



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

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

- an order of possession for cause pursuant to section 55;
- 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The "first hearing" on September 27, 2018 was adjourned and an interim decision rendered October 1, 2018.

The tenants did not participate in this hearing, which lasted approximately 15 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 on October 9, 2018 he forwarded the landlord's application for dispute resolution hearing package ("application"), amendment and hearing notice via registered mail to the tenants. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application, amendment and hearing notice on October 14, 2018, the fifth day after their registered mailing.

At the outset of the hearing the landlord testified that the tenants vacated the rental unit on September 10, 2018. Consequently, the landlord is no longer seeking an order of possession and this portion of the landlord's application is dismissed without leave to reapply.

Issue(s) 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 authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on June 1, 2018 on a fixed term until November 30, 2018. Rent in the amount of \$3,150.00 was payable on the first of each month. The tenant remitted a security and furniture deposit in the total amount of \$2,250.00 at the start of the tenancy, which the landlord still retains in trust.

The landlord seeks compensation in the amount of \$1,950.00, including the following;

Item	Amount
Rent	\$1,050.00
Strata Fines	\$800.00
Filing Fee	\$100.00
Total Claim	\$1,950.00

Analysis

Under 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 applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the undisputed testimony of the landlord, the letters, the photographs and the emails before me, I find that the landlord incurred strata fines as a result of the tenants' non-compliance with the tenancy agreement and strata bylaws. Accordingly, I find that the landlord is entitled to compensation in the amount of \$800.00 for strata fines (\$200.00 x 4).

Section 26 of the *Act* establishes that a tenant is obligated to pay rent on the date indicated in the tenancy agreement.

I find that the landlord proved that the current rent for this unit is \$3,150.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from September 1, 2018 to September 10, 2018. Therefore, I find that the landlord is entitled to \$1,050.00 for unpaid rent ($\$3,150.00 / 30 \text{ days} = \$105.00 \times 10 \text{ days}$).

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee for a total award of \$1,950.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$1,950.00 of the \$2,250.00 security deposits in full satisfaction of the monetary award. The tenants are entitled to the remaining \$300.00 security deposits balance.

Conclusion

The landlord is entitled to \$1,950.00. I order the landlord to retain \$1,950.00 from the security deposits in full compensation of this amount. The tenants are entitled to the return of the balance of the security deposits. I therefore grant the tenants a monetary order for the balance of the deposits, in the amount of \$300.00.

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 13, 2018

Residential Tenancy Branch