



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HABITRO HOMES INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-S, MND-S, FF

Introduction

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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package via email as per an order granted for substitute service dated October 25, 2019. The landlord submitted copies of the submitted emails and attachments as confirmation. I accept the undisputed affirmed testimony of the landlord and find that the tenant was properly served as per the substitute service order and is deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for compensation and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 4, 2019 on a fixed term tenancy ending on April 30, 2020 as per the submitted copy of the signed tenancy agreement dated May 4, 2019. The monthly rent was \$5,000.00 payable on the 1st day of each month. A security deposit of \$2,500.00 was paid on May 4, 2019. A condition inspection report for the move-in was completed by both parties on May 4, 2019. A condition inspection report for the move-out was completed by the landlord only on September 18, 2019.

The landlord seeks an clarified monetary claim of \$35,000.00 which consists of:

\$3,979.71	Missing Wall Projector
\$249.00	Missing Apple TV
\$99.75	Re-Key Door Lock
\$233.78	Repairs,
\$269.83	Repairs,
\$200.00	FOB Replacement
\$300.00	Cleaning
\$500.00	Painting
\$5,000.00	Unpaid Rent, September 2019
\$24,168.00	Unpaid Strata Bylaw Fines

The landlord stated that the tenancy was terminated with a notice to end tenancy, but the tenant overhauled and occupied the premises and did not pay any rent for September 2019. The landlord also stated that the tenant vacated the rental unit without returning the keys/fobs and left it dirty with scratches on walls in nearly all of the rooms. The landlord stated that the tenancy was ended as the tenant had incurred numerous strata bylaw fines for short term rental violations and noise complaints. The landlord stated that the rental unit was left dirty requiring cleaning.

In support of these claims the landlord provided copies invoices, receipts, photographs and documentation from the strata council regarding violations.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed evidence of the landlord and find that the landlord has established a claim of compensation for unpaid rent, cleaning, damages requiring repair/replacement. The landlord provided evidence of damage, costs for repairs/replacement and strata bylaw fines imposed during the tenancy with this tenant. I note that the landlord's monetary claim totals \$35,000.07 which is above the stated claim and exceeds the statutory limit. As such, the landlord is entitled to a total monetary claim of \$35,000.00.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$2,500.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$32,600.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: November 26, 2019

Residential Tenancy Branch