



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 award for damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their application, evidence and amendment to their application by email on July 15, 2019 in accordance with a substituted service order issued by this Branch dated July 4, 2019. In accordance with the substituted service order the landlord provided email correspondence from the tenant dated July 16, 2019 confirming they had been served with the landlord's materials. Based on the evidence I find that the tenant was sufficiently served with the landlord's materials in accordance with the substituted service order and section 71 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to retain the deposit for this tenancy?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The monthly rent for this periodic tenancy was \$950.00 payable on the first of each month. The rental unit is a suite in a multi-unit building managed by a strata corporation. A security deposit of \$475.00 was paid at the start of the tenancy and is still held by the landlord.

The tenant informed the landlord of their intention to vacate the rental unit by July 1, 2019 on June 15, 2019. As a result of the tenant's short notice and interference with the landlord's attempts to show the suite, the landlord was unable to find a new occupant for July 1, 2019 and was only able to start a new tenancy on July 7, 2019. The landlord seeks the equivalent of the loss of rental income for those seven (7) days in the amount of \$229.83.

The tenant incurred multiple fines from the strata corporation for various infractions totalling \$1,200.00. The landlord submitted into evidence copies of the correspondence from the strata showing these fines and warnings issued to the tenant.

The landlord testified that the tenant left the rental unit in a state of disarray and disrepair requiring considerable cleaning, work and repairs. The tenant failed to attend and participate in a move out inspection despite the landlord providing multiple opportunities. The landlord submitted into evidence a condition inspection report prepared without the tenant, copies of correspondence showing the tenant's refusal to participate, photographs of the suite and receipts showing the cost of repairs and cleaning. The landlord submits that the total amount of losses incurred is \$2,839.22.

Analysis

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 the existence of the damage/loss, and 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, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied that the landlord has shown through their documentary evidence and testimony that they have incurred losses as a result of the tenant.

I find that the tenant did not provide sufficient notice under the Act of their intention to end the tenancy and that the landlord suffered rental income loss as a result. I accept the evidence that the landlord acted reasonably to mitigate their losses by seeking a new occupant but still incurred losses for seven (7) days. I accept the landlord's submission that the monetary amount of the loss is \$229.83 and issue a monetary award accordingly.

I accept the evidence that the tenant violated strata rules in contravention of the tenancy agreement. I accept the evidence that the amount of the fines issued is \$1,200.00 and that the tenant obstinately refused to pay these amounts despite being informed of their obligation to pay. I issue a monetary award in the landlord's favour in the amount of \$1,200.00 for the fines incurred as a result of the tenant's violations.

I accept the evidence that the tenant left the rental unit in a state of disrepair requiring cleaning, work and repairs. I accept the landlord's submission, supported in their documentary materials, that the cost of the work done as a result of the tenant's violation is \$2,839.22. Accordingly, I issue a monetary award for this amount as against the tenant for the losses incurred by the landlord.

As the landlord was successful in their application they may recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,894.05, which allows the landlord to recover their losses and filing fee and retain the security deposit for this tenancy.

The tenant must be served with 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: October 21, 2019

Residential Tenancy Branch