



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MND MNR MNDC MNSD

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for damage to the unit, site, or property, 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 a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlords attended the hearing by way of conference call, the tenants did not. I waited until 1:59 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords testified that the tenants were served with the landlords' application for dispute resolution hearing package on September 9, 2016, by way of registered mail. The landlords provided a Canada Post tracking number. The landlords testified that the tenants' address was verified by a process server, who had attended the same residence on a subsequent date to serve documents on an unrelated matter on December 13, 2016. I find that the process server had provided sufficient evidence to satisfy me that the tenants do reside at the address where the Application was sent by registered mail. In accordance with sections 89 and 90 of the Act, I find that the tenants were deemed served with the landlords' application on October 14, 2016, five days after its registered mailing.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for unpaid rent and losses pursuant to section 67 of the *Act*?

Are the landlords entitled to monetary compensation for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

Are the landlords entitled to monetary compensation for damage to the site, unit, or property pursuant to section 67 of the *Act*?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

Background and Evidence

The landlords testified regarding the following facts. The tenants had moved out on or about August 20, 2016, after being served with a Supreme Court Writ of Possession. The landlords were granted a 2 Day Order of Possession, dated August 11, 2016, by an Adjudicator after a Direct Request Proceeding for failing to pay July 2016 rent. The tenants failed to comply with this Order, and the landlords filed the Order with the Supreme Court. The landlords were unable to confirm the exact move out date as the tenants had moved out while the landlords were not in town. A security deposit was paid at the beginning of the tenancy in November of 2015, in the amount of \$725.00. The landlords still hold that deposit.

The landlords testified that both move in and move out inspections were completed, with the move out inspection done on August 26, 2016 as the tenants had already moved out. The landlords provided copies of both reports in their evidence. The landlords testified that the duplex was brand new when the tenants had moved in, and they had spent two days cleaning after the move out. The landlords testified that the tenants had never cleaned the property while residing there.

The landlords testified that they were able to find a new tenant as of September 15, 2016. As the tenants refused to move out until the landlords had obtained a Writ of Possession from the Supreme Court, the landlords are seeking compensation equivalent to half a month's rent for September 2016, the time it took them to locate a new tenant.

The landlords testified that the August 2016 rent cheque was returned to them from their financial institution as the tenants did not have sufficient funds. The landlords submitted a letter in their evidence to support this, which contained a photocopy of the returned cheque for \$1,450.00. The landlords attempted to re-rent the home as soon as a possible and found a new

tenant for September 15, 2016. The landlord submitted a copy of the tenancy agreement in their evidence.

The landlords are seeking compensation for the cost of re-renting the home, as well as the cost of cleaning. The landlords submitted receipts for the cleaning supplies that they had used to clean the home. The landlords also submitted a monetary claim for cleaning, and used an hourly rate of \$30.00 per hour for 30 hours of labour. The landlords submitted that it took them 36 hours of cleaning in order to prepare the rental for the new tenants. The landlords are also seeking compensation for the time involved in screening and showing the home to prospective tenants. They provided a calculation of \$30.00 per hour for 12 hours of labour.

The landlords testified that the tenants did not return the keys to the home, and as a result the landlords had to call a locksmith. The landlord provided a copy of the receipt for \$110.25.

The landlords are seeking to retain the tenant's \$725.00 security deposit in partial satisfaction of their monetary claim.

The landlord's monetary claim is summarized below:

August 2016 Rent (returned due to NSF)	\$1,450.00
Rent for September 1-15, 2016	725.00
Cost of re-renting/screening new tenant (\$30/hour x12)	360.00
Cost of cleaning \$30/hour x 30	900.00
Cleaning Supplies	191.19
Locksmith	110.25
Filing Fee	100.00
Security Deposit	-725.00
Total	\$ 3111.44

Analysis

The landlords provided undisputed evidence at this hearing, as the tenants did not attend. The landlords submitted detailed accounts and receipts of the costs incurred as part of the tenants' failure to abide by the Order of Possession served upon them, and as a result of the damage left by the tenants upon move out.

The landlords had claimed for rental loss for half of September 2016. Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed

directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that this tenancy had ended by way of an Order of Possession, granted by an Adjudicator pursuant to section 55 of the Act. The Order of Possession required the tenants to vacate the rental home two days after being served the Order by the landlords, which they did not do until August 20, 2016, after the landlords had obtained a Writ of Possession. I find that the tenants had breached the Act and as a result the landlords experienced a loss.

I then must consider whether the landlords had sufficiently mitigated their damages. I find that the landlord had found a new tenant as soon as reasonably possible after spending countless hours cleaning the home due to the nature of the how the tenants had vacated the rental home. The landlords found a new tenant as soon as September 15, 2016, and as a result are looking for compensation of half a month's rent. I find that the landlords had complied with the Act, and have followed the proper process to mitigate their losses that were incurred as part of this tenancy.

Accordingly I find that the landlords are entitled to the full monetary claim of \$3,736.44.

The landlords continue to hold the tenants' security deposit of \$725.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 and the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit of \$725.00 in partial satisfaction of the monetary claim.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the landlords' favour under the following terms which allows the landlords to recover the costs and losses incurred as part of this tenancy, plus retention of the security deposit in partial satisfaction of the monetary claim. The landlords are also entitled to recover the cost of the filing fee for this application.

August 2016 Rent (returned due to NSF)	\$1,450.00
Rent for September 1-15, 2016	725.00
Cost of re-renting/screening new tenant (\$30/hour x12)	360.00
Cost of cleaning \$30/hour x 30	900.00
Cleaning Supplies	191.19

Locksmith	110.25
Filing Fee	100.00
Security Deposit	-725.00
Total	\$ 3111.44

The landlords are provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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: April 10, 2017

Residential Tenancy Branch