



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") 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;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this 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 was represented by his mother and the landlord had the property manager that dealt directly with the tenant represent them. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

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?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2015 and ended on October 17, 2017. The tenancy originally started on a one year fixed term and renewed each year. The landlord testified that the tenant broke the current lease and ended the tenancy early without the landlords consent. The tenant was obligated to pay \$655.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$327.50 security deposit which they still hold. The landlord testified that written condition inspection reports were conducted at move in and move out. The landlord testified that the tenant participated at the move in inspection but not the move out despite three attempts to arrange a time and serving a notice of final inspection. The landlord testified that the tenant did not clean the suite at move out and left numerous items damaged. The landlord testified that the tenant did not pay the rent for October 2017 and left the unit in such a deplorable condition, they were unable to rent it again until November 13, 2017.

The landlord is applying for the following:

1.	Unpaid Rent October 2017 & loss of revenue November 1-12 , 2017	\$917.00
2.	Late Fees	50.00
3.	Cleaning 7 hours x \$25.00 per hour	175.00
4.	Replace stove \$600.44 – prorated amount	200.00
5.	Carpet Cleaning	88.20
6.	Repair Bathroom door	75.00
7.	Repair Kitchen counter, floor, and carpet	265.00
8.	Repair Wall holes	530.00
9.	Telephone Jack	20.00
10.	Replace broken light shade	42.00
11.	Removal of Garbage and furniture	101.33
12.	Liquidated damages	450.00
13.	Filing fee	100.00
14.	Minus deposit	327.50
15.		
16.		
17.		
	Total	\$2586.03

TP gave the following submissions on behalf of the tenant. TP testified that the landlords claim was hyperbolic. TP submitted that the tenant disputes the landlords' claim in its entirety except for the \$101.33 to remove some garbage and furniture. TP

submitted that the unit was in poor shape and that much of the damage was due to a sewer backup flooding the unit and a rat infestation that the landlord refused to address.

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 landlord's claim and my findings around each are set out below. It is worth noting that TP was not present at the move out inspection and did not provide sufficient evidence that she had any firsthand knowledge of the condition of the unit. In addition, TP continually speculated on the events and frequently stated "I can't say for sure, but I can only imagine" and "I would think". I found much of the submissions provided by TP to be opinions and speculation lacking firsthand knowledge. On the other hand, the landlord was very clear, concise and credible when providing testimony and information. The landlord testified that numerous attempts were made to work with the tenant, but to no avail. The landlord testified that they had made several attempts to try to resolve the matter to avoid this hearing but were not met with the same efforts by the tenant.

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.

Rent owing for October 1-November 12, 2017 plus late fees = \$967.00

TP did not dispute that the rent was not paid during that time but felt the tenant was entitled to withhold the rent. The landlord provided a copy of the tenancy agreement that reflects the late rent payment would incur a cost of \$25.00 each time as claimed for October and November. Section 26 of the *Act* addresses this issue as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the above, I find that the landlord is entitled to \$967.00.

Cleaning \$125.00

The landlord provided the condition inspection report, photos and statements from the in-house contractors who conducted the cleaning. I find that the landlord has provided sufficient evidence to support this claim, on a balance of probabilities, accordingly; the landlord is entitled to \$175.00.

Stove \$200.00

The landlord testified that the stove was so dirty that it was more cost effective to replace it at a cost of \$600.44. The landlord applied the pro-rated amount as noted under Residential Tenancy Policy Guideline 40 that a stove has a useful life of 15 years and that the stove was 10 years old. The landlord seeks the pro – rated amount of \$200.00. TP testified that the stove was green and the claim was hyperbolic. I disagree with TP as the stove depicted in the photos is white and the landlord has provided sufficient evidence of the poor condition at move out. I find that the landlord has provided sufficient evidence to support this claim, on a balance of probabilities, accordingly; the landlord is entitled to \$200.00.

Carpet Cleaning – \$88.20

The landlord testified that the tenant didn't clean the carpets and incurred a cost of \$88.20. TP submitted that the carpets were damaged during a "flood" in 2016 and were never replaced. The landlord provided the condition inspection report, photos and the receipt. I find that the landlord has provided sufficient evidence to support this claim, on a balance of probabilities, accordingly; the landlord is entitled to \$88.20.

Bathroom Damage, Kitchen counter burnt, floor burnt, carpet burnt & Wall Damage
\$870.00

TP submitted that all of these claims were hyperbolic. The landlord provided photos to show excessive damage done to the walls in the living room, bedroom and ceiling. The landlord provided photos depicting cigarette burns on the carpet, linoleum floor and kitchen counter despite there being a no smoking clause in the tenancy agreement that the tenant signed. The landlord provided the condition inspection reports, photos and statements from the in-house contractors the conducted the repairs. I find that the landlord has provided sufficient evidence to support this claim, on a balance of probabilities, accordingly; the landlord is entitled to \$870.00.

Telephone jack – \$20.00

The landlord testified that the tenant ripped the phone jack off of the wall and had to replace it. TP submitted that “the phone jack is neither here nor there; the tenant had a cell phone”. Based on the condition inspection report, testimony of the landlord and photos, they have provided sufficient evidence to support this claim. I find that the landlord is entitled to \$20.00.

Light shades - \$42.00

The landlord provided sufficient evidence by way of receipt and condition inspection report to support this claim, accordingly; I find that the landlord is entitled to \$42.00.

Removal of garbage and furniture – 101.33

TP agrees that the tenant is responsible for this claim accordingly; the landlord is entitled to 101.33.

Liquidated damages \$450.00

The landlord testified that the tenant abandoned the unit and broke the lease early which was a violation of the agreement and that they are entitled to \$450.00 as per the tenancy agreement. TP submits that the landlord released the tenant from the lease in an email from October 4, 2017. I do not agree with TP. The tenant abandoned the unit and ended the tenancy without notice or justification. The landlord provided a detailed explanation of the work and costs incurred as a result of this breach and has satisfied me that they are entitled to the this claim, accordingly, the landlord is entitled to \$450.00.

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

Conclusion

The landlord has established a claim for \$2913.53. I order that the landlord retain the security deposit of \$327.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2586.03. 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: June 28, 2018

Residential Tenancy Branch