



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed and damages and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord’s agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 12, 2018, Canada post tracking numbers were provided as evidence of service. The Canada post tracking history show the packages were successfully delivered on October 15, 2018. The tracking numbers have been noted on the covering page of this decision.

I find that the tenants have been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for money owed or damages?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began December 2016. Rent in the amount of \$645.00 was payable on the first of each month. The tenants paid a security deposit of \$322.50. The tenancy ended on September 12, 2018, when the tenants were removed by the bailiff.

The landlord claims as follows:

a.	Court Bailiff Services fees	\$2,979.75
b.	Supreme Court filing fee	\$ 120.00
c.	Blocked container fee	\$ 15.00
d.	Filing fee	\$ 100.00
	Total claimed	\$3,114.75

The landlord's agent testified that the tenants failed to pay rent and they were granted an order of possession for the rental unit on August 24, 2018. The agent stated that the tenants did not comply with the order to vacate and as a result they had to have the tenants removed by the bailiffs.

The landlord's agent testified that they had to pay the court bailiff fees of \$2,979.75 and the Supreme Court filing fee of \$120.00. The landlord seeks to recover the above costs. Filed in evidence are invoices for bailiff fees and court fees.

The landlord's agent testified that the tenant's vehicle was blocking the garbage bin and the garbage collection services left. The agent stated that they were charged an additional fee of \$15.00, for the company returning at a different time to collect the garbage. Filed in evidence is a receipt.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

On August 18, 2018, the landlord received an order of possession of the rental unit. The tenants did not comply with the order of possession and the landlord was required to obtain a writ of possession in the Supreme Court and hire bailiff services. I find the tenants breached the Act when they failed to give vacant possession to the landlord. I find the landlord is entitled to recover the bailiff fees, court fees in the total amount of **\$3,099.75**.

I further find the tenants were blocking access to the garbage bin and as a result the landlord was charged \$15.00. I find the landlord is entitled to recover the service fee in the amount of **\$15.00**.

I find that the landlord has established a total monetary claim of **\$3,214.75** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$322.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,892.25**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: February 06, 2019

Residential Tenancy Branch