



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, MNDCT, 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 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.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46;
- 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 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 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.

Preliminary Issue

At the outset of the hearing both parties confirmed that the tenant moved out on September 22, 2018 and that the tenancy is no longer an issue. Both parties confirmed that they were each seeking a monetary order. The hearing proceeded and completed on that basis.

Issue to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to the return of her security and pet deposit?

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

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

Background, Evidence

The landlord's testimony is as follows. The on year fixed term tenancy began on June 1, 2018 and but ended early on September 22, 2018. The tenant was obligated to pay \$1500.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$750.00 security deposit and a \$300.00 pet deposit. The landlords testified that written condition inspection reports were not done at either move in or move out. The landlords testified that on September 5, 2018 the tenant gave notice that she would be vacating by September 22, 2018. The landlords testified that the tenant did not pay rent for the month of September and would not allow the landlords to show the unit while she was there; resulting in a loss of revenue for October 2018.

The landlords testified that they have re-rented the unit for \$1200.00 per month for November 1, 2018 and seek the difference in rent as loss of revenue. The landlords testified that the tenant left the carpets and suite dirty requiring extra cleaning. The landlords testified that the tenants' dog caused damage to the yard, and the irrigation system. The landlords testified that the tenant did not pay the utilities as agreed. The landlord testified that they seek compensation for having to take pictures of the unit and advertise it again online as well as the filing fee for this application. The landlords adamantly dispute the tenants' claim of harassment, bullying or any aggressive

behaviour. The landlords testified that the tenant gave short notice without explanation or the willingness to resolve the matter.

The landlords are applying for the following:

1.	Unpaid Rent September loss of revenue October 2018	\$3000.00
2.	Loss of Revenue for November 2018- May 2019	2100.00
3.	Yard damage by dog	682.50
4.	Damage to irrigation system by dog	250.00
5.	Carpet Cleaning	152.50
6.	Suite Cleaning	210.00
7.	Unpaid Utilities	246.20
8.	Re-Rent Suite Costs	350.00
9.	Filing Fee	100.00
10.	Minus security and pet deposit	\$1050.00
	Total	\$4991.20

The tenant gave the following testimony. The tenant testified that JB is extremely abusive and acts like “he’s the king of the castle”. The tenant testified that JB was aggressive and threatening in their dealings so she decided “to just end it”. The tenant testified that the parties were like a bad marriage and needed to part ways. The tenant testified that the landlords wanted her out by September 15, 2018 but she needed to stay until September 22, 2018. The tenant testified that if the landlords had allowed her to peacefully leave on September 22, 2018 she would have walked away without making a claim. The tenant testified that she is seeking the costs of moving because she wasn’t ready to leave and only did so because of the landlords’ behaviour. The tenant is seeking cleaning costs because the unit was dirty when she moved in. The tenant is also seeking the return of her security and pet deposit and the recovery of the filing fee.

The tenant is applying for the following:

1.	Compensation	\$6000.00
2.	Moving Expenses	900.00
3.	Cleaning	450.00
4.	Security and Pet Deposit	1050.00
5.	Filing Fee	100.00
6.		
	Total	\$8500.00

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 each party's 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' claims and my findings as follows.

Unpaid Rent September 2018 -\$1500.00 & Loss of Revenue October 2018 \$1500.00

The tenant did not provide one month's written notice that she would be moving out. In addition, the tenant did not dispute she didn't pay the rent for September or that she denied access to the landlord to show the suite. The tenant made mention that the landlords did not conduct condition inspection reports. Residential Tenancy Policy Guideline 17 addresses that as follows:

- 7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:*
- the landlord does not offer the tenant at least two opportunities for inspection as required¹⁰ (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
 - having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, **retains the following rights:**

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- **to file a claim against the deposit for any monies owing for other than damage to the rental unit;**
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

As this claim is for rent and loss of revenue, I find that the landlord is entitled to make a claim towards the deposit. I also find that the tenant did not give proper written notice and that she restricted the landlords from carrying out their business and mitigating their losses. Based on all of the above I find that the landlords are entitled to \$3000.00.

Loss of Revenue \$2100.00 November 2018-May 2019

The landlords are premature in this application as they are attempting to collect money for events which have not yet happened. This was explained to the landlords' and they indicated they understood. I dismiss this portion of the landlords claim with leave to reapply.

Damaged yard \$682.50

The landlords allege the tenants' dog damaged the yard. The tenant submits that the landlords' dog also played in the yard and caused some of the damage. The landlords have not repaired the yard as of this date. The landlords have submitted a "quote". The tenant finds the quote to be excessive. The landlords have not provided sufficient proof of the actual out of pocket costs. In addition, they have not provided sufficient evidence to show that the tenants' dog caused the damage. Based on the above, the landlords' have not provided sufficient evidence to satisfy the four factors under section 67 of the Act, accordingly; I dismiss this portion of the landlords' application.

Damaged irrigation \$250.00

As in the previous claim, the landlords have not done this repair. The landlords have submitted the amount to be a "rough estimate". The landlords have not provided sufficient proof of the actual out of pocket costs. In addition, they have not provided sufficient evidence to show that the tenants' dog caused the damage. Based on the

above, the landlords' have not provided sufficient evidence to satisfy the four factors under section 67 of the Act, accordingly; I dismiss this portion of the landlords' application.

Carpet Cleaning – \$152.50

The landlords testified that the tenant left the carpets dirty and that they had to hire a company to clean them. The landlord submitted a receipt to support this claim. The tenant testified that the carpets were vacuumed by not shampooed. Residential Tenancy Policy Guideline 1 addresses this issue as follows:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

*The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, **regardless of the length of tenancy**, if he or she, or another occupant, **has had pets which were not caged or if he or she smoked in the premises.***

Based on the above, I find that the landlord is entitled to \$152.50.

Suite Cleaning – 210.00

The landlords testified that the unit was left dirty at the end of the tenancy requiring them to hire cleaners. The tenant disputes this claim. The tenant testified that the unit was left very clean. The landlord submitted some photos but they were of a poor quality and I find them limited in their usefulness. Based on the lack of condition inspection report and limited supporting documentation, the landlords have not provided sufficient evidence to prove this claim, accordingly; I dismiss this portion of their application.

Utilities - \$246.20

The tenant agrees that she is responsible for this claim, accordingly; I find that the landlords are entitled to \$246.20.

Re-Rent Unit - \$350.00

The landlords submit that “There is time and effort required to prepare and show the unit for re rental – I am requesting that the tenant cover the costs for the time and effort required to re rent the unit.” The landlords did not provide sufficient documentation to justify the amount sought or a calculation as to how they arrived at the amount. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

The landlords are entitled to the recovery of the \$100.00 filing fee.

I address the tenants’ application and my findings as follows.

Compensation \$6000.00 & Moving costs \$900.00

The tenant submits that she should be entitled to all of her rent back as she was not able to have quiet enjoyment as a result of JB’s behavior. The tenant testified that she was forced to move and incurred moving costs as a result. The landlords adamantly dispute this claim. JM gave clear, concise and credible testimony as to the steps she was taking to try to work with the tenant and try to resolve any issues. In addition, I find that the evidence shows that the tenant was often hostile and the aggressive party. The tenant has not provided sufficient evidence to show that she was “forced to move” as she alleges. Furthermore, the tenant has not provided sufficient evidence to show that either landlord was abusive towards her. Based on the above, I find that the tenant has not proven this claim on a balance of probabilities, accordingly; I dismiss this portion of her application.

Suite Cleaning \$450.00

The tenant testified that the unit was dirty at move in and that the landlord should pay for her cleaners at move out. The landlords dispute this claim and stated that the unit was clean at move in. The tenant has not provided sufficient evidence or justification as to why the landlord should be responsible for this claim. In addition, Residential Tenancy Policy Guideline 1 outlines that a tenant must leave a unit reasonably clean at the end of the tenancy. I find that the tenant was responsible for cleaning the unit at the end of the tenancy and that the cost is one that she must bear. I dismiss this portion of the tenants’ application.

The tenant has not been successful in her application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

In summary, the landlord has been successful in the following claims:

Unpaid Rent September 2018	\$1500.00
Loss of Revenue October 2018	\$1500.00
Utilities	\$ 246.20
Carpet Cleaning	\$ 152.50
Filing Fee	\$ 100.00
Minus Deposits	-\$ 1050.00
Total:	\$2448.70

I order that the landlord retain the deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2448.70. 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: October 22, 2018

Residential Tenancy Branch