



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, FFL, MNDL-S

Introduction

This hearing dealt with the cross applications pursuant to the *Residential Tenancy Act* ("Act")

The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenant applied for:

- 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 landlord, pursuant to section 72.

Only the landlords participated in the teleconference. The landlords filed their application in response to the tenants' application. The landlords provided documentary evidence that the tenants were served with their application, evidence and Notice of Hearing package by registered mail on October 19, 2017. The landlords provided tracking information to show that the packages were returned "unclaimed" by the tenants on November 16, 2017. Based on the above, I find that the tenants were deemed served in accordance with Section 89 and 90 of the Act.

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.

As the tenants chose not to submit any documentation for this hearing or participate in the teleconference, I dismiss their application in its entirety without leave to reapply.

Issues to Decide

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on October 1, 2016 and ended on August 31, 2017. The tenants were obligated to pay \$1350.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$675.00 security deposit. Written condition inspection reports were conducted at move in and move out by the landlord but the tenants did not participate at the move out inspection. The landlords testified that the tenants left the unit damaged and dirty. The landlords testified that the carpets were not cleaned, the walls were damaged requiring patching, repairing and painting, floors were damaged requiring repairs and two drawers in the fridge were damaged requiring replacement parts.

The landlord is applying for the following:

1.	Carpet Cleaning	\$140.00
2.	Wall Repair and paint supplies	362.87
3.	Flooring repair	1359.75
4.	Fridge Shelf	43.19
5.	Fridge Drawer	137.00
6.	Filing Fee	100.00
	Total	\$2,142.81

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 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.

The landlords provided the following to support their claim; undisputed testimony, photographs, the condition inspection report and receipts. Based on all of the above, the landlords' have provided sufficient evidence to support their claim and the amount sought. Accordingly I find that the landlord is entitled to \$2142.81. Although the landlord did not apply to retain the deposit, applying the offsetting provision of section 72, I order that the landlord is entitled to retain the deposit in partial satisfaction of the claim.

Conclusion

The landlord has established a claim for \$2142.81. I order that the landlord retain the \$675.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1467.81. 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 without leave to reapply.

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 25, 2018

Residential Tenancy Branch