



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:

- a monetary order for compensation 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background

In a decision dated April 18, 2016, the landlord was granted an order of possession effective April 30, 2016 and the tenancy ended on this date. The tenant paid a security deposit of \$1050.00 and a pet deposit of \$1000.00 at the start of the tenancy which the landlord continues to hold. A forwarding address was provided by the tenant during a move out condition inspection report completed on April 30, 2016. The landlord made

an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address.

Evidence & Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four 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 other party in violation of the *Act*, *Regulation* or tenancy 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 followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the testimony of the parties and the documentary evidence, the various aspects of the landlords' application and my related findings are set out below:

Loss of sale of home: \$5000.00

The landlord claims he suffered a loss due to the tenant's refusal to allow entry to the rental unit for the purpose of viewing by prospective purchasers. The landlord submits there was an accepted written offer on the property subject to viewing. The offer fell through as the tenant denied access to the rental unit. The landlord submits he was granted an order of possession on these grounds in a previous dispute resolution hearing.

While the landlord may have been granted an order of possession on the grounds of significant interference with the landlord's right to show the rental unit, I find the landlord has failed to meet its burden of proof to establish that actual loss exists. The landlord did not provide any evidence of an accepted offer on the property and that the offer fell through as result of the tenant's actions. The landlord also failed to establish if or when the property actually sold and whether it sold at a loss in comparison to the alleged failed offer.

This aspect of the landlord's claim is dismissed.

Lawn & Yard maintenance: \$200.00

The landlord claims the tenant did not maintain the lawn as per the tenancy agreement and the landlord had to hire a lawn cutting service. The tenant maintains he did cut and maintain the lawn.

The landlord has failed to establish that the tenant did not maintain the yard nor has the landlord provided any receipts or invoices in support of his claim that a lawn cutting service had to be hired.

This aspect of the landlord's claim is dismissed.

Garage door opener and garage door keyhole: \$150.00 per hour

The landlord claims the garage door was damaged by the tenant as supported in the move-out condition inspection report. The landlord submits a brand new garage door opener was installed at the start of the tenancy. The landlord submits a technician was booked to assess the problem. The landlord has not provided any follow-up receipt or invoice from the technician supporting any loss or potential cause of the garage door not working.

The tenant claimed the items were damaged when the tenancy began. In either event, as the landlord has failed to provide any receipts or invoices supporting the actual amount required to compensate for this loss, this aspect of the landlord's claim is dismissed.

Loss of Vacation time: \$250.00

The landlord is claiming this amount for having to attend to the rental unit to flip a breaker switch on the electrical panel which the tenant refused to flip.

The landlord has failed to establish how the tenant's refusal to flip a breaker switch is in violation of the Act, Regulation or tenancy agreement.

This aspect of the landlord's claim is dismissed.

Filing fee: \$100.00

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord is ordered to return to the tenant, the full amount of both the security deposit and pet deposit in the sum of \$2050.00.

The tenant is granted a Monetary Order in the amount of \$2050.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2050.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: September 27, 2016

Residential Tenancy Branch