



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WITMAR HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL
 MNDCT, MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on July 3, 2018. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover the filing fee. The Tenants’ Application for Dispute Resolution was made on July 13, 2018. The Tenants applied for the return of their security deposit and a monetary order for losses due to the tenancy.

Both the Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?
- Are the Tenants entitled to the return of her security deposit?
- Are the Tenants entitled to monetary compensation for damages under the *Act*?

Background and Evidence

The tenancy agreement shows that this tenancy began on April 1, 2013, initially as a one-year fixed term tenancy that rolled into a month to month tenancy after the initial term. The Parties testified that rent in the amount of \$1,100.00, was to be paid by the first day of each month and that the Landlord is holding a \$520.00 security deposit that was paid by the Tenants at the beginning of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Tenants were removed from the rental unit on June 20, 2018, by a Bailiff that was enforcing a Writ of Possession. Both parties agreed that the move-out inspection was completed by the Tenant and the Landlord at the end of tenancy and that the Tenants provided the Landlord with their forwarding address the first week of July 2018.

The Landlord testified that they had served the Tenants with the Order of Possession on May 10, 2018, and that they had attempted to work with the Tenants to allow some additional time to secure alternative housing. However, the Landlord testified that in June 2018 they spoke to the Tenants and they had told them that they were not going to move out in accordance with the Order of Possession and they would have to get a Writ to get them out. The Landlord testified that after that conversation they went to court and got the Writ of Possession and then hired a Bailiff to remove the Tenants.

The Landlord is seeking to recover their costs of \$120.00 to obtain the Writ of Possession and \$2,240.00 in costs to hire the Bailiff. The Landlord is also seeking permission to retain the security deposit for this tenancy.

The Tenant testified that they had paid their rent for June 2018 and felt that they should have been allowed to remain in the rental unit until the end of June 2018. The Tenants are seeking the return of their security deposit and the prorated return of the rent for 10 days in June 2018, between June 21 to 30, 2018.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that this tenancy ended due to a breach of the *Act* by the Tenants, that resulted in an Order of Possession being issued by the Residential

Tenancy Branch. I also accept the agreed upon testimony of both parties that the Order of Possession had been served on the Tenants, and that the Tenants did not move out in accordance with that Order. The Landlord is seeking to recover the costs associated with enforcing the Order of Possession.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have reviewed the documentary evidence provided by the Landlord, and I find that the Landlord has provided sufficient evidence to show that the Landlord suffered a loss due to the Tenants breach of the *Act* and the value of that loss. I also find that the Landlord took reasonable steps to try and minimize their loss. Therefore, I find that the Landlord is entitled to the recovery of the costs associated with having the Tenants removed from the rental unit, in the amount of \$2,360.00. I also grant permission to the Landlord to keep the security deposit, in the amount of \$520.00, in partial satisfaction of this award.

As for the Tenants claim for the recovery of the pro-rated return of 10 days worth of rent for the period of June 21 to 30, 2018. I find that the Tenants failed to prove that the Landlord breached the *Act* when the Landlord had them removed from the rental unit, and therefore they have not proven that they suffered a loss due to the Landlord's action. Consequently, I must dismiss the Tenants claim for the pro-rated return 10 days worth of rent.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their

application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application.

<u>Awarded Item's</u>	<u>Due</u>
Writ of Possession Costs	\$120.00
Bailiff Costs	\$2,240.00
	\$2,360.00
Security Deposit	-\$520.00
	\$1,840.00
Filing fee	\$100.00
Due	\$1,940.00

Conclusion

The Tenants' application is dismissed, without leave to reapply.

I grant the Landlord a Monetary Order in the amount of \$1,940.00. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: November 7, 2018

Residential Tenancy Branch