



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, 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 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.

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 tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing.

Issue to be Decided

Is the landlord entitled to a monetary award for losses and damages 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?

Background, Evidence

The landlord's testimony is as follows. The one year fixed term tenancy began on November 1, 2016 but ended early on April 30, 2017 as a result of the tenant "breaking

the lease". The tenants were obligated to pay \$1950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$975.00 security deposit.

The landlord testified that the tenant sublet the unit without her authorization. The landlord testified that the sub tenants damaged the floor of the suite and left numerous burnt out lightbulbs. The landlord testified that that as a result of the unauthorized rentals the landlord was fined a total amount of \$450.00. The landlord testified that she also incurred a fee of \$500.00 by the property management company for having to rent the unit out prior to the end of the fixed term. The landlord testified that the tenants left the unit without notice and she seeks the recovery of loss of revenue for May and half of June until she was able to get new tenants.

The landlord is applying for the following:

1.	Rental Agent	\$500.00
2.	Short term Rental Bylaw Fine	200.00
3.	No Form K bylaw Fine	50.00
4.	Move In Move out Fee	200.00
5.	BC hydro	127.79
6.	Floor Repair – January	587.08
7.	Floor Repair - May	1127.00
8.	Lightbulbs	46.11
9.	Loss of Rent May	1950.00
10	Loss of Rent June 1- 15	975.00
11	Filing of Fee	100.00
	Total	\$5989.98

The tenant gave the following testimony. The tenant testified that the landlord had given him verbal permission to sublet the unit. The tenant testified that he agreed that the floor was damaged but that the contractor missed some of the damage the first time causing the repairs to increase the second time it was damaged. The tenant testified that that the landlord didn't provide sufficient evidence to support her claim and that most of it should be dismissed.

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 landlords' 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.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, 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, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

1. Rental Agent - \$500.00.

The tenant acknowledges and concedes that he did not fulfill his obligation of a one year tenancy causing the landlord to have to prematurely advertise and rent the unit earlier than scheduled. The tenant testified that he was verbally told to move out and complied with that request. The landlord has provided sufficient evidence to support her claim that the tenancy ended prematurely causing her to incur the cost of hiring the rental agent of re-renting the unit sooner than originally scheduled and is entitled to \$500.00.

2.-4. Bylaw Fines and Move in Move out fee \$450.00.

The landlord testified that she received fines of \$250.00 plus a charge of \$200.00 for nonpayment of the move in move out fee. The landlord testified that she's not sure why the rental agent did not have the tenant sign a Form K advising of their rights and responsibilities pursuant to the Strata Act and rules. The landlord testified that although the tenant did not sign the form he is well aware of them and should still be responsible for these costs. The tenant testified that he did not sign a Form K form and was not advised of his rights or responsibilities. The landlord hired a rental agent to carry out all the obligations of a landlord at the outset of the tenancy, and although this may have been an oversight, the burden is on the landlord to advise incoming tenants of all their rights and responsibilities and to maintain written records of such. In the absence of the

Form K, I find that the landlord is not entitled to the amount as sought and I dismiss this portion of her application.

5. BC Hydro - \$127.79

The tenant testified that he paid this bill and it must be “some mix up”. The landlord provided documentation that clearly shows the hydro bill in her name and paid by her. Based on the documentation before me, I am satisfied that the landlord has incurred this cost and is entitled to \$127.79.

6-7. Flooring \$1714.08.

The tenant testified that he does not dispute the damage but submits that the costs could have been a little lower had the contractor conducted all the work at one time. The landlord testified that the costs could not have been reduced as this was two different occurrences of damage and in different areas. The landlord submitted extensive documentation to support this claim. Based on the documentation before me I am satisfied that the landlord incurred these costs to repair the floor and that these damages were as a result of the tenant or his subtenants. The landlord is entitled to \$1714.08.

8. Lightbulbs - \$46.11.

The tenant takes responsibility for this claim and agrees that the landlord is entitled to this amount, accordingly; the landlord is entitled to \$46.11.

9 – 10. Loss of Rent May 1, 2017 - June 15, 2017 - \$2925.00

The tenant disputes this claim. The tenant testified that the landlord did not prove this claim by not providing evidence of what steps she took to mitigate the loss, despite the tenant not fulfilling the full term of the tenancy. The landlord testified that the tenant “broke the lease” and is responsible for the loss of revenue. The landlord testified that the unit was not suitable for immediate occupation as it was filthy and not in a viewable condition. The landlord testified that the rental agent attempted to do their best to rent it under the circumstances. Based on the landlords own documentation, she was aware that the tenancy was coming to as early as March 23, 2017, however she has not submitted any documentation from her rental agent or advertisements showing the steps she took to mitigate the loss. As noted above, a party making a claim must satisfy all four factors to be granted a monetary award, I find that the landlord has failed to

mitigate in relation to this portion of their claim, accordingly; I dismiss this portion of their application.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$2847.98. I order that the landlord retain the \$975.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1512.98. This order may be filed in the Small Claims 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: January 02, 2018

Residential Tenancy Branch