



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* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled hearing time at 1:30 p.m. until 1:42 p.m. to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The landlord testified that he served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on January 28, 2019 which is deemed to have been received by the tenant five days later, on February 2, 2019, under section 90 of the *Act*. The landlord provided the Canada Post tracking number in support of service which is referenced on the first page of the decision. Based on the undisputed testimony of the landlord, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution pursuant to section 89 of the *Act*.

The landlord testified that he filed two amendments to his application which were both served on the tenant, along with the landlord's evidence, by registered mail on April 1, 2019. The landlord provided the Canada Post tracking number in support of service which is referenced on the first page of the decision.

The landlord testified that the tenant vacated the rental unit without providing a forwarding address. The landlord addressed the registered mailing to the tenant's post office box which the tenant had been using for mail during the tenancy. The Canada Post delivery records show that this mailing was delivered to the tenant. Since the tenant has received the landlord's amendments and evidence at the post office box, I find that these documents have been sufficiently served upon the tenant pursuant to section 71(2)(b) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover his filing fee for this application from the tenant pursuant to section 72?

Background and Evidence

The parties had a tenancy agreement which stated monthly rent of \$950.00. The tenant paid a security deposit of \$475.00 which the landlord still holds.

The landlord received an order of possession against the tenant on January 9, 2019 in a previous Residential Tenancy Branch hearing. The file number for the previous matter is referenced on the first page of the decision.

The landlord testified that the tenant refused to leave the property after the order of possession was issued. The landlord testified that he had to retain a bailiff to have the tenant forcibly removed from the rental unit. The tenant testified that the bailiff recovered possession of the rental unit for the landlord on January 29, 2019. The landlord presented an invoice of \$3,530.96 for the bailiff's fee to execute the writ of

possession. The landlord seeks reimbursement of the bailiff fees from the tenant for failing to vacate the rental unit despite the issuance of an order of possession.

The landlord testified that the rental unit was extremely dirty when he regained possession. The landlord testified that there was so much debris in the rental unit that he had to rake the debris out. The landlord testified the rental unit required extensive cleaning. The landlord testified that floors, wall and exterior of the property needed to be thoroughly cleaned.

The landlord testified that he needed to rent a truck and take eight trips to the dump to remove the tenant's debris. The landlord also testified that he needed to purchase cleaning supplies and hire a professional cleaner. The landlord also testified that a shelf in the refrigerator was broken and a drawer in the refrigerator was missing.

The landlord submitted credit card statements showing the following costs related to the tenancy:

- Truck rental: \$128.60
- Refrigerator shelf repair: \$22.40
- Refrigerator drawer replacement: \$114.04
- Keys: \$7.18
- Cleaning supplies: \$38.14
- Carpet cleaner rental and supplies: \$86.80
- Light bulbs: \$25.07
- Toilet seat: \$11.49
- Dump fees: \$105.80

The landlord also presented a receipt for \$245.00 for professional cleaning services. In addition, the landlord requested reimbursement of \$118.71 for electrical services in February 2019. The landlord also requested reimbursement of \$1,900.00 for overholding damages and loss of rent in January 2019 and February 2019. The landlord testified that the tenant did not pay any rent for January 2019 or anytime thereafter.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same

position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Each of the landlord's claims is addressed as follows:

Bailiff Fees

The landlord claimed \$3,530.96 for reimbursement of bailiff fees. Based upon the landlord's undisputed testimony and the invoice from the bailiff, I find that the landlord did incur \$3,530.96 in bailiff expenses because the tenant failed to comply with the lawful order of possession. Accordingly, I grant the landlord's claim for \$3,530.96 for bailiff fees.

Cleaning and Repairs

The landlord is claiming \$539.52 for cleaning supplies and replacement of broken items. Based on the landlord's undisputed testimony, which is corroborated by his credit card statement, I find that these expenses were caused by the tenant's failure to leave the property in a reasonably clean condition as required by section 37(2)(a) of the *Act*. The landlord needed to rent a truck and make eight trips to the dump to clean the property. The landlord also rented a carpet cleaner to shampoo the carpets. These cleaning expenses would have been significantly higher if the landlord had hired a professional carpet shampooing service. In these circumstances, I find the \$539.52 for cleaning supplies and repairs to be reasonable.

In addition, the landlord paid an additional \$245.00 for a professional cleaner. I find this fee to be reasonable in these relation to the extreme amount of filth which the landlord testified needed to be cleaned.

Accordingly, I grant the landlord \$784.52 (\$539.52 plus \$245.00) for cleaning and repairs.

Utilities

The landlord also requested reimbursement of \$118.71 for electrical services in February 2019. However, the tenant vacated the rental unit on January 29, 2019 and the landlord has not presented any contractual obligation requiring the tenant to pay the utility bills after she left the rental unit.

The landlord argued that he was unable to rent the rental unit in February 2019 because the rental unit needed extensive cleaning. However, the inability to rent the property does not establish that the tenant was obligated to pay utilities. I find that the landlord has failed to satisfy his burden of proving that the tenant was obligated to pay the utility expenses in February 2019. Accordingly, I deny the landlord's claim for reimbursement of utility expenses.

Overholding Damages and Loss of Rent

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, an order of possession was issued on January 9, 2019 but the tenant remained in possession of the rental unit until January 29, 2019. *Residential Tenancy Policy Guideline #3* states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit for the rental periods of January 1, 2019 to January 29, 2019, I find that the landlord is entitled to overholding damages in the amount of \$888.85 (29 days at the per diem rate of \$30.65) for January 2019.

Loss of Rent

In addition, the landlord requests damages for loss of rent in February 2019 because the property was not habitable while it was being cleaned. Section 37(2)(a) of the *Act* stipulates 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. As the tenant left the property in a condition that was not reasonably clean or undamaged, the landlord was further damaged by loss of rent while the property was not rentable while the landlord cleaned the property and made repairs.

However, even if the landlord's rental unit was damaged, the landlord must still mitigate his loss. Residential Tenancy Branch Policy Guideline No. 5 states:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act ..., the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

In this matter, the landlord has not produced adequate evidence to establish on the balance of probabilities that he adequately mitigated their losses by taking most of February 2019 to complete the remediation process.

Based upon the landlord's testimony and the evidence presented, I find that one week would be a reasonable amount of time to clean the rental unit. Accordingly, I grant the landlord an additional \$214.55 (7 days at the per diem rate of \$30.65) for loss of rent while the rental unit was being cleaned.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$475.00 which may be deducted from the damages owed by the tenant pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

I find that the landlord is entitled to an award of \$5,043.88 from tenant for damages and losses as summarized below:

<u>Item</u>	<u>Amount</u>
Bailiff fees	\$3,530.96
Cleaning and repairs	\$784.52
Overholding damages	\$888.85
Loss of rent	\$214.55
Less: Security Deposit	-\$475.00
Filing fee	\$100.00
Total	\$5,043.88

Conclusion

I grant the landlord a monetary order in the amount of **\$5,043.88**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: May 14, 2019

Residential Tenancy Branch