



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for damage or loss 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although the teleconference line remained open for over 30 minutes in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30pm. The landlord and her son as her assistant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage or loss?

Are the landlords entitled to retain all or a portion of the tenant's security deposit?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on July 1, 2006 with a rental amount of \$600.00 payable on the 28th of each month. The landlord's representative ("the son") testified that the landlords continue to hold a \$300.00 security deposit paid by the tenant at the outset of the tenancy (May 22, 2006). The landlords submitted a monetary worksheet indicating they sought \$2974.68. The landlords sought to retain the tenant's security deposit towards that amount.

The son/assistant testified that in December 2015, a Residential Tenancy Branch Arbitrator issued the landlord an Order of Possession. The landlord submitted a letter sent to the tenant and her assistant to indicate that they had agreed to extend the tenant's stay beyond the date of the Order of Possession "for use and occupancy only"

with a clear indication that she was to vacate the rental unit by January 31, 2016. The son testified that the tenant vacated the residence on February 19, 2016 with the assistance of bailiffs hired by the landlords. The son testified that the tenant provided a forwarding address to the landlords in writing by mail on March 4, 2016.

The landlord sought to recover the cost of filing for a writ of possession in support of the Order of Possession issued by an RTB Arbitrator. The landlord provided documentary evidence of the \$120.00 cost for that action. The landlord also sought to recover the cost of the bailiff used to remove the tenant and her belongings from the rental unit/residence. Documentary evidence (receipts) show a total cost of the bailiff of \$1734.68. A portion of this amount was for storage of the tenant's belongings by the landlords in accordance with the provisions of the *Residential Tenancy Act*. The landlord testified that, when the bailiffs were packing the tenant's possessions, they placed some items belonging to the landlords in with the tenant's belongings including a satellite receiver remote control and a shelf.

The landlord and her son testified that the rental unit had no damage at the end of the tenancy but that it required substantial cleaning before it could be re-rented. They estimate their own time and cost at \$120.00 for several days of cleaning including carpet cleaning, and washing of the ceilings and floors.

The landlord and her son both testified that the amount of time to clear out and clean the rental unit resulted in the landlords' inability to show or re-rent the unit over the majority of the month of March 2016. The landlord testified that the unit was re-rented by April 1, 2016.

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 that the damage/loss stemmed from action or failure to act in violation of the agreement or a contravention of the *Act* by the other party.

The landlord provided sufficient evidence of the \$120.00 cost to file for a writ of possession. That writ was required to take further steps to remove the tenant when she did not vacate the rental unit in accordance with the Order of Possession and subsequent agreement with the landlords. Therefore, I find that the landlord is entitled to recover \$120.00 for the cost of filing for a writ of possession.

The landlord also provided evidence in the form of receipts to prove costs for bailiff services (including storage of the tenant's belongings) totalling \$1734.68. The landlords took steps in accordance with the provisions of the *Residential Tenancy Act* in storing the tenant's possessions. The cost incurred to them for both the use of bailiffs and storage stems directly from the tenant's failure to move out of the rental unit as required. Therefore, I find that the landlord is entitled to recover \$1734.68 for the cost of bailiff services.

The landlord sought to recover the cost of a satellite receiver remote control and a shelf that the bailiffs inadvertently packed with the tenant's belongings. I find that this loss is not a result of any action attributable to the tenant. Therefore, I find that the landlord is not entitled to recover the cost of a satellite receiver remote control or a used shelf.

I accept the testimony of the landlord and her son supported by documentary evidence that the rental unit required cleaning. I find that the landlord's calculation of \$120.00 for their time cleaning for what was described by both landlord witnesses as several days' work is reasonable. Therefore, I find that the landlord is entitled to recover \$120.00 for cleaning costs. I also accept the sworn undisputed evidence of the landlord and her son that the unit could not be re-rented until April 1, 2016. Therefore, I find that the landlord is entitled to \$685.00 for March 2016 rent.

The landlord testified that she continues to hold a security deposit of \$300.00 plus any interest from May 22, 2006 to the date of this decision for this tenancy. In accordance with section 72(2)(b) of the Act, I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. [interest: \$10.03]

As the landlord has been successful in this application, I find that the landlord is entitled to recover the filing fee from the tenant.

Conclusion

I issue a monetary order to the landlord as follows,

Item	Amount
Rental Loss	\$685.00
Cleaning Rental Unit	120.00
Bailiff: removal and storage	1734.68
File for Writ of Possession	120.00
Less Security Deposit	-310.03
Recovery of Filing Fee for this Application	100.00

Total Monetary Order	\$2449.65
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The landlord is provided with these Orders in the above terms and the tenant must be served with this Order 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*.

Dated: July 13, 2016

Residential Tenancy Branch