$108: Powder room repair of drain plug, fan, and spring holder

5. \$150: allowed for kitchen repairs, that is the dimmer switch and garburator. I find the paint in the base may have been affected by the mould so I disallow \$72 of the \$222 estimate for kitchen repair.
 6. \$486: for overhead fan, microwave.
 7. I disallow the \$1237 estimated for replacement of kitchen counter tops that were swollen. I find this may have been a result of leaks and mould.
 8. \$115: replace living room screen
 9. \$210: replace 3 missing light globes and recaulk tub and sink
 10. \$720: remove and dispose existing blinds which are all badly damaged. Supply new ones to two large windows and patio door.
- Total of above is \$2209 ^{+ tax.}

As noted above, I find the damage and cost of the items as listed above is well supported by move-in and move-out reports and the professional estimate. I note that the tenant claimed she cleaned the carpets and unit but the landlord did not claim for these expenses, except for degreasing in the kitchen; the necessity of this was illustrated by photograph. Even if some of the listed items above had a reduced useful life, I find this irrelevant as the landlord is willing to waive any damage claim in excess of the security deposit of \$647.50. He was allowed to retain this \$647.50 on the Original Decision dated November 20, 2017. I find he was also entitled to receive the monetary order dated November 20, 2017 for \$100 for the filing fee.

Conclusion:

**I HEREBY CONFIRM THE ORIGINAL DECISION AND ORDER MADE NOVEMBER 20, 2017.
THE ORIGINAL DECISION AND ORDER STAND.**

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: January 18, 2018

Residential Tenancy Branch