



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:

Both parties filed Applications but the tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:50 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. on November 13, 2018. The landlord attended the hearing and gave sworn testimony. He was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord stated he served his Application personally on the tenant and confirmed receipt of the tenant's Application for Dispute Resolution but the landlord said he never received the tenant's forwarding address in writing until he saw it on the Application. . I find the Applications and evidence were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing but not the tenant's forwarding address which I find was not provided in writing pursuant to section 38 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security and pet damage deposit pursuant to Section 38;
- and An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- d) For a return of twice the pet damage and security deposits pursuant to section 38.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice her security and pet deposits refunded?

Background and Evidence:

Only the landlord attended the hearing, although the tenant had also filed an Application. The landlord was given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in June 2016, that rent was \$1200 a month and a security deposit of \$900 and a pet damage deposit of \$300 was paid. The landlord said he had served a two month Notice to End Tenancy for his own use of the property effective April 30, 2018 and the tenant received a free month's rent for April. However, she did not vacate until May 3, 2018. The landlord claims as follows:

\$120 for 3 days over-holding rent. ($1200/31 \times 3 = \$116.12$)

\$1200 estimate to replace the front door about 7 years old.

\$161.98 for paint and supplies; painted at move-in.

\$75 for cleaning (3 hrs x \$25)

\$68.99 estimate for ceiling tile to replace tiles ruined by water

\$89.99 to replace bedroom door due to holes made by pets

\$89.99 to replace a closet door which dates from the 1970s as anchor pins were destroyed.

\$343 estimate to replace 7 yr. old kitchen floor damaged by tenant with cigarette burns and punch marks.

\$450 estimate to repair, paint and mount doors (18 hrs at \$25 hr.)

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

Analysis

Monetary Order:

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 the damage,

that much of it was caused by a pet. 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 the damage that much of it was caused by a pet and that some of the damage was beyond reasonable wear and tear. I find the amount of damage and cost to repair is supported by estimates, statements and photographs. The photographs show large holes and gouges in doors. However, the Residential Policy Guideline 37 assigns a useful life to elements in rented premises which is designed to account for reasonable wear and tear so the age of items must be taken into account.

I find the landlord entitled to recover cleaning and repair costs of \$75 and \$450. However, I find that doors are assigned a useful life of 20 years in the Guideline so I find the landlord entitled to recover 65% of the cost of the front door which was about 7 years old. This totals \$780 recovery of the cost of replacement. ($20 - 7 \text{ yrs.} = 13/20 = 65\%$ useful life remaining). In respect to the closet doors, I find the evidence was they dated from 1970 so were beyond their useful life. I find the landlord not entitled to recover costs to replace them. I note the landlord is allowed costs of repair and repainting of \$450 above.

Flooring and other tiles are assigned a useful life of 10 years and I find the ceiling tile and kitchen flooring were about 7 years old according to the landlord's testimony. Therefore I find the landlord entitled to recover 30% of the cost of replacement or \$123.60 ($\$68.99 + \$343 \times 30\%$).

As the tenant over-held for 3 days, I find the landlord entitled to recover 3 days of rent for May or \$116.13. ($1200/31 \times 3$).

Although the landlord pointed out that section c of the tenancy agreement allowed him to keep the pet damage deposit at the end of the tenancy, I find section 20(c) of the *Act* prohibits such a term so I find that section of his agreement is of no effect.

In respect to the tenant's claim, I find section 38 of the Act provides that the landlord has 15 days from the later of the tenant vacating and providing their forwarding address in writing to file an application to claim against the deposits. I find the weight of the evidence is that the landlord never got a forwarding address in writing until the tenant filed this Application. I find the tenant filed her Application on July 12, 2018 and the landlord filed his Application on July 27, 2018 which is within the time limits allowed by section 38 of the Act to claim against the deposits even if it was found that filing the Application with an address was sufficient to meet the criteria of section 38. In this case, I find the tenant never served her forwarding address in writing in accordance with section 38. I find she is not entitled to the doubling provision of section 38 of the Act. Her deposits will be used to offset the allowed claim of the landlord.

Conclusion:

I find the landlord entitled to a monetary order as calculated below and to retain the security and pet damage deposits to offset the amount owing. I find him entitled to recover his filing fee.

I dismiss the application of the tenant in its entirety without leave to reapply and I find she is not entitled to recover filing fees for his application.

Calculation of Monetary Award:

Cleaning costs	75.00
Repair costs	450.00
Allowance to replace front door	780.00
Replacement of ceiling tiles and flooring allowance	123.60
Over-holding rent 3 days	116.13
Filing fee	100.00
Total allowed claim of landlord	1644.73
Less security and pet damage deposits	-900.00
Total Monetary Order to Landlord	\$744.73

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: November 13, 2018

Residential Tenancy Branch