



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for money owed or compensation for damage or loss under the Act, to retain the security deposit in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenant.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord's Agent testified and supplied evidence that they received an Order of Possession, dated October 15, 2009, from a previous dispute resolution hearing, that the Tenant did not comply with the Order of Possession, and was removed from the rental unit by a Court Bailiff on November 4, 2009.

The Landlord's Agent testified and supplied evidence that the fees paid to the Bailiff for enforcement of the Order of Possession, along with related charges, was \$1,055.88, which has not been paid by the Landlord.

The Landlord is also seeking the amount of \$484.50 for part of November 2009 rent, with a total claim of \$1,536.17, plus the filing fee of \$50.00.

The Tenant testified, but provided no relevant testimony in support of her defense of the claim.

Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find as follows:

To prove a claim for damage or loss under the Act or tenancy agreement the Applicant, in the case the Landlord, is required to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that Court Bailiff costs are recoverable as costs incurred by the Landlord during the tenancy and I am satisfied that the Landlord has established that claim through testimony and evidence in the amount of \$1,055.88.

I find that the tenancy ended on November 4, 2009, and the Landlord has submitted insufficient evidence to establish that they mitigated their loss for the balance of November 2009 rent by attempting to re-rent and I **dismiss** their claim of \$484.50.

I find that the Landlord has established a total monetary claim of **\$1,105.88** comprised of **\$1,055.88** for Court Bailiff costs and the **\$50.00** fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit and interest of **\$258.36** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$847.52**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Pursuant to Section 67 of the Act, the Landlord is granted a monetary Order for **\$847.52.**

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: December 07, 2010.

Dispute Resolution Officer