



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNSD, MNDC

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- a monetary order for damage to the suite, pursuant to section 67;
- authorization to retain 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 its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issue

The landlord acknowledged receipt of the tenant's documentary evidence. The tenant advised that he did not receive the landlords' documentary evidence. It was explained to the tenant the options that were available to him. The documentary evidence was explained to the tenant. The tenant advised that he still wished to proceed after hearing what the landlords' evidence was; on that basis the landlords' documentary evidence has been fully considered when making this decision.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

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

Background, Evidence

The landlord's testimony is as follows. The tenancy began on July 31, 2015 and ended on July 31, 2016. The tenants were obligated to pay \$2130.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1065.00 security deposit. The landlord testified that the suite is a furnished unit. The landlord testified that the tenant left the unit damaged and took many of the furnishings without the landlords consent. The landlord testified that the tenant did not advise him of the water damage to the hardwood floor until the end of the tenancy. The landlord testified that the tenant was very careless in the unit and caused a great deal of damage to the items as listed below. The landlord testified that the tenant is responsible for the damages as well as the replacing of the furniture he took. The landlord is applying for the following:

Item	Amount
Damaged hardwood floor	5000.00
Missing Part for Air Conditioner	500.00
T.V. Remotes and connector cables	100.00
White leather bench	350.00
Two bedside tables	150.00
Mattress	1000.00
80% kitchen dishes	130.00
Ikea shelve	40.00
Garage remote control	200.00
Bathroom fan	150.00
Shower curtain	30.00
Damaged garburator	150.00
Damaged white sofa	1500.00
Damaged entertainment center	200.00
Filing fee for this application	100.00
Less security deposit	-1065.00
Total Monetary Order	\$8535.00

The tenant gave the following testimony. The tenant testified that he adamantly denies removing any of the items from the unit. The tenant testified that he had advised the landlord several times about the flooring buckling, but was told that due to the quality of

hardwood it was normal. The tenant testified that he was concerned that there was a leak somewhere in the bathroom area and made attempts to have a plumber investigate and inspect but the landlord was unwilling to allow a thorough inspection. The tenant testified that the landlord did a condition inspection report with him at move in but did not conduct one at move out. The tenant testified that the landlord sent his father and sister to the inspection but they refused to provide or sign any paperwork. The tenant testified that the landlord was being untruthful and that his claim lacks any merit. The tenant requests the return of his security deposit.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around are set out below.

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. The landlord testified that he had written condition inspection reports, photos and receipts to support his claim; however the landlord did not submit those for this hearing. The landlord provided several poor quality black and white photos that were not helpful. Based on the insufficient evidence before me, I dismiss the landlords' application in its entirety.

Conclusion

I order that the landlord return the security deposit back to the tenant. I grant the tenant an order under section 67 for the balance due of \$1065.00. 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: February 06, 2017

Residential Tenancy Branch