



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, damages and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, 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.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- 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 obtain a return of all or a portion of their security deposit 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. The parties acknowledged receipt of evidence submitted by the other.

Issue 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 in partial satisfaction of the monetary award requested?

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

Is the tenant entitled to a monetary award for the return of their security deposit?

Is the tenant entitled to a monetary award for compensation for loss or damage under the Act, regulation or tenancy agreement?

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

Background, Evidence

The landlord's testimony is as follows. The six month fixed term tenancy began on June 1, 2016 and became a month to month tenancy after the six months .The tenancy ended on December 31, 2016. Condition inspection reports were conducted in writing with both parties present at move in and move out. The tenants were obligated to pay \$1600.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$800.00 security deposit. The landlord testified that on December 6, 2016 the tenants gave notice that they would be moving out by December 31, 2016. The landlord testified that after having discussions with the tenants, they agreed to have the tenants responsible to pay rent until January 15, 2017. The landlord testified that the tenants left the unit dirty and damaged. The landlord testified that the tenants also owe her for utilities.

The landlord testified that the tenants' claims should be dismissed in its entirety. The landlord testified that she tried to help the tenants out by trying to show as many potential renters as possible to mitigate both parties loss. The landlord testified that if the tenants were being honest they would withdraw their claim. The landlord testified that the showings were always done with the tenants consent during reasonable hours between noon and 8:00 p.m. The landlord testified that as soon as the tenants advised her that the washing machine wasn't working, she had it repaired at a cost of \$302.13. The landlord testified that the machine hasn't caused a problem since and this claim should also be dismissed.

The landlord is applying for the following:

1.	Unpaid Rent January 1-15, 2017	\$800.00
2.	Replacement of toilet paper holders	48.18
3.	Staples – supplies for Hearing	44.49
4.	Repair Floor- Estimate	294.00
5.	Utilities – Fortis and B.C. Hydro	142.60
6.	Canada Post	84.58

7.	Key Replacement	7.00
8.	Cloverdale Paint	52.23
9.	Cleaning	315.00
10.	Filing Fee	100.00
	Total	\$1888.08

The tenants gave the following testimony. The tenants testified that that they agree with some of the landlords claim. The tenants testified that they don't agree with the cleaning charges, damage to the floor or to the ceiling. The tenants testified that they were very accommodating in allowing the landlord show the unit at all hours but feel that they should be compensated for the disruption in their life. The tenants testified that showing the unit at odd hours of the day caused them significant anxiety and stress. The tenants testified that the washing machine caused severe damage to their clothes that they needed to be replaced. The tenants testified that they lost time at work to deal with this matter.

1.	Damages to their clothes	\$500.00
2.	USB stick	20.00
3.	Loss of wages	250.00
4.	Canada Post	63.00
5.	Compensation for Stress	1000.00
6.	Filing Fee	100.00
7.	Security Deposit	800.00
8.		
9.		
10.		
	Total	\$2733.00

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 each party's claim and my findings around each 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.** In this case each party bears that burden of providing sufficient evidence to support their claim. The claimant must prove the following; 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. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly I address the landlords' application and my findings as follows.

1. Unpaid Rent -\$800.00.

The tenants agree to this claim, accordingly; I find that the landlord is entitled to \$800.00.

2. Toilet Paper Holders - \$48.18

The tenants testified that they were damaged from the day that they moved in. The tenants' testified that it was not a big concern for them and that it didn't impact them. The landlord testified that the home was over fifty years old. The landlord testified that portions of the suite were renovated prior to the tenants moving in but not the bathroom; only the shower stall. Based on the age of the bathroom and the insufficient evidence before me to show that the item was damaged through recklessness or negligence by the tenant, I hereby dismiss this portion of the landlords' application.

3. Staples \$44.39

The only hearing related cost the *Act* covers is the filing fee, the applicant must bear all other costs, accordingly; I dismiss this portion of the landlords claim.

4. Floor Repair - \$294.00.

The landlord testified that the tenants scratched the floor and that she received an estimate of \$294.00 to repair it. The tenants testified that the scratch was under a table that the landlords provided from the outset of the tenancy and that it was pre-existing damage. The landlord has not suffered any out of pocket costs as of this hearing as they have only obtained an estimate. The landlord has failed to show what loss they

incurred or that the tenants caused the damage. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

5. Utilities - \$142.60.

The tenants agree to this claim, accordingly; the landlord is entitled to \$142.60.

6. Canada Post \$84.58

The only hearing related cost the Act covers is the filing fee, the applicant must bear all other costs, accordingly; I dismiss this portion of the landlords claim.

7. Key Replacement \$7.00.

The tenants agree to this claim, accordingly, the landlord is entitled to \$7.00.

8. Cloverdale paint - \$52.83.

The tenants dispute this claim. The tenants testified that this was pre-existing damage. The tenants testified that the landlord alleges they burned too many candles thus causing burn marks. The tenants testified that they have severe sensitivities such as incense or scented candles and don't use them. The landlord's condition inspection report does not refer to any burn marks on the ceiling. Based on the disputing testimony of the tenant and lack of documentation reflecting the change from the start of the tenancy versus the end, I dismiss this portion of the landlords claim.

9. Cleaning - \$315.00.

The tenants dispute this claim. The landlord provided the condition inspection report, photos and bills to support their claim. Residential Tenancy Policy Guideline 1 outlines the tenants' responsibility to leave the unit in a reasonably clean state at the end of the tenancy. Based on the evidence before me, I find the unit was not left in a reasonable state and the tenants are responsible for these costs. I find that the landlord is entitled to \$315.00.

10. Filing Fee - \$100.00.

As the landlord has been partially successful in their application they are entitled to the recovery of the \$100.00 filing fee.

The landlords' total award is \$1364.60.

I address the tenants' application and my findings as follows.

1. Damages to their clothes - \$500.00.

The tenants testified that the washing machine twisted and damaged their clothes so badly that they had to be replaced. The tenants testified that this was a “rough estimate” of the damage and have not replaced any items. The tenants have not met the burden of proof as outlined in Section 67 of the Act that requires them to provide the “actual cost” incurred, accordingly I dismiss this portion of the tenants application.

2. USB stick \$20.00.

The only hearing related cost the Act covers is the filing fee, the applicant must bear all other costs, accordingly; I dismiss this portion of the tenants’ claim.

3. Loss of Wages – \$250.00.

The tenant testified that he had to take time off of work to prepare for the hearing and attend the hearing. The only hearing related cost the Act covers is the filing fee, the applicant must bear all other costs, accordingly; I dismiss this portion of the tenants’ claim.

4. Canada Post - \$63.00.

The only hearing related cost the Act covers is the filing fee, the applicant must bear all other costs, accordingly; I dismiss this portion of the tenants’ application.

5. Compensation \$1000.00.

The tenant testified that the landlord did ten scheduled showings of the unit to potential renters in a three week span with viewing times between noon and 8:00 p.m. The tenants feel this caused them great stress and should be compensated for it. The landlord testified that they were trying to actively and aggressively advertise and rent the unit to mitigate losses as required by the Act. The landlord testified that she always gave the tenant notice and received their approval for the times. I find that ten showings over three weeks are reasonable. I also find that the times that the unit was shown are also reasonable. Based on all of the above, and on a balance of probabilities, I dismiss this portion of the tenants’ application.

6. Filing Fee - \$100.00.

As the tenants have not been successful in their application, I dismiss this claim.

7. Security Deposit -\$800.00.

The tenants acknowledge that the security deposit is to be offset against the charges that they are responsible for.

Conclusion

The landlord has established a claim for \$1364.60. I order that the landlord retain the \$800.00 security in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$564.60. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application is dismissed 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: June 29, 2017

Residential Tenancy Branch