



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL-S**

Introduction

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

- A monetary order for damages or compensation pursuant to section 67;
- Authorization to apply a security deposit to the monetary order pursuant to section 38; and
- Recovery of the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that the tenant was served the Notice of Hearing package via registered mail on November 30, 2018. The package was sent to the forwarding address of the tenant provided to her at a previous arbitration hearing which took place on November 23, 2018. The landlord provided a tracking number for the mailing, noted on the cover page of this decision. I deem the tenant served with the Notice of Hearing package five days later, on December 5, 2018 in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for damages done to the rental unit?

- Authorization to apply a security deposit to the monetary order?
- Recovery of the filing fee for this application from the tenant?

Background and Evidence

The landlord gave the following undisputed testimony. The rental unit is a mobile home situated on a residential lot. The tenancy began on July 1, 2018. A security deposit in the amount of \$1,100.00 was provided and the landlord continues to hold it in trust for the tenant. A tenancy agreement was prepared but never returned to the landlord before a fire took place the night of July 22, 2018 and destroyed the rental unit. The cause of the fire was determined to be arson allegedly caused by the tenant's boyfriend. Criminal charges are pending against the tenant's boyfriend, with a trial expected later this year.

After the fire, only remnants of the rental unit were left and photographs of the remainder were provided as evidence. The landlord contacted several demolition companies and contractors to cleanup the site, however only one company was willing to take on the job, due to the potential hazardous waste and age of the structure. The contractor's estimate of \$21,000.00 to do the work was provided as evidence.

The rental unit was insured for use as a rental property and the landlord's insurer capped the insurance settlement at \$40,000.00. The payout went directly to the outstanding mortgage, which still has a remaining balance.

The landlord testified she believed the tenant had an on and off relationship with the person who allegedly set the rental unit on fire. The tenant decided to spend the night elsewhere the night of July 22, 2018 as the boyfriend threatened he would burn the rental unit down.

Analysis

Under section 7 of the *Residential Tenancy Act* a landlord or tenant **who does not comply with the Act**, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the *Residential Tenancy Act* if the director determines that damage or loss **has resulted from a party not complying with the Act, the regulations or a tenancy agreement**, the director may determine the amount of compensation that is due and order that the responsible party pay compensation to the other party.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is

claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- **a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;**
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The landlord has not demonstrated how the tenant failed to comply with the *Act*, regulation or tenancy agreement.

I dismiss the landlord's claim without leave to reapply.

As the landlord is not successful in her application, the security deposit in the amount of \$1,100.00 is to be returned to the tenant. There is no interest due on the security deposit.

The landlord is not entitled to recovery of the filing fee of \$100.00 as the landlord's application was not successful.

Conclusion

I order the landlord to return the security deposit in the amount of \$1,100.00 to the tenant. I grant a monetary order in favour of the tenant in the amount of \$1,100.00.

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 25, 2019

Residential Tenancy Branch