



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

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

- a Monetary Order for damages or losses arising out this tenancy pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the property manager, D.D. (the "landlord") attended the hearing on behalf of the corporate landlord. The landlord was given a full opportunity to be heard, to present her testimony and to make submissions.

The landlord said that the tenant had abandoned the property in May 2017 and that no forwarding address was given. The landlord said that she sent her application for dispute resolution to the last known address used by the tenant on June 12, 2017. Pursuant to sections 88, 89 & 90 of the *Act*, the tenant is deemed served with the landlord's application on June 15, 2017, three days after its posting.

No evidence was supplied to the hearing by the tenant.

Issue(s) to be Decided

Can the landlord retain the tenant's security deposit?

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

Undisputed testimony was provided to the hearing by the landlord that this tenancy began on October 30, 2013 and ended "sometime" in May 2017 when the tenant abandoned the rental property. Rent was \$925.00 per month, and a security deposit of \$462.50 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord said she was seeking a monetary award for unpaid rent related to January, February, March, April and May 2017, along with bank fees of \$25.00/month, for each unpaid month. In addition, the landlord sought \$159.54 for a lock which required re-keying after the tenant failed to return the keys to the landlord, and \$3,290.00 for cabinets and flooring that required significant repair after they had been removed by the tenant so she could install a dishwasher.

Analysis

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results.”

Based on the undisputed testimony presented at the hearing, I find that rent remains unpaid for January, February, March, April and May 2017. Furthermore, the landlord incurred bank fees due to the returned cheques that the tenant failed to account for. I find that the landlord is entitled to recover of this rent, along with the unpaid banking fees, under section 7 of the *Act*.

In addition to an application to recover unpaid rent and bank fees, the landlord applied for a monetary award related to damage in the rental unit.

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 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 must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to a monetary award.

The landlord explained that the tenant had physically removed an entire cabinet from the rental unit so that she could install a dishwasher. The landlord said that this work was done without the landlord's permission and caused great damage to the cabinet and the surrounding flooring. The landlord sought a monetary award in relation to the work that was required to return the rental unit to an appropriate state of repair.

I find that the landlord suffered damage to the unit which was done purposefully and without the landlord's permission. This damage is beyond the scope of what can be

considered, “regular wear and tear” and the landlord is therefore entitled to a return of the funds required to fix the rental unit.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenant.

Using the offsetting provisions contained in section 72 of the *Act*, the landlord is entitled to retain the tenant’s security deposit as partial relief against the monetary award.

Conclusion

I issue a Monetary Order of \$7,837.04 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for January to May 2017 (5 x 925.00)	\$4,625.00
Bank Fees for January to May 2017 (5 x 25.00)	125.00
Repair of Cabinets and Floor	3,290.00
Re-keying of lock	159.54
Recovery of Filing Fee	100.00
Less Return of Security Deposit	(-462.50)
Total =	\$7,837.04

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 09, 2018

Residential Tenancy Branch