



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR

Introduction

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

- a monetary order for unpaid rent 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.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 24, 2017, but that the package was returned as "unclaimed" by Canada Post. The tenant confirmed that no package was received as she had vacated the rental unit on February 26, 2017. The tenant confirmed receipt of the landlord's amended application for dispute via Canada Post Registered Mail. The tenant submitted no documentary evidence. As both parties have attended and have confirmed receipt of the amended application for dispute, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and money owed or compensation for damage or loss?

Is the landlord entitled to retain all or part of the security and pet damage deposits?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2015 on a fixed term tenancy ending on November 30, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$900.00 payable on the 1st day of each month. A security deposit of \$450.00 and a pet damage deposit of \$200.00 were paid on November 14, 2015.

The landlord seeks an amended monetary claim of \$3,070.00 which consists of:

\$1,800.00	Unpaid Rent, January (\$900.00) and February (\$900.00)
\$270.00	Cleaning
\$1,000.00	Damage, walls

The landlord provided affirmed testimony that the tenant moved out of the unit on March 1, 2017 and returned 1 key and 1 fob on March 3, 2017. The tenant disputes the landlord's claim and stated that she moved-out on February 26, 2017, but confirms that the keys and a walk through of the rental premises was done on March 3, 2017.

Both parties clarified and confirmed that the tenant did not pay the January 2017 rent of \$900.00. Both parties also confirmed that the tenant was owed compensation equal to the monthly rent of \$900.00 for the tenant complying with the landlord's 2 Month Notice and as such the landlord has cancelled this portion of his claim.

The landlord discovered that the tenant left the unit dirty and paid \$270.00 to get the unit clean. The tenant disputes the landlord's claim stating that the rental unit was not left dirty.

The landlord stated that the tenant left the unit with damaged walls requiring repairs and painting of \$1,000.00. The landlord clarified that the tenant left "glue" stuck to the walls which had to be scraped off and subsequently the walls re-painted. The tenant disputes this claim stating that the "glue" was present when she moved in prior to the start of her tenancy.

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.

I accept the undisputed affirmed evidence of both parties and find based upon the tenant's own direct testimony that no rent for January 2017 (\$900.00) was paid. As such, this portion of the landlord's claim is granted.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. As for the remaining two items of claim, \$270.00 for cleaning and \$1,000.00 for wall damages, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to establish his claim. The landlord relies solely on his direct testimony which is disputed by the tenant. The landlord has failed to provide sufficient evidence that damage occurred as a result of the tenant's actions or neglect or of an actual amount required for the losses (ie. Invoices/receipts). This portion of the monetary claim is dismissed.

The landlord has established a monetary claim of \$900.00. In offsetting this claim, I authorize the landlord to retain the combined \$650.00 security and pet damage deposits in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$250.00.

The landlord may retain the combined \$650.00 security and pet damage deposits.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: March 31, 2017

Residential Tenancy Branch