



Dispute Resolution Services

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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 for Dispute Resolution (Application) pursuant to the *Residential Tenancy Act* (the *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*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenants pursuant to section 72.

The landlord and Tenant M.T. 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. Tenant M.T. (the tenant) indicated that they are representing the interests of both tenants in this matter.

The tenant acknowledged receipt of the Application for Dispute Resolution (Application) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants are duly served with the Application and evidence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent, for damage to the rental unit and for damage or loss under the *Act*, Regulations or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

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

Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on April 27, 2016, with a monthly rent of \$2,400.00, due on the first day of each month with a security deposit in the amount of \$1,200.00 that the landlord currently retains.

The landlord also provided in evidence a copy of a 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated January 09, 2018, for \$2,400.00 in unpaid rent;

The landlord testified that the tenant did not pay the monthly rent for January 2018. The landlord confirmed that they did not submit any evidence to support their Application for compensation for damage to the rental unit or for compensation for damage or loss under the Act, Regulations or tenancy agreement.

The tenant confirmed that they owe the monthly rent in the amount of \$2,400.00 for unpaid rent owing for January 2018. The tenant disputed the other compensation requested from the landlord.

Analysis

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. In this case, 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*, *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 find that the landlord did not submit any evidence to demonstrate that a loss exists for damage to the rental unit or proof that any damage occurred due to the actions or neglect of the tenant is violation of the Act, Regulations or tenancy agreement other than unpaid rent.

For the above reason, the Application for compensation for damage to the rental unit and for damage or loss under the Act, Regulations or tenancy agreement is dismissed, without leave to reapply.

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.

Having reviewed the affirmed testimony, I find that is undisputed that the tenant owes \$2,400.00 for unpaid rent for January 2018 and I grant the landlord a monetary award for this amount.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour in the amount of \$1,300.00, which allows the landlord to recover unpaid rent, to retain the tenants' security deposit and to recover the filing fee for this Application. The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 24, 2018

Residential Tenancy Branch