



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFL, MNDL-S

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$4155 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sufficiently served on the Tenant on August 24, 2018 as the Tenant acknowledged service. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on June 1, 2011. The tenancy agreement provided that the tenant(s) would

pay rent of \$1850 per month payable in advance on the first day of each month. The Tenant testified the parties subsequently agreed that the rent was to be \$1800 per month. The tenant paid a security deposit of \$925 at the start of the tenancy. The Tenants paid rent of \$1800 until the tenancy ended on August 31, 2016.

Landlord's Application - Analysis

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim of \$3050 for loss of rent for the following reasons:
 - I prefer the evidence of the tenant that the parties agreed to the reduced rent of \$1800 per month to that as the landlord as the parties subsequent conduct is more consistent with the tenant's testimony.
 - The landlord accepted the \$1800 for over 4 years without objecting or taking steps to enforce to claim. He only took steps after the tenant obtained two monetary orders against him totaling in excess of \$1900. .
 - In an arbitration hearing held on June 7, 2016 the arbitrator recorded that the parties had agreed to rent of \$1800. The decisions in two subsequent arbitrations confirmed this determination.
- b. The landlord claimed damages in the sum of \$1100 for the failure to clean and damages. Policy Guideline #16 includes the following:

"C. COMPENSATION

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. In order 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.”

.....

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

The landlord relies on a document allegedly from a contractor which the landlord testified shows the work done on the property for which he was charged over \$5000. The tenant disputes this document. The landlord relies on a notation in the summary work stating the contractor did “industrial cleaning” because of the presence of cats and he replaced a basement door.

After carefully considering all of the evidence I determined that the tenants had cat(s) in the rental unit and made a change in the basement door to allow for the cat(s) to go in and out. I determined the tenant’s failed to fix the damaged door or sufficiently clean the carpets.

However, the landlord failed to prove the value of the damage done by the Tenant as the document does not break down the work. In the circumstances I determine the landlord is entitled to nominal damages in the sum of \$50 for the cleaning states and \$50 for the damage to the door for a total of \$100.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$100 plus the \$50 filing fee (reduced as part of the landlord’s claim was dismissed) for a total of \$150.

Security Deposit

The security deposit has been dealt with in a previous arbitration and no order can be made with respect to it.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: December 17, 2018

Residential Tenancy Branch