

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:47 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she sent the tenant a copy of the dispute resolution hearing package by registered mail on November 12, 2010. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

At the hearing, the landlord testified that she had submitted copies of receipts as part of her evidence package. As that evidence had not been attached to the material forwarded to me in advance of this hearing, I allowed her to re-send this material by fax. I received this material from the landlord later on the day of the hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover her filing fee from the tenant?

Background and Evidence

This month-to-month tenancy was to commence on October 5, 2010. The landlord said that she agreed to let the tenant pay \$500.00 for the remainder of October 2010, due to her anticipated occupancy of the rental unit on the 5th of October and as an allowance for some repairs that the tenant was planning to conduct when she moved into the rental unit. The landlord said that the normal monthly rental rate of \$1,450.00 was to commence on the tenant's first full month of occupancy, November 2010.

The landlord testified that the tenant paid the \$500.00 rent for October 2010, but did not move into the rental unit. She said that the tenant did not return the keys to the rental unit, requiring the landlord to change the locks at a cost of \$195.90. She said that she also had to pay an individual \$10.00 per visit to attend the property to check on whether the tenant had vacated the premises for a total cost of \$140.00. On October 27, 2010, the landlord received the tenant's October 25, 2010 written notice to end this tenancy. The landlord said that she returned \$164.10 of the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing.

The landlord applied for a monetary award of \$335.90 for losses arising out of this tenancy and applied for dispute resolution to retain the remaining portion of the tenant's security deposit to satisfy the monetary award she was requesting. She also applied for permission to recover her filing fee. She said that she was not seeking any lost rent for November 2010 because she was able to mitigate the tenant's losses for that month by re-renting the unit to another tenant as of November 1, 2010 for the same \$1,450.00 in monthly rent.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

Based on the undisputed evidence provided, I am satisfied that the landlord incurred losses arising out of this tenancy. I allow the landlord's application for a monetary award of \$195.90 for replacement of the locks and \$140.00 for the cost incurred in checking the rental status of this property during October 2010.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the deposit.

I am satisfied that the landlord applied for dispute resolution within 15 days of receiving the tenant's written notice ending this tenancy. I allow the landlord to retain the \$335.90 security deposit plus interest that the landlord continues to hold. No interest is payable over this period.

As the landlord has been successful in her application for dispute resolution, I allow her to recover her filing fee from the tenant.

Conclusion

I issue a monetary award in the following terms which allows the landlord to recover losses arising out of this tenancy and to recover the filing fee for this application from the tenant.

Item	Amount
Changing Locks	\$195.90
Monitoring Premises in October 2010	140.00
Less Retained Portion of Security Deposit	-335.90
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$50.00

I allow the landlord to retain the remaining \$335.90 portion of the tenant's security deposit in partial satisfaction of this monetary award.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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*.
