



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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/respondent did not attend this hearing, although I waited until 1:59 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord's representative testified that the landlord served the Application for Dispute Resolution ("ADR") including Notice of Hearing to the tenant at the address provided by the tenant to the landlord as her forwarding address. A copy of the letter from the tenant providing her forwarding address on November 29, 2016 was submitted as evidence at this hearing. Based on the undisputed testimony of the landlord, I find that the tenant was deemed served with the landlord's ADR with the notice of this hearing date on December 3, 2016 – 5 days after the registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began January 15, 2012 with a rental amount of \$867.00 payable on the first of each month. The landlord testified that the tenancy ended on October 3, 2016 when the tenant attended for a condition inspection of the rental unit and provided the keys to the landlord. The

landlord testified that the tenant was scheduled to vacate the rental unit on September 30, 2016. The landlord continues to hold a \$434.00 security deposit paid by the tenant at the outset of the tenancy (January 5, 2012). The landlord applied to retain the tenant's security deposit claiming the tenant owes the landlord \$4200.00.

The landlord testified that, at the move-out condition inspection, the tenant was reminded that she owed the landlord \$4200.00 as a result of a prior incident of damage to the rental unit. The landlord referred to the tenant's letter requesting the return of her security deposit that also stated in part,

My damage deposit cannot be held for reasons you claimed. I have NO problem continuing to make my payments for the cost of repairs from the flood.

After the tenant provided this letter with her forwarding address to the landlord on November 22, 2016, the landlord filed thereafter for a monetary order in the amount of \$4200.00 and retention of the tenant's \$434.00 security deposit.

The landlord submitted several pages of documentary evidence titled, "payment schedule" signed by both a property manager and the tenant. Three pages were dated September 11, 2013 and 10 pages were dated December 3, 2013. The landlord also submitted a tenant ledger documenting payments from the tenant and her balance, which included a \$5000.00 statement debit on August 30, 2013. The landlord submitted letters referring to outstanding payments. One letter indicates that the \$5000.00 deductible was "attached" to the tenant's rent file for full payment and attached a proposed payment schedule. The landlord's representative testified that she did not choose to submit evidence to represent the flood or to evidence the landlord's costs as a result of the flood.

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 (landlord) must first 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/landlord must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has not submitted sufficient proof of the existence of the damage to the rental unit. Beyond brief testimony of the landlord's representative, who was not with the landlord in 2013, I have been provided only with second hand information that refers to an incident that resulted in flood and damage.

As I must make a decision with respect to any compensation for this damage, I require evidence that shows the damage is a result of a violation of the residential tenancy agreement or a contravention of the *Act* by the tenant. I was not provided testimony, documentary or photographic evidence of the damage or any other evidence that might confirm the tenant's responsibility for the damage. The landlord did not provide sufficient evidence that can verify the original and actual monetary amount of the loss or damage: I was not provided with a document from the insurance company assessing the damage, photographs or copies of documents to show that the landlords paid the insurance deductible with respect to this unit or a document that clearly outlines liability to the tenant. I have been asked to rely on a typewritten document that the landlord testified was sent to the landlord by the tenant. That document, and the payment schedules provide insufficient evidence to verify the large amount sought against the tenant.

As I have not been provided with evidence with respect to the damage that results in the landlord's claim against the tenant, **I must dismiss the landlord's claim.**

Conclusion

I dismiss the landlord's claim in its entirety.

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: May 31, 2017

Residential Tenancy Branch