



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit 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, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 54 minutes. 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 testified that he personally served the tenant with his application for dispute resolution hearing package on March 1, 2018. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's application on March 1, 2018.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on January 1, 2016 for a fixed term of three months ending on March 31, 2016, after which the tenant was required to vacate the rental unit. The tenant vacated by April 27, 2016. Monthly rent of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing. A move-in condition inspection report was completed with the tenant, while a move-out condition inspection report was completed without the tenant. The landlord provided a copy of both reports. The landlord did not provide the tenant with a Residential Tenancy Branch form to conduct a move-out condition inspection, the Notice of Final Opportunity to Conduct a Move-Out Condition Inspection. The tenant did not provide a written forwarding address to the landlord. The landlord filed this application to retain the tenant's security deposit on February 23, 2018.

The landlord initially applied for a monetary order of \$4,625.86 plus the filing fee. At this hearing, the landlord clarified that he was seeking a monetary order of \$3,176.26 for unpaid rent, cleaning and damages to the rental unit, plus the \$100.00 application filing fee. The landlord confirmed that he was changing his monetary claim because he initially asked for \$2,700.00 in May 2016 rent when he wanted \$1,350.00 only. He also said that he wanted \$210.50 for the table repair rather than \$210.10. He stated that he wanted \$333.76 for drywall repair and painting, \$192.00 for cleaning, and \$90.00 for the FOB replacement.

Analysis

Overall, I found the landlord's evidence to be confusing and difficult to follow. This hearing lasted 54 minutes because the landlord was trying to figure out his own case, since he was not adequately prepared for this hearing. He said that he could not remember all the details because these claims happened over two years ago.

Pursuant to 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 landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$1,000.00 for April 2016 rent. The tenant lived in the rental unit until April 27, 2016, according to the landlord, and failed to pay the rent, which was due on April 1, 2016. The landlord provided a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as well as a proof of service for this document to the tenant, for unpaid rent of \$1,000.00 due on April 1, 2016.

I dismiss the remainder of the landlord's application for \$2,176.26 without leave to reapply.

I dismiss the landlord's claim of \$1,350.00 for a loss of rent for May 2016. I find that the landlord failed to provide advertisements for when and how he attempted to re-rent the unit, thereby mitigating his losses. He said that he found a new tenant to rent the unit for April 1, 2016, without advertising, and when the tenant failed to move out, this new tenant found another place because he did not want to wait a month for the tenant to vacate. The landlord then changed his testimony when I identified the May 1, 2016 tenancy start date on the new tenant's tenancy agreement provided by the landlord. He said the new tenant then agreed to move in on May 1, 2016 but could not because the landlord took two weeks to repair the unit due to the tenant's damages. The landlord did not say why he could not rent the unit for May 15, 2016 to this new tenant. The landlord did not provide the advertisements that he said he posted to re-rent the unit for June 1, 2016.

The landlord provided a rent receipt which said that he paid the new tenant \$1,350.00 in rent and storage fees on March 22, 2016, before the tenant was even required to move out on March 31, 2016 and before the landlord knew that the tenant was going to refuse to move out from the unit. The landlord said that he did not know what this document was for and did not know whether he paid the new tenant or the new tenant paid him. The new tenant did not provide a written statement or appear at this hearing to testify about what happened or what the landlord offered him.

I dismiss the landlord's claim for \$192.00 in cleaning, \$210.50 for a table repair and \$90.00 for a FOB replacement. The landlord failed part 3 of the above test by failing to provide receipts for these amounts supposedly paid by him. He provided invoices and estimates for the work to be done, some from 2018, two years later because he did not ask for the invoices at the time they were supposedly performed in 2016. The landlord had ample time to obtain and provide receipts from the time his application was filed on February 23, 2018 and this hearing date of September 20, 2018, almost seven months later. The landlord only provided confusing invoices and estimates, without knowing the dates the work was actually done or the dates that he actually made payments for the work. Although the table repair invoice says "paid cash" it does not indicate when the payment was made and how much it was for, since the total still indicated \$210.50 on the invoice. Although the tenancy agreement indicates a charge of \$90.00 for a FOB replacement, I find that the landlord failed to prove that he actually suffered this loss and paid this amount to replace the FOB due to the tenant failing to return the FOB.

The landlord continues to hold the tenant's security deposit of \$500.00. Over the period of this tenancy, no interest is payable on the tenant's security deposit. I order the landlord to retain the tenant's entire security deposit in the amount of \$500.00 in partial satisfaction for the April 2016 rent. I issue a monetary order in the amount of \$500.00 to the landlord for the remainder of the April 2016 rent.

As the landlord was mainly unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I order the landlord to retain the tenant's entire security deposit in the amount of \$500.00.

I issue a monetary Order in the landlord's favour in the amount of \$500.00 against the tenant. The tenant must be served with a copy of 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.

The remainder of the landlord's application is dismissed 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: September 20, 2018

Residential Tenancy Branch