



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S, FFT, MNSD

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
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its 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 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 loss 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 recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of a portion of her security deposits?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on September 1, 2018 and ended on February 28, 2019. The tenants were obligated to pay \$1100.00 per month in rent plus half of the utilities, in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit and the parties agreed to a \$200.00 utilities deposit in case of shortfalls. The landlord testified that a written condition inspection was conducted at move in. The landlord testified that the parties agreed to inspect the unit at move out on March 1, 2019. The landlord testified that she and her husband worked late and would not be able to attend at the agreed upon time. The landlord testified that she did a walk thru of the unit and found it to be very dirty and that the toilet was plugged with feminine hygiene products.

The landlord testified that she immediately called the tenant to advise that she wasn't happy with the unit and wanted them to rectify the situation. The landlord advised the tenant refused to return or even discuss the matter with her. The landlord testified that she didn't receive the tenants forwarding address until the tenant filed an application. The landlord testified that she wanted to resolve the matter and have the tenants clean the unit but they refused. The landlord testified that she and her husband spent over two days cleaning the suite but are only seeking the agreed upon amount as per the tenancy agreement of eight hours of cleaning at \$65.00 per hour. The landlord testified that she and her husband spent more than eight hours cleaning.

The landlord is applying for the following:

Toilet Repair	\$94.50
Cleaning	\$ 520.00
Loss of Revenue March 1-15, 2019	\$550.00
Filing Fee	\$100.00

	\$
	\$
Total:	\$1264.50

The tenant gave the following testimony. The tenant testified that she felt the unit was left in a clean state. The tenant testified that it's difficult to clean the unit while caring for her child and returning back to the unit wasn't an option. The tenant testified that she spent a whole day cleaning the unit and felt that was more than enough and didn't think it was fair to have to clean any more than that.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

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' claims and my findings as follows.

Toilet Repair- \$94.50

The landlord provided a receipt for the work conducted. In addition, despite being given several opportunities to challenge any and all evidence, the tenant did not dispute this claim, accordingly; I find that the landlords are entitled to \$94.50.

Cleaning - \$520.00

The landlord has provided testimony, photos, and the condition inspection report to support their claim and to corroborate the scope of work and cleaning conducted. The tenant was given ample opportunity to return to the unit but in the tenants own testimony she stated that she simply refused to go back. Based on the above, I find that the landlords' are entitled to \$520.00.

Loss of Revenue- \$550.00

The landlords provided sufficient supporting documentation to show that the unit was not suitable for the new incoming tenants. As a result of the tenants' actions and not returning the unit in a reasonably clean condition at move out, the new incoming tenants did not move in until March 15, 2019 causing the landlord to lose half a month's revenue. Based on the above, I find that the landlords are entitled to \$550.00.

The landlords are also entitled to the recovery of the filing fee of \$100.00.

As the landlords have been successful in their application and the amount to their favour exceeds the amount of deposits they hold, the tenant is not entitled to the return of any the deposit, accordingly; I dismiss the tenants' application in its entirety without leave to reapply.

Conclusion

In summary, the landlord has been successful in the following claims:

Toilet Repair	\$94.50
Cleaning	\$ 520.00
Loss of Revenue March 1-15, 2019	\$550.00
Filing Fee	\$100.00
	\$
	\$
Total:	\$1264.50

The landlord has established a claim for \$1264.50. I order that the landlord retain the \$750.00 in deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$514.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application is dismissed in its entirety without leave to reapply.

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: July 05, 2019

Residential Tenancy Branch