



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL MNDL-S MNRL

Introduction

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

- 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;
- a monetary order for unpaid rent and for damage to the unit in the amount of \$3,885.63 pursuant to section 67; and
- authorization to recover 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 1:40 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on April 5, 2019. The landlord's agent provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on April 10, 2019, five days after the landlord's agent mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- to retain all of the tenant's security deposit in partial satisfaction of the monetary order requested;
- a monetary order for unpaid rent and for damage to the unit in the amount of \$3,885.63; and
- recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord's agent, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The tenant and the landlord's property management company (acting on behalf of the landlord) entered into a written fixed term tenancy agreement starting July 1, 2018. Monthly rent was \$2,400.00 (excluding utilities) and was payable on the first of each month. The tenant paid the landlord a security deposit of \$1,200.00. The landlord still retains this deposit.

The landlord's agent testified that:

- 1) the tenant abandoned the rental unit on March 28, 2019;
- 2) the tenant did not pay monthly rent for March, 2019;
- 3) the tenant failed to pay utilities for January and February 2019, in the amounts of \$285.95 and \$199.68 respectively (\$485.63, in total);
- 4) the tenant significantly damaged a five-year old couch owned by the landlord, the use of which was included in the tenancy agreement; and
- 5) a replacement couch costs \$1,087.00.

The landlord entered into evidence:

- 1) copies of the outstanding utilities bills corroborating the amounts above;
- 2) photographs of the damaged couch showing significant damage to one side of it caused by what appears to be cat scratches; and
- 3) an online quote showing the value of the replacement couch as set out above.

Analysis

I accept the landlord's agent's uncontroverted evidence. I find that:

- 1) monthly rent is \$2,400.00;
- 2) the tenant did not pay monthly rent for March 2019;
- 3) the tenant failed to pay the utilities bill in the amount of \$485.63;
- 4) the tenant caused significant damage to the couch, which requires the couch's replacement;
- 5) the cost of a replacement couch is \$1,087.00.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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.

Monthly Rent

Section 26(1) of the Act requires that a tenant pay monthly rent as set out in the tenancy agreement. It states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant breached this section of the Act. I find that the landlord suffered a loss of \$2,400.00 as a result. Accordingly, I order that the tenant pay the landlord \$2,400.00.

Utilities

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the tenancy agreement requires that the tenant pay the utilities bill. I find that the tenant has failed to do this. I find that such a failure is a breach of section 7 of the Act and that this breach has caused the landlord to incur damages in the amount of \$485.63. Accordingly, I order that the tenant pay the landlord \$485.63.

Couch

Section 32(3) of the Act states:

Landlord and tenant obligations to repair and maintain

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the tenant caused the couch to be damaged, as described above. I find that this damage is significant enough to necessitate the replacement of the couch. I find that the tenant has breached section 32(3) of the Act by failing to repair the damage caused to the couch.

However, as the couch is five years old, the landlord is not entitled to recover an amount of money equal to the cost of a new couch. Such a recovery would represent a windfall to the landlord. Rather, the landlord is entitled to recover an amount equal to the depreciated value of the couch. Residential Tenancy Branch Policy Guideline 40 provides guidance as to how much certain items depreciate over time. It sets out the "useful life" of pieces of furniture as 10 years. Bearing this in mind, find it reasonable to depreciate the value of the couch by 40%. I acknowledge that the couch is half-way through its useful life, according to Policy Guideline 40. However, I decline to depreciate the couch by 50% as I do not think it reasonable that, at the end of its useful life, the couch would be completely worthless. I assign the couch a nominal value of \$100 at the

end of its useful life. Accordingly, I find that a 40% depreciation to the value of the couch after five years to be reasonable.

As such, I order that the tenant pay the landlord \$652.20 ($\$1,087 - (\$1,087 \times 40\%)$).

As the landlord has been successful in its application, I order that the tenant pay the landlord the application filing fee (\$100.00).

I order that the landlord may retain the security deposit (\$1,200.00) in partial satisfaction of the monetary order made above.

I order that the tenant pay the landlord \$2,437.83, as follows:

March 2019 Rent	\$2,400.00
Utilities	\$485.63
Couch	\$652.20
Filing Fee	\$100.00
Security Deposit credit	-\$1,200.00
Total	\$2,437.83

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$2,437.83.

Pursuant to section 72(2), I order that the landlord pay retain the tenant's security deposit.

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