



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESCENT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDCL-S MNDL-S**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent October 7, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on October 12, 2019.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on October 12, 2019.

Issue(s) to be Decided

- Is the landlord entitled to Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on January 26, 2010 for monthly rent of \$751.00 payable on the first of the month. The tenant provided a security deposit of \$375.50 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The tenant vacated the unit at the end of September 2019 without notice. The tenant left the unit in an infested, filthy and cluttered condition requiring biohazard cleanup. The landlord submitted photographs in support of the claim regarding the condition of the unit.

The landlord testified the landlord incurred the following expense of \$2,402.76 to clean the unit. The landlord submitted an estimate and testified that the expense was incurred on October 17, 2019. The landlord requested authorization to apply the security deposit to the award. The landlord withdrew the request for reimbursement of the filing fee.

A summary of the landlord’s claim follows:

ITEM	AMOUNT
Cleaning costs – October 17, 2019	\$2,402.76
(less security deposit)	(\$375.58)
Total Monetary Award Requested	\$2,027.18

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the *Act* provided that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. The landlord has provided testimony, supported by photographs and documents relating to condition of the unit and the cost of clean up.

Therefore, in the absence of any contrary evidence, I accept the landlord's testimony the tenant caused the damage described. I find the landlord has taken reasonable steps to mitigate the damage and has incurred the expenses claimed. I therefore allow the landlord's claims.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

I grant a monetary order to the landlord in the amount of **\$2,027.18**. My award to the landlord is summarized as follows:

ITEM	AMOUNT
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Cleaning costs – October 17, 2019	\$2,402.76
(less security deposit)	(\$375.58)
Total Monetary Award Requested	\$2,027.18

Conclusion

The landlord is entitled to a monetary order in the amount of **\$2,027.18**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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: February 04, 2020

Residential Tenancy Branch