



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HSUS ENTERPRISE CO.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT, MNDL-S, FFL

Introduction

This hearing dealt with cross-applications pursuant to the *Residential Tenancy Act* ("Act")

The landlord applied 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.

The tenant applied for:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The landlords agent and tenant both participated in the teleconference on August 2, 2019. At that time the tenant had advised me that she had filed her own application. The landlord's application was adjourned to be heard with the tenant's application as the central issue was the security deposit. The landlord's agent participated in today's teleconference, the tenant did not. The tenant confirmed at the August 2, 2019 hearing that she received the landlords Notice of Hearing, Application and documentary evidence.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant brought this hearing date to the attention of myself and the landlord at the first hearing on August 2, 2019. The tenant was fully aware of today's hearing and chose not to participate, accordingly; I dismiss the tenants' application in its entirety without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for loss or damages as result of this tenancy?

Is the landlord entitled to retain a portion of the security deposit in satisfaction of their claim?

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

Background and Evidence

The landlord's agent gave the following testimony. GM testified that the tenancy began on August 4, 2016 and ended on May 31, 2019. Written condition inspection reports were conducted at move in and move out. The monthly rent was \$1900.00 due on the first of each month. The tenant paid a security deposit of \$950.00 which the landlord still holds in trust. GM testified that at the move out inspection it was brought to the attention of the tenant that the drapes were damaged and needed some attention.

GM testified that despite offering the tenant numerous opportunities to get them repaired by someone of her choosing, she refused to do anything. GM testified that the drapes were installed in 2014 and were five years old when the tenant moved out. GM testified that they had to replace the drapes at a cost of \$687.86. GM is seeking half that amount in accordance with Residential Tenancy Policy Guideline 40 – "useful life of building elements". GM also seeks the recovery of the filing fee and that the balance of the deposit be returned to the tenant.

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 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.

GM has submitted photos, a receipt, condition inspection reports and undisputed testimony to support their claim. Based on the above I find that the landlord has proven their claim. I also agree that the landlord is entitled to half the cost of the new drapes in the amount of \$343.84 in accordance with the pro-rating of building elements and in accordance with Residential Tenancy Policy Guideline 40; drapes are listed at 10 years. In addition, the landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$443.84. I order that the landlord retain \$443.84 from the security deposit in full satisfaction of the claim. The landlord is to return the remaining \$506.16 to the tenant. I grant the tenant an order under section 67 for the balance due of \$506.16. This order may be filed in the Small Claims 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: November 05, 2019

Residential Tenancy Branch