



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDL-S**

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. to enable the tenant to call into this hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn 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 and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

The landlord's representative, LF ("landlord") testified that she personally delivered the tenant her Application for Dispute Resolution Proceedings and evidence on September 9, 2019 at 12:33 p.m. at the tenant's place of work. The landlord's witness CI also testified that he observed the landlord personally deliver the Application for Dispute Resolution Proceedings package upon the tenant on September 9th. I am satisfied the landlord has served the Application for Dispute Resolution and evidence on September 9th in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

Background and Evidence

The landlord gave the following undisputed testimony. The month to month tenancy began on November 1, 2017. Rent in the amount of \$1,063.00 is due on the first day of each month. The tenant qualifies for a rent subsidy and pays \$828.00 of the \$1,063.00 rent. A security deposit of \$531.50 was collected by the landlord which she continues to hold. No pet damage deposit was taken and no condition inspection report was done at the commencement of the tenancy.

The landlord's witness, CI gave the following undisputed testimony. He received a call from the tenant at approximately 2:00 a.m. on May 2, 2019. The tenant had called to advise that the toilet was broken and during this conversation, the tenant lost her balance and made the break in the toilet worse. The landlord immediately contacted an emergency repair/restoration company to stop the water flow resulting from the damage caused to the toilet. The landlord has provided an invoice from the restoration company in the amount of \$772.46 for what is described as a toilet overflow in the tenant's rental unit.

The following morning, the landlord contacted a construction company to do "second stage repairs". The landlord testified those repairs consisted of repairing the damage to the tenant's rental unit as well as damage caused to the unit below due to the water coming from the tenant's toilet. The construction company's invoice indicates they removed the damaged toilet, linoleum flooring and wet drywall in the tenant's bathroom as well as supplied and installed a new toilet, repaired and painted the drywall and flooring in the tenant's bathroom. To the unit below, the construction company removed and disposed of the ceiling, insulation and wall board; replaced all of it including redrywalling, mudding and taping and painting. As well, the company removed and replace a small section of the water damaged carpet underpad. The company invoiced the landlord \$3,953.33 for the materials, labour and asbestos sample testing.

The landlord chose this construction company to do the repairs as the restoration company hired for the emergency repairs charges a higher rate. The landlord testified he has used this construction company in the past and used them for this work because he is satisfied with their work and they are reasonably priced compared to larger construction companies he's used in the past.

The landlord testified she and the tenant discussed the option of the tenant reimbursing the landlord for the damage caused to the two rental units immediately after the toilet broke. The tenant was initially in agreement with doing so if she could stay living there. When the quote for the work came in on May 22nd, the tenant refused to pay and the landlord advised her it could put the tenancy in jeopardy. On May 24th, the landlord served the tenant with a One Month Notice To End Tenancy for Cause with an effective date of June 30th.

The testified she found out from other residents in the building that the tenant had abandoned the rental unit on June 13th without giving the landlord notice. She does not know the actual date the tenant moved out of the unit, acknowledging it was probably some time before June 13th. The landlord seeks the tenant's portion of unpaid rent for the month of June as the tenant abandoned the unit without notice.

Analysis – Damage

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 1.) the existence of the damage/loss, 2.) 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, 3.) the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. The claimant must also show 4.) what steps were taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* states 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

In the case before me, the landlord provided undisputed evidence to show that during the tenancy, the tenant broke the toilet, causing damage to rental unit and the unit below. The landlord has shown the tenant has not repaired the damage to the rental unit, contrary to section 32 of the *Act*. The landlord has provided compelling evidence to show they made the repairs as quickly as possible and mitigated the loss by choosing an inexpensive contractor to perform the repairs. Lastly, the landlord has provided the invoices from the restoration company and the construction company to verify the

monetary amount of the loss. Pursuant to section 67, I award the landlord **\$722.46** and **\$3,953.33**.

Analysis – June Rent

Section 26 of the *Act* states 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.

Although the tenant was served with a Notice to End Tenancy with an effective date of June 30th, the tenant is still obligated to pay rent for the entire month of June pursuant to section 26. Being served with a Notice does not relieve the tenant of this obligation. I find the landlord is entitled to compensation for June rent in the amount of **\$828.00**.

The landlord continues to hold the tenant's security deposit in the amount of **\$531.50**. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Emergency Restoration	\$722.46
Repairs to rental unit and unit below	\$3,953.33
June 2019 rent	\$828.00
Less security deposit	(\$531.50)
Total	\$4,972.29

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$4,972.29**. The tenant must be served with this Order as soon as possible. Should the tenants 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: October 09, 2019

Residential Tenancy Branch