



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FF

Introduction

This hearing was reconvened from the original hearing in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

At the original hearing the Landlord, Agent and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath. At the reconvened hearing the Tenant did not attend and the Landlord and Agent continued under oath.

Preliminary Matter

At the original hearing the Landlord withdrew the request for an Order of Possession and stated that he is only seeking compensation for damages. At the original hearing, the Parties provided evidence on the merits of the claim however the matter was adjourned for the Landlord to provide supporting evidence of causation from the fire department and for the Tenant to provide supporting evidence of causation from a restoration company. It is noted that the Landlord provided additional evidence for the reconvened hearing and the Tenant provided no additional evidence.

At the reconvened hearing the Landlord stated that an order of possession for the unit was obtained at a hearing held on December 2, 2013. The Landlord states that no

orders have been obtained in relation to the security deposit and that the Landlord still holds the security deposit.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on November 1, 2011. Although the rent at the start of the tenancy was set at \$1,600.00 this rent was reduced to \$1,500.00 starting August 1, 2013. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit.

The Landlord stated that on July 10, 2013 the house was damaged by a fire started by the Tenant's child, that the Tenants agreed to pay the Landlord's insurance deductible of \$2,500.00 and that the Tenants did pay \$400.00. The Landlord stated that the Tenants have since refused to pay the remainder. The Tenant stated that the fire report does not contain any indication of cause. For the reconvened hearing, the Landlord provided a copy of the fire report setting out the likely cause of fire. The Landlord claims \$2,100.00.

The Tenant did not dispute the amount of the deductible but denied that their child caused the fire and stated that following the fire the restoration company discovered that the electrical wiring for the house was in horrible condition. The Tenant stated that the fire more likely started from a pull light in the closet and that a report from the restoration company was due within a week of the original hearing. The Landlord stated that the electrical wiring was completely redone three years ago and prior to this tenancy following the discovery of a grow operation in the unit.

Analysis

Section 32 of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a

person permitted on the residential property by the tenant. Section 7 of the Act provides that where a tenant does not comply with the Act, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the fire report and considering that the Tenant has provided no supporting evidence of other causation, I find that the Landlord has substantiated that the Tenants negligently caused the fire to occur and that the Landlord is entitled to compensation of **\$2,100.00** for the remaining cost of the Landlord's insurance deductible. As the Landlord has been successful, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,150.00**.

Section 72 of the Act provides that where payment is ordered from a tenant to a landlord, the payment may be deducted from any security deposit due to the Tenant. As the Landlord still holds the security deposit of \$800.00 plus zero interest, I order the Landlord to retain this amount from the entitlement of **\$2,150.00** leaving **\$1,350.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$800.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,350.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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*.

Dated: December 12, 2013

Residential Tenancy Branch