



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S

Introduction

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

- a monetary order for damages and loss 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent AC (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the landlord's application for dispute resolution and evidence on December 21, 2018 by registered mail sent to the forwarding address provided by the tenant. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant was deemed served with the landlord's materials on December 26, 2018, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that there was a previous hearing and order under the file number on the first page of this decision already

allowing the landlord to recover the unpaid rent for November, 2018. As such the landlord withdrew the portion of their monetary claim that has already been a subject of a previous hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided evidence regarding the following facts. This periodic tenancy began in August 2015. The monthly rent was \$750.00 payable on the first of each month. A security deposit of \$375.00 was collected and is still held by the landlord. The tenancy ended on December 9, 2018 in accordance with an Order of Possession granted to the landlord enforcing a 10 Day Notice to End Tenancy for non-payment of rent.

The landlord seeks the pro-rated rent for the period of December 2018 when the tenant occupied the rental unit. The landlord calculates the rent owing to be \$217.71.

A condition inspection report was prepared at the start of the tenancy. The tenant did not participate in a move-out inspection at the end of the tenancy. The landlord said that the rental unit was in a state of disrepair requiring cleaning, garbage disposal and repairs. The landlord submitted into documentary evidence receipts and invoices for the work done. The landlord seeks a monetary award in the amount of \$235.00 for the cost of cleaning and \$256.00 for garbage disposal.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the undisputed evidence of the landlord that the tenant occupied the rental unit for 9 days in December 2018 without paying any rent. I accept the landlord's evidence that the pro-rated rent due and owing for the period the tenant occupied the rental unit in December 2018 is \$217.71. Accordingly, I issue a monetary award in that amount.

I accept the evidence of the landlord that the rental unit was left in a state of disarray by the tenant. I accept that the landlord incurred costs for cleaning and repairs. I accept the evidence that the total cost of the work done is \$491.00. I therefore find that the landlord is entitled to a monetary award for that amount.

As the landlord's application was successful the landlord is also entitled to recover the filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$375.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$433.71 under the following terms, which allows the landlord to recover unpaid rent, damages and the filing fee for their application:

Item	Amount
Unpaid Rent December 2018	\$217.71
Cleaning Costs	\$235.00
Garbage Disposal Costs	\$256.00
Filing Fees	\$100.00
Less Security Deposit	-\$375.00
Total Monetary Order	\$433.71

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: April 12, 2019

Residential Tenancy Branch