



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 his filing fee for this application from the tenant pursuant to section 72.

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 October 3, 2018. I accept the landlord's undisputed affirmed testimony that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail as per sections 88 and 89 of the Act. Although the tenant failed to attend, I find that the tenant is deemed served as per section 90 of the Act.

During the hearing the landlord stated that he was unsure if he had served the tenant with the amendment to the application increasing the monetary claim to \$426.00. No service details were provided by the landlord. As such, I find that the landlord has failed to provide sufficient evidence that the amendment to the monetary claim was properly served and is dismissed with leave to apply. Leave to reapply is not an extension of any applicable limitation period.

During the hearing the landlord's monetary claim was clarified in that the landlord had failed to provide any details regarding the monetary claim for compensation regarding "melted wax on Carpet & wall....\$ not yet determined". As such, this portion of the landlord's claim was dismissed with leave to reapply. Leave to reapply is not an extension of any limitation period.

The landlord's monetary claim shall be limited to the original amount filed of \$300.00 for which, I will not include the landlord's request for recovery of the \$100.00 filing fee.

I note that after the hearing concluded a review of the landlord's Residential Tenancy Branch File revealed a second cross application filed by the tenant (noted on the cover of this decision). The landlord did not provide any details of being served with a tenant's application for dispute nor was the Arbitrator aware of this application during the hearing. In the circumstances, as the tenant has not attended to put forth her claim, I find that the tenant's application is dismissed with leave to reapply, however leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss 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 was a month-to-month tenancy as per the incomplete copy of a tenancy agreement. It states in part that the monthly rent was \$650.00 payable on the 1st day of each month. A security deposit of \$325.00 was paid on December 1, 2017.

The landlord seeks a monetary claim of \$400.00 which consists of:

\$150.00	Cleaning costs
\$31.99	Rug Doctor, Rental
\$24.99	Rug Doctor, Pet Formula (Cleanser)
\$7.99	Rug Doctor, Stain Remover

\$6.49	Bleach
\$4.99	Pinesol
\$100.00	Filing Fee
\$326.45	Total

The landlord made no clarification on the distinction of the filed claim and the total amount listed above. As such, the hearing proceeded on the total monetary claim as detailed above for \$326.45.

The landlord claims that the tenant vacated the rental unit leaving it dirty and “un-rentable”. The landlord stated that the rental premises required cleaning and carpet cleaning to make the premises in a rentable state.

The landlord has submitted in support of these claims invoices/receipts for each of the claimed items, photographs depicting the condition on the rental unit at the end of tenancy.

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 a claim has been established for compensation of \$326.45 as detailed above. The landlord provided undisputed evidence of the premises left dirty requiring cleaning as per the submitted photographs and the costs incurred based upon the submitted invoice/receipt copies. The landlord having been successful was also entitled to recovery of the filing fee.

I authorize the landlord to retain the \$325.00 security deposit in satisfaction of this claim and grant the landlord a monetary order for the balance of \$1.45.

Conclusion

The landlord is granted a monetary order for \$1.45.

This order must be served upon the tenant. Should the tenant 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 28, 2019

Residential Tenancy Branch