



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, FF

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for damage to the rental unit, for money owed or compensation for damage or loss, to retain the security deposit and to recover the cost of the filing fee from the tenant.

Although the tenant was served with the Application for Dispute Resolution and Notice of Hearing by registered mail on April 21, 2011, the tenant did not appear at the hearing. The landlord provided a copy of the registered mail receipt, testified that the mail was sent to the address at which the tenant resided and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence.

The landlord appeared with his legal counsel, gave affirmed testimony, and was provided the opportunity to present his evidence orally 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*?

Is the landlord entitled to retain the security deposit and to recover the filing fee?

Background and Evidence

I heard testimony from the landlord that this tenancy started on February 2, 2010, ended on August 16, 2010, monthly rent was \$1,000.00 and the tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The landlord's monetary claim is \$6,027.29 for water leakage from the tenant's washing machine, resulting in damage to the rental unit and the unit below.

The landlord submitted that the tenant was negligent in failing to take prompt action in stopping and reporting the leak.

The monetary claim is the amount reflected on the work order invoice from a restoration company to repair the damage. The work order was submitted into evidence.

The landlord also submitted into evidence a copy of an Agreement which was signed by the tenant, a witness and the landlord's attorney. The Agreement was signed on May 10th, 2011.

In the Agreement, the tenant "accepts responsibility for the damage caused to [landlord's] apartment by water damage. The tenant further acknowledged that the damage was in the approximate amount of \$6,000.00 and committed to a payment plan.

The landlord testified that although the tenant agreed to repay the debt, he has not made a payment.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlord in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the tenant admitted his responsibility for the damage to the rental unit and the costs incurred by the landlord for that damage when he signed the Agreement referred to above. I further accept the testimony of the landlord that the tenant agreed, but has yet, to make any payments towards that debt.

I find the landlord is entitled to recover the filing fee.

I therefore find that the landlord has established a **monetary claim** in the amount of **\$6,127.29**, comprised repair to the damage he acknowledged responsibility for and the filing fee of \$100.00.

At the landlord's request, I order the landlord to retain the security deposit of \$500.00 in partial satisfaction of the claim and the Landlord is hereby granted a monetary Order in the amount of **\$5,627.29** for the balance due.

I am enclosing a Monetary Order for **\$5,627.29** with the landlord's Decision. This Order is a **legally binding, final Order**, and it may be filed in the Provincial Court (Small Claims) should the tenant fail to comply with this Monetary Order.

Conclusion

The Landlord is granted a monetary Order for **\$5,627.29**.

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: August 17, 2011.

Residential Tenancy Branch