



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 Order for unpaid rent and compensation for damage or loss, and authorization to retain the security deposit in partial satisfaction of this monetary claim, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord attended at the date and time set for the hearing of this matter and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. 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.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that the tenants failed to provide her with their forwarding address after vacating the rental unit some time before July 16, 2019. The landlord applied to the Residential Tenancy Branch (RTB) for a Substituted Service Order. In accordance with the instructions provided in the Substituted Service Order Decision rendered by an adjudicator of the RTB on July 30, 2019, the landlord served tenant J.M. with the notice of this hearing and evidence by email on August 8, 2019. The landlord

failed to upload proof of service prior to the hearing, however, I allowed the landlord until 4:00 p.m. on the day of the hearing to upload proof of service of the email on the tenant. The landlord complied with this direction and as such, I have proceeded to consider the landlord's application on the basis that she obtained a Substituted Service Order and that she submitted a screen shot showing the sent email to the tenant.

The Substituted Service Order only permitted the landlord to serve tenant J.M. by email, not the other named tenant in the matter. As such, the landlord requested to amend her Application for Dispute Resolution to remove tenant A.E. as a named party in this matter. Pursuant to my authority under section 64(3)(c) of the *Act*, I permitted the landlord to amend her Application to remove tenant A.E. from this proceeding.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, providing the following information pertaining to this tenancy:

- This tenancy began June 1, 2019.
- Monthly rent of \$1,875.00 was payable on the first of the month.
- The tenant paid a security deposit of \$937.50 and a pet damage deposit of \$937.50, which continues to be held by the landlord.
- The landlord testified that the landlord and tenant participated in a condition inspection of the rental unit at the beginning of the tenancy, however the tenant vacated the rental unit without participating in a move-out condition inspection with the landlord. The landlord conducted a move-out condition inspection in the absence of the tenant and submitted a copy of the condition inspection report into evidence.

The landlord testified that when she attended the rental unit on July 16, 2019 to conduct the move-out condition inspection, the tenant had already vacated the rental unit but had allowed a couple of occupants, unknown to the landlord, access to the rental unit.

It was not until late on the evening of July 16, 2019 that the occupants vacated the rental unit, returning possession to the landlord.

The landlord filed an Application for Dispute Resolution on July 29, 2019 seeking to retain the tenant's security and pet damage deposit against her claims for damage and loss set out on the Monetary Order Worksheet. I explained to the landlord in the hearing that her claims are limited to what was set out in the Monetary Order Worksheet submitted with her Application and that she could not amend her Application in the hearing to add any additional claims. In support of her claims, the landlord submitted into evidence invoices, a condition inspection report, and photographic evidence of the condition of the rental unit at move-out.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

In this case, the landlord has claimed for compensation under several different categories. My findings, based on the testimony and evidence presented, on a balance of probabilities, are set out below.

Unpaid Rent and Rental Revenue Loss

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I accept the landlord's unchallenged testimony that the agreed upon terms of the tenancy required the tenant to pay \$1,875.00 in monthly rent and that the tenant failed to pay rent for the month of July 2019.

Therefore, I find the landlord is entitled to a monetary award of \$1,875.00 for unpaid rent owed by the tenant. I decline the landlord's claim for lost rental revenue for the month of August 2019 as the landlord failed to submit any evidence of her efforts to re-rent the unit for August 2019.

Cleaning Costs and Wall Repair

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

Based on the condition inspection report, photographic evidence and receipts submitted by the landlord in support of her claim, I find that there is sufficient evidence that the tenant failed to leave the rental unit reasonably clean and undamaged. As such, I find that the landlord has shown that the damage or loss claimed stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. I find that the landlord has provided some itemized receipts and some receipts that were not clearly itemized. I have only considered the clearly itemized receipts for repairs, cleaning and cleaning supply costs.

Therefore, I find the landlord is entitled to a monetary award of \$680.33 for the claimed cost of wall repair, cleaning and cleaning supplies.

Strata fines and Move Out Fee

Section 7 of the *Residential Tenancy Regulations* allows a landlord to charge a tenant a move-out fee charged by a strata corporation to the landlord. I find that the landlord has provided sufficient evidence that she was charged a \$150.00 move-out fee by the strata corporation and two fines of \$200.00 (totalling \$400.00) due to infractions of the strata bylaws by the tenant.

Therefore, I find the landlord is entitled to a monetary award of \$550.00 for the claimed costs of the move-out fee and strata fines.

The landlord's remaining claims for the cost of a replacement lock and personal time are declined. It is a landlord's responsibility to replace the lock prior to the start of a new tenancy, and in this case, the landlord replaced the lock at the end of the tenancy and left that lock in place for the start of the next tenancy. The landlord did not submit any evidence to establish that she incurred a financial loss for the personal time spent assisting with the end of the tenancy.

Set-off Against Security Deposit

In summary, I find that the landlord is entitled to a monetary award of \$3,105.33. I find that the landlord submitted an Application for Dispute Resolution in accordance with the requirements of section 38 of the *Act* to retain the tenant's security and pet damage deposits in partial satisfaction of their claim for compensation.

The landlord continues to retain the tenant's security and pet damage deposits totalling \$1,875.00. In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenant to the landlord of \$3,105.33, against the tenant's deposits of \$1,875.00 held by the landlord, in partial satisfaction of the total monetary award in favour of the landlord.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$1,330.33.

A summary of the monetary award is provided as follows:

Item	Amount
Monetary award in favour of landlord	\$3,105.33
Recovery of the filing fee from the tenant	\$100.00
LESS: Security deposit held by landlord	(\$1,875.00)
Total Monetary Order in Favour of Landlord	\$1,330.33

Conclusion

I order the landlord to retain the \$1,857.00 security and pet damage deposits for this tenancy in partial satisfaction of the monetary award granted to the landlord for compensation.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$1,330.33 in full satisfaction of the remaining amount of loss owed, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and 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: November 27, 2019

Residential Tenancy Branch