



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNDC MNSD FF

Introduction:

Both parties and witnesses attended the hearing and gave sworn testimony. . The landlord testified that they served the Application for Dispute Resolution dated September 19, 2018 and his evidence on the tenant by registered mail and the tenant acknowledged receipt. I find the documents were legally served pursuant to section 89 of the Act. 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 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 proved on a balance of probabilities that the tenant damaged the property and that it was beyond reasonable wear and tear? What is the cost of the losses proven by the landlord? Is the landlord entitled to retain the security deposit and to recover the filing fee?

Background and Evidence:

Both parties and witnesses attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced September 1, 2017 on a fixed term to August 31, 2018, that monthly rent was \$3100 and a security deposit of \$1550 was paid. It is undisputed that a Mutual Agreement to End Tenancy was signed on July 9, 2018 and the tenants helped in getting a new tenant who moved in on July 10, 2018.

The tenant agreed there was a condition inspection done at the commencement of the tenancy and there were no damages noted. However, she notes there was no move-out inspection completed. They were in another country in July but she said the female

landlord said she would do a final inspection and her friend could substitute for her. She came back in 45 days to get her belongings which had been stored in one room and no final inspection had been done. She said she paid \$150 to a man for the basketball hoop to be fixed and cleaned the windows. She provided no receipts.

The landlord claims as follows:

1. \$157.50 to fix the basket ball hoop. It is on a metal standard that is embedded in concrete. He said the person sent by the tenant did not fix it properly and it had to be done correctly for safety.
2. \$93.98 and \$78.34 to find the reason why the dryer drum was not turning and to replace the broken belt which was the cause. The tenant said it was fine when she left and pointed out that the invoice for the estimate was in mid September 2018 when the new tenants had already occupied the home for about 2 months. The landlord pointed to the buildup of lint in the dryer which he states could not have happened in 2 months and states it was negligence of this tenant in cleaning the lint filter that caused the belt to break. It was 10-12 years old.
3. \$210 to repair the refrigerator filtration system as the tenant had disconnected the water filter pipe and left it leaking in the sink.
4. \$97.50 to clean windows, \$50 of this was for inside the windows.
5. \$1150 for painting the main floor ceiling. I note this cost includes the \$150 for the fixing of the basketball hoop although the landlord listed it separately. The paint was 2 years old. The painting was necessary because of water stains on this main floor ceiling. The parties agreed the tenant went on vacation in January 2018 for about a week and found the stains when she returned. The landlord had a handyman investigate but he could not find the source but said it was most likely from a spill from the upstairs. There was no water damage noted to the upper floor ceilings so it did not seem it could be from rain or the roof and no stains were noted on walls; it also did not reappear after further heavy rains. The tenant occupies the top two floors and said there are bedrooms and a bathroom on the upper floor. She said there was no damage to the carpets or floor upstairs so the rain or something must have come through the walls or something. She said no one occupied the house while she was on vacation and she had not spilt anything or left a tap on.

There was much discussion about the opportunity for a final inspection. The landlord said the tenant was in another country when her tenancy ended by mutual agreement and her friend moved in. She returned in August and called on August 20, 2018 to meet. They met on August 24, 2018 and went through the home and saw the damages. She said they would come back on August 25, 2018 but did not come. Their

phone was not working and he did not have a forwarding address. His emails in evidence support this time line. The tenant said they came on August 25, 2018 but stayed for a time with the other tenants who were friends; they saw the damage but no condition inspection report was signed. Another family were occupying the unit so it could not be an official move out inspection. She was not told about the dryer belt but saw the stains that had been there since January 2018. The handyman could not determine the cause so it was not their fault. She said she cleaned inside the windows. The landlord pointed to his email evidence where an email dated August 29, 2018 said someone would come and clean the windows. He pointed out she provided no invoices to support her allegations.

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. I find the landlord's evidence credible that this tenant or her family damaged the 10-12 year old basketball hoop which is a steel post set in concrete. The question of reasonable wear and tear was raised. Residential Policy Guideline 40 assigns a useful life of building elements to account for reasonable wear and tear. It states: "If the arbitrator finds that a landlord makes repairs to a rental unit due to

damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement." I find concrete is assigned a useful life of 20 years and steel posts a useful life of about the same. As this hoop was possibly 12 years old, I find the landlord is entitled to 40% of its repair cost or \$60 + GST of \$3..

I find the landlord not entitled to reimbursement for dryer repair. I find insufficient evidence that this tenant caused the broken belt as it broke sometime after the tenancy ended.

I find the landlord entitled to recover the costs of the refrigerator repair as the weight of the evidence is that the tenants disconnected the hose and it cost \$210 + GST of \$10.05 to have it reattached. I find the tenant also liable for the \$50 + GST of \$2.50 for the cost of cleaning the interior of the windows but not the cost of cleaning the exterior of the windows which is the landlord's responsibility as set out in Residential Tenancy Policy Guideline 1.

I find the Guideline 40 assigns a useful life for paint of 4 years. As the ceiling paint was painted 2 years before, I find the landlord entitled to recover half of his cost of repainting or \$500 + GST of \$25. Although the tenant contended the water stains on the ceiling could not have been caused by her tenancy, I find the weight of the evidence is that the stains were not caused by rain but seemingly from the floor above which was part of her rental. I do not find it credible that some mysterious leak from the roof or side of the home may have caused it since the evidence is that it has not occurred again despite very wet weather.

Regarding the failure to complete a written move-out condition inspection report, I find this was not due to any failure of the landlord. The tenant was out of the country and was unable to do it and wanted the unit re-rented so she would not be responsible for the rent to the end of her fixed term lease on August 31, 2018. She did not contact the landlord until August 20, 2018 and he had no telephone number or address for contact prior to that. I find the landlord met with her on August 25, 2018, inspected the damage and discussed responsibility for it. She wanted time to think about it and he gave her an opportunity to come back to finalize the inspection and costs but she did not come. I find the failure of a signed final condition inspection report was due to the tenant's negligence as the landlord tried to provide her ample opportunity to do this.

I find the landlord entitled to recover his costs as outlined above.

Conclusion:

I find the landlord is entitled to compensation as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application. **The balance after deducting the security deposit is in favour of the tenant so a monetary order is issued to the tenant for \$589.45 as calculated below.**

Calculation of Monetary Award:

Allowance for Basketball hoop and standard repair	60.00
Refrigerator repair	210.00
Cleaning of Interior of windows	50.00
Allowance for Repainting ceiling	500.00
GST on above $3+10.05+2.50+25$	40.55
Filing fee	100.00
Total compensation allowed to landlord	960.55
Subtract Tenant security deposit	-1550.00
Total security deposit to be refunded to tenant	\$589.45

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 10, 2019

Residential Tenancy Branch