



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL

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.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties confirmed that they had exchanged their documentary evidence. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. 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.

Issue to be Decided

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

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

Background, Evidence

The landlord's testimony is as follows. The one year fixed term tenancy began on July 15, 2017 but ended early on January 11, 2018. The tenants were obligated to pay

\$2500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1250 security deposit which the landlord still holds. The tenants also provided a \$1250.00 pet deposit but that was returned to the tenants at the end of the tenancy. MM testified that the tenants January rent came back from the bank for non-sufficient funds. MM testified when she asked the tenant about it, he advised that he would be moving out within a few days. MM testified that the tenants did not attend the move out inspection on January 11, 2018.

MM testified that all immediate attempts to rent the unit were undertaken and were able to get a new tenant for a short term of February 15, 2018- June 15, 2018 at \$2000.00 per month. MM testified that the result ended up being a shortfall of \$8250.00 which the owner seeks. MM testified that the owner of the property asked her to change the locks and charge the tenant for it. AP testified that the tenants misuse and neglect caused the dryer vent hose to become disconnected causing the home to be covered in dust. AP testified that it required extensive cleaning that the tenant should be responsible for.

The landlord is applying for the following:

1.	Loss of rent and Revenue January 15 2018 – July 15 2018	\$8250.00
2.	Replace Locks	91.35
3.	Clean Dryer Ducts and Vents	437.85
4.	Filing Fee	100.00
5.	Minus Deposit	-1250.00
6.		
	Total	\$7629.20

The tenant gave the following testimony. The tenant testified that the landlord willfully broke the lease in November 2017 when they replaced the furnace in the home and left the tenants without heat for three days and therefore is relieved of his obligations for the lease. The tenant testified that the locks were not rekeyed when he moved in and he shouldn't have to pay for them now. The tenant testified that he had a new stacker washer and dryer installed during his time in the home and was put in by a professional company. The tenant testified that the dust the landlord refers to was always there and he shouldn't have to pay for cleaning.

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 the landlord'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 claim and my findings as follows.

Loss of Rent and Revenue – \$8250.00

The tenant submits that because he was without a working furnace for three days in November 2017; the landlord had broken the lease and that he was relieved of his obligation. I disagree with the tenant. The tenant did not at any time advise the landlord that it was an issue. In addition, the tenant continued living in the unit for two more months and only after he failed to pay the January rent was any of that brought to the landlord's attention. Based on the documentation before me and the testimony of the parties, I am satisfied that the tenants are the one that did in fact breach the fixed term tenancy without justification.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement a few days later. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses. I find that the landlord is entitled to \$8250.00.

Change locks \$93.25

MM testified that the owner asked her to change the locks and to charge the tenant, but was unsure why. AP did not provide sufficient evidence as to how this cost was something that the tenants were responsible for, accordingly; I dismiss this portion of the claim.

Dryer and Vent Cleaning - \$437.85

AP testified that the ducts and vents had never been cleaned despite the home being built in 2001. AP did not provide sufficient evidence that the tenant was reckless or negligent and that they should be responsible for this cost, accordingly; I dismiss this portion of the claim.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

As for the monetary order, I find that the landlord has established a claim for \$8350.00. I order that the landlord retain the \$1250.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$7100.00. 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 06, 2018

Residential Tenancy Branch