



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, MNDCT, MNSD

Introduction

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

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is either party entitled to a monetary order as claimed?

Is either party entitled to the security deposit?

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

Background and Evidence

The landlords gave the following testimony. The tenancy began on January 1, 2017 and ended on December 22, 2018. The monthly rent of \$1190.00 is payable on the first of each month. At the outset of the tenancy the tenant paid a \$300.00 security deposit which the landlord still holds. PG testified that the tenancy ended as a result of an order of the Branch. PG testified that after the tenant had given the keys to BG but then returned later and broke into the unit and proceeded to vandalize it. PG testified that the police attended and that he has been criminally charged in the matter and awaits trial. PG testified that the landlord called a restoration company to make emergency repairs and paid a \$1000.00 deductible. BG testified that after the work was completed by the restoration company, she had to take a day off of work to clean the unit. BG testified that she had to pay for parking that day as she stayed for seven hours to clean.

PG testified that they have had numerous hearings with the tenant and that they have no desire to deal with him any further. PG testified that the tenant disconnected the smoke detectors as he smoked in the unit. PG testified that the tenant left the window of his unit open at all times allowing vermin to infest his furniture. PG testified that the dryer is functioning normally and didn't cause any disturbance. PG testified that the unit is a legal unit that meets building codes and that the tenant has attempted to submit numerous fraudulent claims and lies.

PG testified that the tenant had an empty gas can in his unit as did the landlord but was not a risk to either party. BG testified that the tenant is lying and has been harassing the entire family. The landlords submit that the tenants claim should be dismissed.

SG testified that he was there when the tenant broke in. SG testified that the tenant had a metal bar and was smashing everything in the suite. SG testified that the suite looked "like a crime scene". SG testified that the tenant made threats to him and the landlord that "I'll chop your head". SG testified that the tenant was the aggressor and that he caused the damage to the unit.

The landlord is applying for the following:

1.	Insurance Deductible	\$1000.00
2.	Parking	12.50

3.	Loss of work	334.00
4.	Cleaning	140.00
5.	Filing fee	100.00
6.	Less Deposit	-300.00
	Total	\$1286.50

The tenant gave the following testimony. The tenant testified that the landlord illegally raised the rent from \$600.00 to \$1200.00 and then lowered it to \$1190.00. The tenant testified that he was looking for another place to live so he thought he would just pay the landlord until he was ready to move on. The tenant testified that he asked the landlord to fill out shelter information forms so that he could get a \$375.00 subsidy but because the landlord initially refused and then later filled them out incorrectly, he paid an additional \$1125.00 in rent out of his own pocket that he didn't have to. The tenant testified that he had to endure; vermin, cancer causing odors, illegal entry to his unit, a noisy dryer, and electrical and fire safety issues during his tenancy. The tenant seeks a monetary order to address all these issues.

The tenant is applying for the following:

1.	Illegal rent increase	\$6890.00
2.	Refusal to fill out shelter information	375.00
3.	Double security deposit	300.00
4.	Loss of Quiet Enjoyment	14,400.00
5.		
6.		
	Total	\$23,015.00

Analysis

The relationship between the parties is an acrimonious one. The parties have been involved in numerous hearings making claims against one another. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were making allegations of "liar and fraud" to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim to me.

The parties continually referred to previous decisions, statements or testimony given in other proceedings to support their position for this hearing. Both parties also continually challenged the others documentary evidence and wanted them to be “stricken” from the proceedings. The tenant continually attempted to rehabilitate evidence from a previous hearing and tried to alter it to assist him in this hearing.

I address the above as follows. Firstly section 64(2) of the Act addresses the above as follows:

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64 (2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

All documentary evidence was considered as well as the testimony of each of the participants.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlords to be more credible witnesses than either the tenant or his witness. The landlords provided consistent, logical testimony which was supported with documentary evidence where available. The landlords admitted when they could not recall specific facts and, where appropriate, referred to their notes and documents prepared prior to this hearing to assist in their recollection.

The tenant was argumentative, focused on irrelevant matters and conducted himself in an agitated and irrational manner. I found that much of the tenant’s submissions to have little to do with the matter at hand and was concerned with attacking the landlords and making himself appear to be the wronged party. When given the opportunity to cross-examine the landlords the tenant chose to make editorial comments to me and ask irrelevant personal questions rather than any substantive matter. Towards the conclusion of the hearing the tenant continually interrupted the landlord’s testimony, shouting disagreement with their evidence.

Based on the foregoing, where the evidence of the parties clashed, I found that the landlord's version to be more credible and consistent with how a reasonable person would behave.

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. I address the landlords claim and my findings as follows.

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Insurance deductible \$1000.00

In the tenant's own testimony, he acknowledged that he didn't have the keys to the unit but was found in the unit. The tenant provided an explanation that was neither logical or reasonable. Both landlords and their witness provided clear, concise and credible testimony of the events that led to the unit being damaged. In addition, the tenant has been criminally charged for his actions on that day which lends credibility to the landlords and witness testimony. The tenants witness KB gave little information in regard to this issue and I find that his testimony was very limited in its relevancy. Based on all of the above and on a balance of probabilities, I find that the landlord has provided sufficient evidence to show that as a result of the tenants actions the unit was damaged by him and that the landlord incurred costs, as a result, I find that the landlord is entitled to \$1000.00.

Cleaning - \$140.00

The landlord provided poor quality photos for this portion of their claim. BG testified that she spent 7 hours @ \$20.00 per hour to clean the unit after the restoration company had completed their work. BG testified that she had to pay 12.50 in parking fees while she was cleaning. BG testified that she lost \$334.00 in wages as she had to take the day off from work to clean the unit. I find that this is not related to the tenant and that

this is as a result of the restoration company not cleaning the unit after they had completed their repairs. The landlord's recourse was to contact the insurance company to have this rectified; accordingly, I dismiss this portion of the landlords claim.

I find that the landlords are entitled to the recovery of the \$100.00 filing fee.

I now address the tenants claim and my findings as follows.

Rent increase \$6890.00

The tenant testified that he received a rent increase from \$600.00 to \$1190.00 from January 2018 to December 2018 and seeks to recover \$6890.00 in overpayment of rent. The landlord testified that the base rent was \$1000.00. The landlord testified that the parties agreed that since the tenant bought an electric car, he would pay an additional \$100.00 for electricity and an additional \$100.00 for a parking spot. The amount was later reduced by ten dollars as the tenant did not use the laundry facilities and his rent became \$1190.00 per month. The tenant failed to provide sufficient evidence that he disputed this rent increase, and as specifically noted above, he has failed to show how he mitigated the loss pursuant to section 7(2) of the Act and I therefore dismiss this portion of his claim.

Failure to fill out Shelter Form - \$1125.00

The landlord is under no obligation to fill out a shelter form, however, PG testified that he did fill out the form and has no idea what the tenant did with the form afterwards. I find that the tenant has not provided sufficient evidence to show how the landlords actions caused him to pay extra rent and he has also failed to show what attempts to mitigate the loss, accordingly; I dismiss this portion of the tenant's application.

Loss of Quiet Enjoyment - \$14, 400.00.

The tenant testified that he seeks this amount as the dryer made excessive noise and that the landlord stored gasoline in the room next to his. The tenant testified that he was exposed to harmful cancer causing chemicals and odors that could compromise his health. The tenant testified that the home was infested with vermin, lacked the proper fire safety requirement and that the landlord continually broke the law by entering his unit without permission. The tenant has failed to provide sufficient evidence of any of his allegations and his submissions were disjointed and vague on this point. In addition, the tenant failed to provide sufficient evidence of his attempts to mitigate the alleged issues

and finally, how he came to the amount as sought. The tenant did not provide a specific breakdown or calculation to the claim. Based on all of the above I dismiss this portion of his claim.

Security Deposit- \$300.00

Both parties seek to be awarded the security deposit. The tenant seeks the doubling provision under section 38 of the Act. Section 38 addresses the issue before me as follows:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

The tenant confirmed that he only gave the landlord his forwarding address as part of his application and did not provide it in writing prior to that as required, therefore, the double provision isn't triggered, and the tenant is not entitled to the doubling provision under the Act. The tenant has not been successful in any part of his claim. The tenant's application is dismissed in its entirety without leave to reapply.

The landlord has established a claim of \$1100.00.

Conclusion

The landlord has established a claim for \$1100.00. I order that the landlord retain the \$300.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$800.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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: January 06, 2020