



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MNSD MNDC FF

Introduction:

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of double the security deposit pursuant to section 38.

Preliminary Issue:

The tenant's advocate asked for an adjournment as she said the tenant did not receive the Application from the Residential Tenancy Branch in time to serve it within the time limits. She was concerned we had not received the tenant's evidence. Apparently there was a mix-up of communication and when she finally picked up her Application on April 25th or 26th, she was told by the office that her documents were out of time to be served so she did not serve them on the landlord. According to the office records, a voicemail was left for the tenant to pick up her Application on April 21, 2017. In the email to the advocate concerning the problem on April 26, 2017, the information officer said there was obviously a misunderstanding but urged her to act quickly now she knows the documents are at the office. However, the tenant was moving house between April 27 and May 2, 2017 and "the documentation became lost in the kerfuffle" because she thought it would not do any good to serve it now.

Rule 6 of the Residential Tenancy Branch Rules of Procedure provide rules on rescheduling and adjournments. Rule 6.1 states the Branch will reschedule if written

consent is received from both parties at least 3 days before the scheduled date for the hearing. I find the advocate filed an Amendment on May 3, 2017 to ask for more time but there is insufficient evidence that she tried to obtain consent from the landlord to reschedule the hearing.

Rule 6.3 provides an arbitrator may adjourn the proceeding after the hearing commences. The criteria for granting an adjournment are set out in Rule 6.4. In applying the criteria, I find there would be considerable prejudice to the landlord in adjourning the hearing as the landlord filed their application for compensation on November 14, 2017 and the tenant agrees she owes \$1249.92 for unpaid rent plus some other costs. I also find an adjournment is unlikely to contribute to a resolution of the matter and unnecessary to allow a fair opportunity for each party to be heard. The parties were given the opportunity to make submissions and raise issues in the hearing and I find had a fair hearing. I declined to grant an adjournment and the hearing proceeded.

Issue(s) to be Decided:

The tenant vacated the unit on October 31, 2016. Has the landlord proved on the balance of probabilities that the tenant owes rent and 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 deposit refunded?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in November 1, 2015, that rent was \$1250 a month and a security deposit of \$625 was paid on October 20, 2015. The landlord claims as follows:

1. \$250 for window and yard cleanup including mowing of the grass for which the tenant was responsible. The hired person charged \$45 an hour. The tenant said the discarded bicycle in the photograph was not theirs and it was November 8, 2016 and had a snowfall so she could not mow.
2. \$270 for cleaning. The tenant said she spent two days cleaning but she agreed at the time that she would compensate the landlord \$300 later. She agreed she did the walk through with the landlord but did not sign the move out report for she wanted her full security deposit back to get a new place. The landlord denies adding anything later and points to the many dirty items noted on the move out report as evidence of necessary cleaning.

3. \$110.85 to replace an interior door. The tenant takes responsibility for the door. It was about 5 or 6 years old.
4. \$138.43 to replace light bulbs, for supplies to paint and repair a closet door
5. \$360 for labour for repairs. I note the cost of the paint was \$21.99 + \$41.97 and the labour to paint was \$56.25 for painting the bedroom wall. The painting was done in 2014 so was two years old at move out. The advocate noted the bedroom wall needed repair for the landlord had not supplied door protectors to prevent the door hitting the wall.

The tenant vacated on October 31, 2016 and provided a forwarding address in writing on either November 1 or November 8, 2016.

In evidence are invoices for the claimed damages, a rent ledger statement, the tenancy agreement, a condition inspection report done on move-in and move-out, photographs and emails.

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

Analysis:

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find there are rental arrears of \$1249.92 as the tenant honestly agreed she owed that.

Awards for compensation for damages 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 damages. I find the weight of the evidence is that the tenant owes \$250 for window and yard cleanup and \$270 for cleaning. Although the tenant contended she did clean, I find the evidence of the move-out report and the photographs support the landlord's claim

that many items were missed and had to be cleaned. I find it improbable that the landlord added items to the move out report as the writing seems to be done at the same time and the tenant agreed she told the landlord she would pay \$300 for the cleaning at a later time. I find section 37 (2) of the Act provides that the tenant must leave the unit clean and undamaged when vacating. Although the advocate for the tenant made some useful points about photographs, I find the weight of the evidence including the move-out report is that the unit and yard were not left clean and tidy. I find the tenant violated the Act and the landlord is entitled to these costs for clean up.

In respect to the replacement of the wood door, I find the Residential Tenancy Policy Guidelines #40 provide for a useful life of elements in rented premises. This is designed to account for reasonable wear and tear. I find wooden doors are assigned a useful life of 20 years. Since this door was about 5 years old when the tenant vacated, I find the landlord entitled to recover 75% of its replacement cost or \$83.13. Regarding the painting, I find the paint was 2 years old and the Guidelines assign a useful life of 4 years to painted elements. I find the paint supplies and labour for the door and wall totalled \$141.54 and the landlord is entitled to recover 50% of this cost for the two years of useful life remaining for a total of \$70.77.

I find the landlord entitled to compensation for replacing lightbulbs \$9.99, the bi-fold door kit \$7.49, and labour of 5 and ½ hours for these repairs plus patching a wall and trimming and sanding the door for which the tenant admitted responsibility. Total labour allowance is \$247.50 at \$45 an hour as charged and total parts \$17.46.

On the tenant's application, the onus is on her to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. I find the tenant vacated on October 31, 2016 and provided her forwarding address on November 1 or 8, 2016. I find the evidence is the landlord filed their Application on November 14, 2016 which is within the 15 days provided in the Act to avoid the doubling provision whether the address was received on November 1 or 8, 2016. I find the tenant not entitled to twice the security deposit refunded. Her security deposit is in trust with the landlord and will be applied to offset the amount owed to the landlord.

Conclusion:

I find the landlord entitled to a monetary order as calculated below. I find them entitled to retain the security deposit to offset the amount owed and to recover filing fees for this Application.

I dismiss the application of the tenant in its entirety without leave to reapply. Her filing fee was waived.

Calculation of Monetary Award:

Unpaid rent	1249.92
Window and yard cleaning	250.00
General house cleaning	270.00
Wood door replacement allowance	83.13
Paint and labour allowance	70.77
Lightbulbs, hardware	17.46
Total labour allowance as specified above	247.50
Filing fee	100.00
Less security deposit (no interest 2015-17)	-625.00
Total Monetary Order to Landlord	1663.78

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: May 16, 2017

Residential Tenancy Branch