



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said they served the Application for Dispute Resolution by registered mail and the tenant agreed he received it. I find the documents were legally served pursuant to section 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 Section 67 for damages to the property; and
- c) An order to recover the filing fee pursuant to Section 72.

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?

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 August 2014, that rent was \$1500 a month and a security deposit of \$800 was paid. The tenant vacated on April 30, 2016 and received double the security deposit refunded pursuant to section 38 in a prior hearing. The landlord claims for damages to the suite as follows:

1. \$1365 for repainting cabinets and walls. He said he painted everything to look like new before the tenant moved in. The tenant denies this and said there was another tenancy before theirs. The landlord said he had not provided proof of the invoice for the prior painting job.
2. \$1470 for a new countertop for the bathroom. It dated from 2009 when the building was new but the landlord said the tenant must have used a chemical on it and damaged it. The tenant denies they caused any damage to the countertop.

3. \$30 to fix a microwave broken by the tenant. The tenant said they broke no microwave.
4. \$215 for a damaged window handle and faucet. The tenant denies doing any damages.
5. \$200 for cleaning done by the landlord's son. He said things were very greasy. The tenant said he and his wife cleaned the apartment before they left.

Both parties confirmed there was no condition inspection report done at move-in or move-out. The landlord provided invoices and photographs as evidence for the hearing. Both parties accused each other of lying. On the basis of the documentary and solemnly sworn evidence presented at the hearing, 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 has not satisfied the onus. Although he has made claims for damages done by the tenant, I find insufficient evidence that the tenant caused any of the damages. While the photographs show chipped cupboards, I find insufficient evidence that this tenant did the damage. It may have pre-existed the tenancy as the unit had been rented out for a few years before this tenancy commenced.

I find the tenant's evidence credible that they cleaned the unit. I find insufficient evidence that it was not cleaned. I note there was no dirty or dirty appliances shown in the photographs provided in evidence.

As noted above, the onus is on the applicant landlord to prove his claim. He has not. I dismiss the Application of the landlord as I find insufficient evidence that this tenant damaged the unit and caused him to incur the costs claimed.

Conclusion:

I dismiss the Application of the landlord in its entirety without leave to reapply. I find him not entitled to recover filing fees due to his lack of success.

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: June 29, 2017

Residential Tenancy Branch