



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

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

- 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;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package on April 16, 2015 in person at the tenant's place of work with a witness. The landlord has submitted a copy of a written statement by the witness confirming service of the notice of hearing package in this manner. As per section 88 and 89 of the Act, I find that the tenant was properly served with the notice of hearing package and the submitted documentary evidence.

During the hearing, the landlord withdrew two portions of her monetary claim of \$150.00 listed as item number 7 on her monetary worksheet for the removal of furniture and her claim for \$200.00 for a strata move-out fee listed as item number 6. As such, no further action is required for these portions of the claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, for money owed or compensation for damage or loss and recovery of her filing fee?

Is the landlord entitled to an order authorizing her to retain all or part of the security deposit?

Background and Evidence

The landlord seeks an amended monetary claim of \$3,019.83 which consists of:

Item	Amount
Deck Cleanup	\$105.00
Cleaning rental unit	\$258.70
Loss of Rental Income	\$1,400.00
Loss of Value on Damaged Furniture	\$990.00
Removal of Furniture	\$120.00
Remount TV	\$86.63
Bank NSF charges	\$9.50
Recovery of Filing Fee for this Application	\$50.00
Total Monetary Order	\$3,019.83

This tenancy began on October 1, 2014 on a fixed term tenancy until October 1, 2015 for a furnished rental unit. The landlord entered into written evidence a copy of the signed tenancy agreement dated September 11, 2014. The monthly rent was \$1,400.00, payable on the 1st day of each month and a security deposit of \$700.00 was paid on September 11, 2014.

The landlord provided affirmed uncontested testimony that the rental was left dirty requiring extensive cleaning and has provided photographic evidence in support of this claim.

The landlord stated that it was discovered that the tenant had a pet cat. The presence of the cat required extensive cleaning of the rental unit by a professional as the landlord reported that she was allergic to cats and that there was cat hair throughout the rental premises. The landlord stated that because of the short notice and her attempts to clean the rental unit the landlord was forced to remove all of the furniture. In removing the furniture that was covered in cat hair, the landlord had to sell the furniture quickly to avoid storage costs.

The landlord provided affirmed uncontested evidence that the tenant breached the fixed term tenancy by ending it prematurely on February 15, 2015, which is approximately 7 months early. The landlord stated that she immediately began advertising the rental unit to re-rent it to mitigate any possible losses. The landlord stated that after repeated attempts to re-rent she was forced to re-advertise the rental from a furnished rental to an unfurnished rental at \$200.00 less per month. The landlord stated that she was successful in re-renting the unit for March 1, 2015, but at \$1,200.00 instead of the original \$1,400.00 as a furnished rental. The landlord applied for a monetary award of \$1,400.00 in lost rental income based upon the loss of \$200.00 per month for the difference between the signed tenancy agreement and what she was able to obtain for the unfurnished rental unit.

The landlord has provided photographic evidence and email correspondence that the tenant removed a mounted television (TV) without permission requiring her to have the TV professionally re-mounted.

The landlord has submitted copies of all invoices and receipts for expenses incurred for these claims. The landlord specified that on two occasions the tenant paid rent by cheque that was returned by her financial institution as "NSF." She was charged \$7.50 and \$7.00 on these occasions by her financial institution. The landlord clarified on the first occasion the tenant paid a portion of the NSF charge of \$5.00, but failed to pay the balance. The landlord seeks recovery of \$2.50 and \$7.00 for NSF charges, totalling \$9.50.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I am satisfied by the undisputed affirmed testimony and written evidence submitted by the landlord that the landlord did suffer a loss of \$1,400.00 in rental income due to the actions of the tenant. Based on the evidence presented, I accept that

the landlord did attempt to the extent that was reasonable to re-rent the premises for March 1, 2015. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the any possible losses. I issue a monetary award to the landlord to recover these losses.

The landlord has provided undisputed affirmed testimony and written evidence that the landlord suffered a loss that the tenant left the rental unit dirty requiring a professional cleaner, left damaged furniture, removed a mounted TV without permission and incurred the cost of NSF charges.

In reviewing the landlord's undisputed affirmed testimony and the submitted documentary evidence, I am satisfied that cleaning and the removal of personal property and garbage was required at the end of the tenancy.

During the hearing, the landlord clarified her claim for the cost of gas was for travelling to and from the rental for the tenancy, postage (delivery of the hearing and evidence packages) and photo printing costs (evidence). Section 72 of the *Act* allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the *Act*. I find that the landlord is not entitled to make any claim for compensation for these costs. These portions of the landlord's claim are dismissed.

I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary awards granted to the landlord. No interest is payable over this period. As the landlord has been successful in her application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord an monetary award less the amount for the security deposit already held by the landlord, plus the recovery of her filing fee

Item	Amount
Deck Cleanup	\$105.00
Cleaning rental unit	\$258.70
Loss of Rental Income	\$1,400.00
Loss of Value on Damaged Furniture	\$990.00

Removal of Furniture	\$120.00
Remount TV	\$86.63
Bank NSF charges	\$9.50
Recovery of Filing Fee for this Application	\$50.00
Less Security Deposit	-700.00
Total Monetary Order	\$2,319.83

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order. 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*.

Dated: September 21, 2015

Residential Tenancy Branch

