



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S

Introduction

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

- a monetary order for unpaid rent and money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The six month fixed term tenancy began on December 1, 2017 and was to end on May 31, 2018, however the tenant moved out on August 15, 2018. The tenant was obligated to pay \$800.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$400.00 security deposit which the landlord still holds. The rent was later reduced to \$750.00 per month. Written condition inspection reports were not conducted at move in or move out. DP testified that the tenant damaged the kitchen faucet by connecting a countertop dishwasher to it. MA testified that she saw the dishwasher connected. DP testified that the tenant also damaged the bathtub drain by removing the metal stopper. CP testified that the tenant also did not pay the rent for the time period of July 1- August 15, 2018. CP testified that there was not an agreement to allow the tenant to live "rent free" for the month of July. CP testified that the tenant told them to keep the deposit for the two weeks of August. CP testified that she still seeks the unpaid rent for July and the recovery of the filing fee for this application.

The landlord is applying for the following:

1.	Kitchen faucet and bathtub drain	\$236.25
2.	Parts for faucet and drain	140.00
3.	Unpaid Rent for July	\$750.00
4.	Filing fee	100.00
5.		
6.		
	Total	\$1226.25

The tenant gave the following testimony. The tenant testified that the faucet and bathtub drain were not willfully damaged but just by normal wear and tear the items broke down. The tenant testified that since the landlords' family member was going to move into her suite she is entitled to one month's free rent.

Analysis

The relationship between the parties is an acrimonious one. I had to caution the parties on several occasions of their behaviour during the hearing, especially MA. MA was intent on engaging the tenant in an argument despite my numerous requests to address the context and specific nature of the application before me.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Kitchen Faucet and Bathtub Drain - \$376.25

The landlord has not provided sufficient evidence to satisfy the four factors as noted above; specifically they were unable to show that the tenant was reckless or negligent to cause the damage in contravention of the *Act*. In addition, it was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

Unpaid Rent for July 2018 - \$750.00

The tenant testified that she was served “notice” and was entitled to compensation as a family member was moving in. The landlord disagrees with this claim. The landlord testified that there wasn’t any notice given to the tenant that a close family member was going to move in. The landlord testified that the tenant did not move pay the rent for July and that no agreement was reached for free rent. The tenant submitted a Mutual Agreement to End Tenancy however the “rent free” condition she referred to was not reflected in that agreement. Based on the landlords documentation and the tenants own testimony confirming that she did not pay the rent, I find that the landlord is entitled to \$750.00 as claimed.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

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As both parties alluded to and agreed to, the security deposit was applied to the payment of rent for the period of August 1-15, 2018 and therefore not an issue for me to make a finding on as the deposit has been addressed by the parties.

Conclusion

The landlord has established a claim for \$850.00 consisting of the \$750.00 of unpaid rent for July 2018 and the recovery of \$100.00 filing fee for this application. I grant the landlord an order under section 67 for the balance due of \$850.00. This order may be filed in the Small Claims 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 11, 2019

Residential Tenancy Branch