



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL MNDL-S MNRL

Introduction

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

- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*,
- a monetary award for loss and damage pursuant to section 67 of the *Act*, and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord's agent, S.L. attended the hearing by way of conference call. The landlord was given a full opportunity to be heard, to present testimony and to make submissions.

The landlord said he sent a copy of his application for dispute along with his evidentiary package to the tenant by way of Canada Post Registered Mail on September 5, 2018. The landlord provided a copy of the Registered Mail receipt with his evidence and through oral testimony. Pursuant to sections 88, 89 & 90 of the *Act* the tenant is deemed served with all documents and the landlord's application for dispute on September 10, 2018, five days after their posting.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

Background and Evidence

The landlord said this tenancy began on October 1, 2016 and ended on approximately October 5, 2017. Rent was \$2,000.00 per month and a security deposit of \$1,000.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said she was seeking a monetary award of \$4,044.25 as follows:

- Repairs - \$781.26
- Move-out Cleaning - \$204.00
- Unpaid October rent 2017 - \$2,000.00
- Unpaid Hydro Bills - \$58.99
- Storage of items - \$1,000.00

= \$4,044.25

The landlord said the tenant left the rental unit in a poor state of repair which required several repairs following the conclusion of the tenancy. As part of his evidentiary package the landlord provided several photos purporting to show the damage to the rental unit, along with cleaning he argued was necessary. In addition, the landlord said the tenant overhired in the rental unit until October 5, 2017 and failed to pay two hydro bills. The landlord said he was looking to recover unpaid rent for the month of October. In addition, the landlord said he was seeking expenses related to storage of items left on the property. The landlord said he followed the rules of the RTB and stored items for the tenant until he could properly dispose of them.

The tenant did not provide any evidence.

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 entitlement to a claim for a monetary award.

The landlord argued he was entitled to a monetary award of \$4,044.25 as a result of damage to the unit and the labour associated with repairing and cleaning the rental unit. In addition, the landlord sought unpaid rent for October 2017 because of the tenant's overholding in the rental unit. The landlord said hydro bills were also unpaid during the tenancy, along with costs associated with storing the tenant's items which were left on the property.

After having considered the oral testimony and evidentiary package of the landlord, I find the landlord has sufficiently demonstrated he is entitled to a monetary award as requested. I accept the landlord's undisputed testimony and evidence that the unit was left untidy and required significant cleaning following the tenant's departure. I find the landlord's evidence to be detailed and compelling and to sufficiently demonstrate that loss occurred under the tenancy. For these reasons, I allow the landlord to recover all costs associated with repairs, cleaning, storage and unpaid hydro bills.

Section 57(3) of the *Act* states as follows, "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended." I find the tenants overheld in the rental unit for a period of 5 days in October. By the landlord's own admission, the unit was not re-rented until January 2018. I find that the landlord is therefore entitled to a return of half of October 2017's rent.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to offset the monetary award granted in his favour, by retaining the tenants' security deposit.

As the landlord was successful in his application, he may recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a Monetary Order of \$2,144.25 in favour of the landlord as follows:

Item	Amount
Repairs	\$781.26
Move out Cleaning	204.00
½ unpaid October Rent	1,000.00
Unpaid Hydro Bills	58.99
Storage of Items	1,000.00
Return of Filing Fee	100.00
Less Security Deposit	(-1,000.00)
Total =	\$2,144.25

The landlord is provided with a Monetary 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: January 25, 2019

Residential Tenancy Branch