



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to the unit site or property, and recovery of the filing fee.

The Landlord provided affirmed testimony that they served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on September 30 2011, and provided the customer receipt/tracking slip from Canada Post as evidence. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The adjourned hearing Notice was served on the Tenant by the Residential Tenancy Branch and the Landlord on December 07, 2011.

The Tenant did not participate in the conference call hearing on either of the scheduled dates. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage to the unit site or property and recovery of the filing fee?

Background and Evidence

The Landlord testified that they had a written tenancy agreement with the Tenant from December 01, 2011 to June 03, 2011 with a monthly rent of \$1,500.00 due on the 1st of the month. The Landlord stated that the Tenant rented the main floor and the upper floor of the house and that there was a separate rental unit in the basement. The Landlord stated that they had a prior hearing with a decision dated June 03, 2011 granting them unpaid rent for May and June 2011 and allowing them to keep the security deposit of \$750.00 to offset unpaid rent amounts owed.

The Landlord stated that they took possession of the rental unit on June 06, 2011 after receiving the order of possession, however they had to use a skip tracer to locate the Tenant to try and collect on the monetary order received from the hearing decision of June 03, 2011, as the Tenant had withheld her forwarding address. The Landlord provided evidence of the Tenant's current address from the skip tracing agent who located the Tenant. The Landlord is claiming \$309.12 for the skip tracing costs incurred in locating the Tenant to serve her with documents, and they have submitted a receipt into evidence showing this cost.

The Landlord stated that when the Tenant moved out she left the rental unit in poor condition full of garbage, junk, broken items, and old food. The Landlord submitted photographic evidence of the rental unit taken on June 06 and 07, 2011. The Landlord is requesting reimbursement by the Tenant for the costs to develop the photos for evidence for this hearing. The Landlord provided receipts in evidence for the photos in the amount of \$27.55 and \$24.60.

The Landlord stated that she contacted a junk removal company who wanted to charge \$30.00 per hour for the work to remove the garbage and junk from the rental unit, so the Landlord decided to do it themselves. The Landlord stated that 67 hours were spent between June 06 to 19, 2011, by various family members of the Landlord, emptying the rental unit of the garbage and that this does not include their hours of cleaning which they have not applied for. The Landlord stated that even a family member who was seriously ill with cancer helped out as much as he could and rested as needed. The Landlord submitted evidence of a record of the hours worked by each family member. The Landlord stated that they all have full time jobs and had to put these hours in on the evenings and weekends. The Landlord stated that they did not know what to ask for their hours of labour so they are asking for \$25.00 per hour, for a total of \$1,675.00. The Landlord also submitted copies of two receipts as evidence of junk disposal at City dump in the amounts of \$26.00 and \$29.00.

The Landlord stated that the Tenant did not clean the carpet in the rental unit and there were many stains in the carpet as shown in their photographic evidence submitted. The Landlord is claiming \$224.00 for professional carpet cleaning and has submitted a receipt for this amount in evidence.

The Landlord stated that the Tenant did not return the remote control for the garage door so they had to purchase one. The Landlord submitted a receipt for \$55.99 in evidence for the amount of the replacement garage remote they purchased.

The Landlord is seeking \$24.52 in registered mail costs for documents sent to the Tenant for the hearings and is requesting to recover the \$50.00 filing fee for his Application.

The Landlord claims as follows:

a.	Skip Tracing fee - to locate Tenant for service of documents	\$309.12
c.	Labour to remove junk/garbage 67 hours x \$25.00 per hour	\$1,675.00
d.	Dump fees - \$26.00 + \$29.00	\$55.00
e.	Professional Carpet Cleaning	\$224.00
f.	Replace Garage Remote	\$55.99
g.	Registered Mail costs - hearing documents \$12.26 + \$12.26	\$24.52
h.	Filing fee for Application	\$50.00
	Total Amount claimed by Landlord	\$2,445.78

Analysis

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

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], 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.

I find that the Landlord suffered a loss pursuant to section 67 of the Act for the following reasons:

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenant) pay for the loss the Applicant (the Landlord) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent (Tenant) in violation of the Act or agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As part of the evidence submissions which I considered, the Landlord provided photographs of condition of the rental unit, receipts for the actual costs, and verbal testimony about actual labour hours, and work performed.

I find that the Landlord attempted to mitigate or minimize their losses by undertaking work on the rental unit immediately after the tenancy ended.

I have reviewed the Landlord's labour cost request and compared it with their testimony and evidence. I find that the Landlord's claim for \$1,675.00 is excessive. The Landlord stated at the hearing that this cost is just for emptying the house and not for cleaning the house. The Landlord chose the least efficient method to have the house emptied of junk and garbage. The Landlord stated that a junk removal company would have cost them \$30.00 per hour, however, I find that a professional junk removal company would have done the job more efficiently, most likely in half the time it took the Landlord to do the work. I find that the Landlord is not able to work with the efficiency of a professional company when it comes to junk removal and that a rate of \$15.00 per hour is more appropriate for the 67 hours spent by the Landlord's family including a seriously ill family member to do the emptying of the rental unit. As a result, I find that the Landlord is entitled to **\$1,005.00** for labour costs (67 hours X \$15.00).

I accept the dump fees incurred by the Landlord totalling **\$55.00** as reasonable and find that the Landlord is entitled to these costs.

I have reviewed the Landlord's photographic evidence and determined that the carpet cleaning bill is reasonable given the condition of the carpet in the rental unit. I find that the Landlord is entitled to **\$224.00** for carpet cleaning costs.

I accept the Landlord's testimony that the Tenant did not return the garage door remote and that the Landlord needed to purchase a replacement. I find that the Landlord is entitled to **\$55.99** for the garage remote cost.

I find that the Landlord is not able to claim the registered mail costs (\$25.52), the photo costs (\$52.15), or the skip tracing costs (\$309.12) associated with their claim against the Tenant as the Act does not allow parties to recover the costs that are outside of our jurisdiction. Costs connected with serving documents or preparing the Application are

outside the jurisdiction of the Act. As a result I dismiss these portions of the Landlord's claim totalling \$385.79.

Section 72 of the Act specifies that the filing fee can be awarded as determined by the Dispute Resolution Officer. As the Landlord has in part succeeded in their Application, I find that the Landlord is entitled to recover the **\$50.00** fee for this proceeding.

I grant the Landlord an order under section 67 for **\$1,389.99** (\$1005.00 labour for junk removal + \$55.00 dump fees + \$224.00 carpet cleaning + 55.99 garage remote + \$50.00 filing fee).

Conclusion

I grant the Landlord's claim in part for damage to the unit site or property and the filing fee, however, the Landlord's claim for registered mail costs, skip tracing costs, and photo costs are dismissed.

I find that the Landlord is entitled to \$1389.99 comprised of reasonable labour costs, dump fees, carpet cleaning, garage remote replacement, and the entire filing fee. I find that the Landlord is entitled to monetary order pursuant to section 67 against the Tenant in the amount of **\$1,389.99**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: January 16, 2012.

Residential Tenancy Branch