



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 19, 2018 and has submitted a copy of the Receipt and the Customer Receipt Tracking label. I accept the undisputed affirmed testimony of the landlord and find that the tenant has been properly served as per sections 88 and 89 of the Act. Although the tenant failed to attend, the tenant is deemed served as per section 90 of the Act on September 24, 2018.

Preliminary Issue(s)

At the outset it was clarified with the landlord regarding jurisdiction as the landlord has submitted a copy of a signed "Furnished Travel Accommodation Tenancy Agreement" which states that the Act does not apply in this tenancy despite filing an application for dispute concerning this tenancy. The landlord has stated through extensive discussions that she feels that the Residential Tenancy Branch has jurisdiction despite the signed agreement. As such, I accept jurisdiction in this matter and the hearing shall proceed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2018 on a 2 month fixed term until August 31, 2018 as per a signed "Furnished Travel Accommodation Tenancy Agreement" dated June 13, 2018. The monthly rent was \$2,750.00 payable on the 1st day of each month and a security deposit of \$1,375.00 was paid.

The landlord seeks a monetary claim of \$190.20 for:

\$125.00	Cleaning
\$30.20	Lightbulb (\$26.66 lightbulb, \$0.30 Eco Fee, \$3.24 Tax)
\$35.00	Labour for lightbulb replacement

The landlord has submitted in support of this claim receipts/invoices for each of the items of claim. The landlord has also submitted a copy of a completed condition inspection report for the move-in and the move-out as well as 34 photographs detailing the condition of the rental unit to show that the unit was left dirty and that there were some lightbulbs that needed to be replaced.

Analysis

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has established a claim for cleaning costs and lightbulb replacement. The landlord has submitted in support of these claims undisputed receipts/invoices for the costs as well as the completed condition inspection reports for the move-in and the move-out and 34 photographs detailing the condition of the rental unit.

The landlord has established the monetary claim of \$190.20. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain \$290.20 from the currently held \$1,375.00 security deposit in satisfaction of the claim. The tenant is granted a monetary order for \$1,354.80 for return of the outstanding balance of the security deposit.

Conclusion

The landlord's application is granted.

The tenant is granted a monetary order \$1,354.80.

This order must be served upon the landlord. Should the landlord fail to comply with the 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 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: January 22, 2019

Residential Tenancy Branch