



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of 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 this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on April 4, 2018 she forwarded the landlord's application for dispute resolution hearing package ("application") via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application and supporting documents on April 9, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on May 15, 2016 on a fixed term until August 31, 2016 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,000.00 was payable on the first of each month. The tenant remitted a security and pet deposit in the total amount of \$1,000.00 at the start of the tenancy, which the landlord still retains in trust. The tenant vacated the rental unit on February 5, 2018.

The landlord seeks compensation in the amount of \$2,756.00, including the following;

Item	Amount
Junk removal	\$183.75
Carpet cleaning	\$152.25
Cleaning and wall repairs	\$420.00
January rent	\$1,000.00
February rent	\$1,000.00
Total Claim	\$2,756.00

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 37 of the *Act*, establishes that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the undisputed testimony of the landlord, the condition inspection reports, the photographs and the invoices before me, I find that the tenant left the rental unit contrary to section 37(2) of the *Act*. Accordingly, I find that the landlord is entitled to compensation in the amount of \$756.00 for junk removal, carpet cleaning, cleaning and wall repairs (\$183.75 + \$152.25 + \$420.00).

Section 26 of the *Act* establishes that a tenant is obligated to pay rent on the date indicated in the tenancy agreement. Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord proved that the current rent for this unit is \$1,000.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from January to February 2018. Although the tenant vacated the unit February 5, 2018, I find that the tenant should reasonably have known that the landlord would suffer the loss of February rent in the amount of \$1,000.00 if she did not vacate the rental unit to allow the landlord to prepare the unit for re-rental. Therefore, I find that the landlord is entitled to \$2,000.00 for unpaid rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee for a total award of \$2,856.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,000.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,856.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,856.00 for the following items:

Item	Amount
Junk removal	\$183.75

Carpet cleaning	\$152.25
Cleaning and wall repairs	\$420.00
January rent	\$1,000.00
February rent	\$1,000.00
Filing fee	\$100.00
Security deposit	(\$1,000.00)
Total Monetary Order	\$1,856.00

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: October 19, 2018

Residential Tenancy Branch