



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for unpaid rent and for 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 all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on November 9, 2018 she forwarded the landlord's application for dispute resolution hearing package and on November 29, 2018 she forwarded the landlord's evidence package via registered mail to the tenants. The landlord provided Canada Post receipts and tracking numbers as proof of service.

Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application on November 14, 2018 and the evidence on December 4, 2018, the fifth day after each registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on November 1, 2017 on a fixed term until October 31, 2018. Rent in the amount of \$900.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$450.00 at the start of the tenancy, which the landlord still retains in trust. The tenants vacated the unit pursuant to a 10 Day Notice.

The landlord applied for monetary compensation in the amount of \$1,398.75, including the following;

Item	Amount
Key replacement	\$25.00
FOB replacement	\$80.00
Cleaning	\$193.75
Carpet cleaning	\$150.00
October rent	\$900.00
Late fee x 2	\$50.00
Total Claim	\$1,398.75

During the hearing, the landlord testified that the key was returned so she no longer seeks \$25.00 for a key replacement. The landlord seeks to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must

satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 37 of the *Act*, establishes that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply

Based on the undisputed testimony of the landlord, the condition inspection reports and the invoices before me, I find that the tenants left the rental unit contrary to section 37(2) of the *Act*. Accordingly, I find that the landlord is entitled to compensation in the invoiced amount of \$348.80 for fob replacement, cleaning and carpet cleaning (\$80.00 + \$163.80 + \$105.00).

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. I find that the landlord proved that the current rent for this unit is \$900.00. I find the landlord provided undisputed evidence that the tenants failed to pay October rent. Therefore, I find that the landlord is entitled to \$900.00 in rent.

Section 7 of the *Regulation* establishes that a landlord may charge a late fee of \$25.00 if the tenancy agreement provides for that fee. Based on the tenancy agreement before me, I find the landlord is entitled to recover late fees in the amount of \$50.00 (September \$25.00 + October \$25.00).

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,398.80. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$450.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$948.80.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$948.80 for the following items:

Item	Amount
FOB replacement	\$80.00
Cleaning	\$163.80
Carpet cleaning	\$105.00
October rent	\$900.00
Late fee x 2	\$50.00
Filing fee	\$100.00
Less security deposit	(\$450.00)
Total Monetary Order	\$948.80

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: March 12, 2019

Residential Tenancy Branch