



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for unpaid rent, for loss of rent, for compensation under the *Act* and the tenancy agreement, for damage and cleaning of the rental unit, for an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified served the Tenant, Masha Lee Calliou, with the Notice of Hearing and his Application on December 9, 2016 by registered mail to the Tenant's grandmother's home where she was residing. Pursuant to section 90 of the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenant, M.C., was duly served as of December 14, 2016. I have recorded the tracking number for the registered mail package on the unpublished cover page of this my Decision.

As only the Tenant M.C. was served with Notice of the Hearing, I make no findings or Orders with respect to the Tenant, J.F. However, I note, pursuant to the residential tenancy agreement filed in evidence, in which both Tenants are named, that the Tenants remain jointly and severally liable for any liabilities arising from this tenancy.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be entitled to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord stated that the Tenants resided in the rental unit at the time he purchased the rental property in December of 2015. Monthly rent was payable in the amount of \$1,228.00 and the Landlord holds a security deposit in the amount of \$600.00.

The Landlord stated that the Tenants failed to pay rent for November 2016. They asked for an extension of time to pay the rent until November 20, 2016, although when he attended the rental unit on that date to collect the rent they had already vacated the rental unit.

The Tenants vacated the property, however the Landlord was not able to re-rent the unit until January 1, 2017 due to the condition of the rental unit. As such, the Landlord sought unpaid rent for November 2016 and loss of rent for December 2016.

Photos of the rental unit submitted in evidence by the Landlord show the following:

- Significant damage to the exterior stucco above the entry door;
- a large portion of the bathroom counter broken off;
- significant denting and damage to the doors;
- a broken window frame;
- a broken staircase railing;
- large holes in the walls;
- a missing drawer in the bathroom vanity;
- missing blinds;
- items left by the Tenants.

The Landlord claims as follows:

Unpaid rent for November 2016 and loss of rent for December 2016	\$2,456.00
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Repairs to the rental unit	\$1,044.00
Filing fee	\$100.00
Total claimed	\$3,600.00.

Analysis

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. that the other party violated the *Act*, regulations, or tenancy agreement;
2. that the violation caused the party making the application to incur damages or loss as a result of the violation;
3. the value of the loss; and,
4. that the party making the application did whatever was reasonable to minimize the damage or loss.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants did not pay the November 2016 rent, and vacated the rental unit so late in November that the Landlord was not able to re-rent the unit until January 2017. I further find that the Tenants failed to clean the unit, or make necessary repairs, which further impacted the Landlord's ability to prepare the rental unit for sale. I therefore award the Landlord the amounts claimed for unpaid rent for November 2016 and loss of rent for December 2016.

Section 7 of the *Act* states:

- (1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Landlord testified that he is a contractor and as such did the repairs himself. He stated that although the repairs cost significantly more, he claimed only \$1,044.00 for the material costs of the repairs and did not claim any of his time. In doing so I find the Landlord minimized his losses.

I therefore award the Landlord the amounts claimed including recovery of the filing fee.

Conclusion

I find that the Landlord has established his monetary claim of **\$3,600.00** comprised of the following:

Unpaid rent for November 2016 and loss of rent for December 2016	\$2,456.00
Repairs to the rental unit	\$1,044.00
Filing fee	\$100.00
Total claimed	\$3,600.00.

I order that the Landlord retain the deposit and interest of **\$600.00** in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$3,000.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 06, 2017

Residential Tenancy Branch