



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

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

- A monetary order for damages and loss pursuant to section 67; and
- Recovery of the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 20 minutes. The phone lines were left open for the party to call in to the teleconference for the full duration of the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the application for dispute resolution and evidentiary materials at a forwarding address provided by the tenant on February 21, 2018 by registered mail. The landlord provided a Canada Post tracking number as evidence of service. Based on the undisputed evidence I find that the tenant was deemed served with the application package on February 26, 2018, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy began in November, 2017. The monthly rent was \$1,300.00 payable on the

first of each month. A security deposit of \$325.00 was collected at the start of the tenancy and is still held by the landlord.

The tenancy ended on January 31, 2018. The tenant did not participate in a move-out condition inspection despite being given multiple opportunities to participate by the landlord. The landlord submitted into written evidence the correspondence and Notice of Final Opportunity to Schedule an Inspection. The landlord conducted an inspection on February 6, 2018 without the tenant.

The landlord seeks a monetary award in the amount of \$3,142.53 for the following items:

Item	Amount
Filing Fee	\$100.00
Registered Mail Fee	\$35.81
Closet Door Repair	\$208.82
Glass Door Installation	\$85.00
Labor and Materials	\$850.00
Blind Replacement and Install	\$279.09
Garbage Removal	\$378.00
Compensation Paid to Tenant	\$870.00
Cleaning Services	\$300.00
TOTAL	\$3,142.53

The landlord testified that the rental unit required considerable cleaning and repairs. Among the work the landlord said was required was replacement of closet doors, disposing of furniture left by the tenant and replacing broken blinds. The landlord submitted into evidence the receipts and invoices for the work performed.

The landlord testified that they paid the tenant the amount of \$870.00 for the tenant's security deposit for their next tenancy. The landlord said that they paid that amount with the expectation that the tenant would leave the rental unit in a reasonable condition and because they did not the landlord seeks to recover the amount.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the landlord's undisputed evidence regarding the condition of the rental unit and the cost of repairs and cleaning undertaken. I find that the condition inspection report and the photographs submitted by the landlord show that the rental unit was in a state where repairs and cleaning were required. I accept the receipts and invoices submitted by the landlord as evidence of the monetary amount of the damage.

While I accept that the landlord paid the tenant's security deposit for their next tenancy, I find that there is insufficient evidence that the payment was conditional on the tenant leaving the rental unit in a specific state. Without any documentation regarding the terms of the agreement I find that I am unable to determine that the landlord is entitled to a return of the funds issued. Consequently, I dismiss this portion of the landlord's claim.

The costs related to service of an application are not recoverable under the Act. Accordingly, I dismiss the claim for \$35.81 for the service of documents.

As the landlord was successful in their application the landlord is entitled to recover the filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$350.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,850.91 under the following terms:

Item	Amount
Filing Fee	\$100.00
Closet Door Repair	\$208.82
Glass Door Installation	\$85.00
Labor and Materials	\$850.00
Blind Replacement and Install	\$279.09
Garbage Removal	\$378.00
Cleaning Services	\$300.00
Less Security Deposit	-\$350.00
TOTAL	\$1,850.91

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: September 13, 2018

Residential Tenancy Branch