



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL MNDL-S

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee 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 landlord was represented by their agent (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 application for dispute resolution and evidence on the tenant by registered mail sent to a forwarding address provided by the tenant on February 8, 2019. 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 February 13, 2019, 5 days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The landlord testified that this periodic tenancy began in June 2017 and ended on October 31, 2018. The monthly rent was \$4,400.00 payable on the 1st of the month. A security deposit of \$2,200.00 was collected at the start of the tenancy and is currently held by the landlord. The tenant failed to participate in a move-out condition inspection despite the landlord providing multiple opportunities to participate.

The landlord testified that the tenant was given a rental discount of \$3,000.00 for the tenant's agreement to paint the rental suite. The landlord said that the tenant failed to paint the rental suite and seek a return of the discount provided.

The landlord said that the rental suite was left in a state of disarray and damage such that it required considerable cleaning and repairs. The landlord submitted into documentary evidence photographs of the condition of the suite and the condition inspection report completed by the landlord. The landlord also submitted various receipts and invoices for work performed and supplies purchased. The landlord said the damage is more than the expected wear and tear. The landlord said that the cost of cleaning and repairs was \$4,153.00.

The landlord testified that the cleaning and repairs required meant that the rental unit could not be occupied by new tenants immediately after the tenancy ended. The landlord seeks a monetary award in the amount of \$4,400.00, the equivalent of one month's rent as they were unable to rent out the suite while repairs and cleaning was being performed.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* 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.

I accept the landlord's evidence that there was an agreement between the parties where the tenant was provided with a rental discount in exchange for painting the suite. I accept the evidence that despite the landlord providing the discount the tenant failed to paint the suite as required. Therefore, I find that the landlord is entitled to a monetary award of \$3,000.00 to recover the discount provided.

I accept the evidence that the rental suite was left in a state of disarray requiring cleaning and repairs as the landlord submits. I find that the landlord has established on a balance of probabilities that the damage was caused during the tenancy. I accept the evidence of the landlord that the total cost of the work performed, supplies purchased and materials required is \$4,153.00. I find the documentary evidence submitted by the landlord shows that the damage to the suite exceeds the expected wear and tear from an occupancy. I find that the invoices, receipts and estimates submitted by the landlord to be reasonable for the work performed. Accordingly, I issue a monetary award in the landlord's favour in that amount.

I accept the landlord's evidence that they incurred a rental income loss of \$4,400.00 as they were unable to commence a new tenancy while work was being performed. Accordingly, I issue a monetary award to the landlord in that amount.

As the landlord's application was successful the landlord is entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's 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 \$9,453.00 under the following terms:

Item	Amount
Monetary Award	\$11,553.00
Filing Fee	\$100.00
Less Security Deposit	-\$2,200.00
Total Monetary Order	\$9,453.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 28, 2019

Residential Tenancy Branch