



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, OPC, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on October 16, 2018. The Landlord applied for a monetary order for damage or compensation under the *Act*, for a monetary order for damages, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord and his Representative (the "Landlord") attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing had been personally served on the Tenant on October 20, 2018. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received the same day. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence 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.

Preliminary Matter

At the outset of the hearing, the Landlord testified that the Tenant had moved out of the rental unit on October 25, 2018, and that he no longer required an Order of Possession.

Additionally, the Landlord requested to withdraw his claim for damages to the rental unit. The Landlord testified that he would complete the repairs to the rental unit and then reapply.

I find the Landlord's request to withdraw appropriate, and I will proceed in this hearing on the Landlord's remain claim, for a Monetary Order compensation, permission to retain the security deposit and to recover the filing fee for this application.

Issues to be Decided

- Is the Landlord entitled to a monetary for compensation under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The Landlord testified that tenancy began on July 1, 2018, as six-month fixed term tenancy. Rent in the amount of \$950.00 was to be paid by the first day of each month and the Landlord is holding a \$475.00 security deposit.

The Landlord testified that he personally served a One-Month Notice to End Tenancy for Cause to the Tenant on September 22, 2018. The Landlord provided a copy of the Notice into documentary evidence. The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord*
 - *Put the Landlord's property at significant risk.*
- *Tenant or person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:*
 - *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*

- *Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*
- *Tenant has not done required repairs of damage to the unit/site.*

The Notice states that the Tenant must move out of the rental unit by October 31, 2018. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Landlord testified that the Tenant moved out of the rental unit on October 25, 2018, in accordance with the Notice.

The Landlord testified that the rental unit was so damaged at the end of tenancy that he was not able to re-rent the rental unit for November 2018. The Landlord testified that he has been working to repair the rental unit and has the unit listed online for rent but that he has not been able to find a new renter for it as of the date of this hearing. The Landlord is requesting to recover his loss of rental income for November 2018.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities that:

I accept the undisputed testimony of the Landlord that the Tenant had damaged the rental unit and that the Landlord had issued a Notice to end tenancy due to the damage.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find that the Tenant breached section 32 of the *Act* when he damaged the rental unit and did not repair the damage.

Awards for compensation due to damage or loss 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.

In this case, I find that the Tenant's breach of section 32 of the *Act* resulted in a loss of rental income to the Landlord for November 2018. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that he took reasonable steps to minimize his losses due to the Tenant's breach.

Therefore, I find that the Landlord has established an entitlement to a monetary award for the loss of rental income for November 2018, in the amount of \$950.00. I grant the Landlord permission to retain the security deposit for this tenancy in partial satisfaction of this award.

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

I grant the Landlord an award of \$575.00, consisting of \$950.00 in rent for November 2018, and the recovery of the \$100.00 filing fee for this hearing, less the \$475.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 38, 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$575.00**. The Landlord is provided with this Order in the above terms, and 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: November 27, 2018

Residential Tenancy Branch