



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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* ("Act") for:

- a monetary order 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 the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by their agent. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's agent testimony is as follows. The one year fixed term tenancy began on June 1, 201 but ended early on November 20, 2018 due to nonpayment of rent and the landlord being successful in obtaining an order of possession through the Branch. The tenants were obligated to pay \$2000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1000.00 security deposit which the landlord still holds. The agent testified that the tenant left the unit dirty at move out. The agent testified that the tenants moved out without notice. The agent testified that a written condition inspection report was done with the tenant at move in. The agent testified that the tenants "skipped out" and did not provide an address or contact number where they could be reached to participate in the written condition move out inspection. The agent testified that despite his efforts he was unable to rent the unit for December 2018. The agent testified that the tenants broke the lease and should be held responsible for the loss of revenue and his fee to re-rent the unit.

The landlord is applying for the following:

1.	Late Rent Payment Fee November 2018	\$25.00
2.	Cleaning	\$200.00
3.	Loss of Revenue December 2018	2000.00
4.	Rent Out fee	1050.00
5.	Filing Fee	100.00
6.	Minus Deposit	-1000.00
7.		
8.		
9.		
10.		
		\$2375.00

The tenants gave the following testimony. LC testified that the agent was overly aggressive in evicting them. LC testified that she acknowledges that they were late in paying the rent but the rent was eventually always paid in full. BM testified that he agrees with the late fee charge but not the cleaning. BM testified that he did not provide a forwarding address in writing to the landlord and did not attend the move out inspection.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Rental Loss \$2000.00 and Rent Out Fee \$1050.00.

The agent did not provide any documentation to reflect what attempts if any were made to rent the suite such as advertisements. In addition the agent did not provide documentation to illustrate how many showings he conducted, if he had open houses or if he offered incentives such as a lower rental amount or flexible terms. Despite the tenants being unable to fulfill their contractual obligations, as noted above, a party is required to mitigate their losses. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

Late Fee - \$25.00

The tenants agree to this claim, accordingly I find that the landlord is entitled to \$25.00.

Cleaning - \$200.00

The landlord provided the condition inspection report and proof of payment to support this claim. Based on the documentary evidence before me, I find that the landlord has provided sufficient evidence to support this claim and I therefore grant the landlord \$200.00.

As the landlord has been successful in parts of their application I find that they are entitled to the recovery of the \$100.00 filing fee. The landlord has established a claim of \$325.00. However, BM acknowledged and confirmed that he did not provide the landlord his forwarding address in writing. The agent testified that the tenants

abandoned the unit without notice and therefore could not conduct a move out inspection with them. The agent testified that he could not advise or serve them of written notice as he did not know where they were living. The agent testified that he only became aware of their address weeks later when he drove by BM's mothers' house and saw BM. Section 36 of the Act addresses the issue before me as follows

Consequences for tenant and landlord if report requirements not met

- 36 (1) The right of a tenant to the return of a security deposit**
or a pet damage deposit, or both, **is extinguished if**
(a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
(b) **the tenant has not participated on either occasion.**

Based on the tenants own testimony, I find that they chose not to attend the move out inspection and therefore have extinguished their right to the deposit. The landlord is entitled to retain the deposit in its entirety and it more than satisfies their claim.

Conclusion

The landlord is entitled to retain the security deposit in full satisfaction of their claim.

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 05, 2019

Residential Tenancy Branch