



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL 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 unpaid rent, pursuant to section 67;
- and a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, 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 tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's' evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Unpaid Rent?

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2016, with monthly rent set at \$985.00. The landlord still holds a \$475.00 security deposit for this tenancy. A previous hearing was held on December 10, 2018 in regards to the tenant's application to cancel a 1 Month Notice for Cause issued by the landlord. At the hearing the tenant and landlord confirmed that the tenancy would end on December 31, 2018, and the landlord was given an Order of Possession for that date. The tenant was also cautioned about her obligation to pay rent as per the tenancy agreement and the *Act*.

Both parties confirmed in the hearing that the tenant moved out and returned the keys to the landlord on December 30, 2018. It was undisputed by the tenant that she did not pay the \$975.00 rent for December 2018. The landlord applied for a monetary order for the unpaid rent as well as \$375.00 in damages left by the tenant.

The landlord testified that she had purchased the property 3 years ago, and was uncertain when the walls were last painted. The landlord testified that she wanted to retain the \$475.00 security deposit in satisfaction of the filing fee and damage to the wall. The landlord confirmed that she had only done touch-ups, and the wall had yet to be repainted at the time of the hearing. No receipts or invoices were submitted by the landlord in support of her claim.

The tenant testified that the hole was there at the beginning of the tenancy. Both parties confirm that the hole was not noted in the move-in inspection report, but the tenant testified that she did not make the hole.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which 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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 26 of the Act, in part, states as follows:

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.

As it was undisputed by the tenant that the December 2018 rent was never paid, I allow the landlord's monetary claim for the December 2018 rent.

The landlord also made a monetary claim equivalent to the tenant's security deposit for damage caused by the tenant and for recovery of the filing fee. It was disputed by the tenant that she had caused the hole in the wall. I have considered the evidence provided by both parties, I am not satisfied that the landlord provided sufficient evidence to support that the tenant caused the damage. Furthermore, I am not satisfied that the landlord had provided sufficient evidence to support the actual value of her loss. As stated above, the burden of proof falls on the landlord. On this basis, the landlord's monetary application for damage to the wall is dismissed without leave to reapply.

As the landlord was partially successful with her claim, I allow her to recover half of the filing fee for this application..

The landlord continues to hold the tenant's security deposit of \$475.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$560.00 in the landlord's favour under the following terms which allows for the recovery of half of the filing fee and the unpaid rent for December 2018. The remaining portion of the landlord's monetary claim is dismissed without leave to reapply.

Item	Amount
Unpaid Rent for December 2018	\$985.00
Recovery of Filing Fee	50.00
Security Deposit	-475.00
Total Monetary Order	\$560.00

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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: May 3, 2019

Residential Tenancy Branch