



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter DORSET GROUP CANADA
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

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

- 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 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*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord’s agent attended the hearing (“the landlord”) and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

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 on October 16, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on October 21, 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 21, 2019.

Issue(s) to be Decided

Is the landlord entitled to:

- 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 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*;
- 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 December 1, 2018 for a fixed one-year term. Monthly rent of \$1,275.00 was payable on the first of the month. The tenant provided a security deposit of \$637.50 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

On September 2, 2019, the tenant provided written notice to the landlord, a copy of which was submitted as evidence, informing the landlord of the tenant's intention to vacate the unit at the end of October 2019. However, a few days before the end of September 2019, the tenant informed the landlord she had changed her mind and would vacate the unit at the end of September 2019. The landlord was unable to find a replacement tenant for October 1, 2019 on such short notice and the unit was vacant until November 1, 2019. The landlord claimed reimbursement of loss of one month's rent.

A condition inspection was signed by both parties on moving in which indicated that the unit was in good condition in all material respects. The parties met for a condition inspection on September 30, 2019 and the report indicated that the unit needed cleaning and minor repairs in the stated amount of \$100.00. The tenant refused to sign the report and a note to this effect is handwritten on the report. A copy of the report signed by the landlord on moving out was submitted. On the report, the tenant provided her forwarding address.

On October 7, 2019, the landlord filed an Application for Dispute Resolution requesting one month's rent and reimbursement of the expenses for cleaning and repairs. The landlord submitted a copy of the receipt in the amount of \$100.00 as evidence. The landlord requested authorization to apply the security deposit to the monetary award as

well as reimbursement of the cost of the filing fee.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
One month's rent	\$1,275.00
Cleaning and repair expense	\$100.00
Reimbursement of filing fee	\$100.00
(less security deposit)	(\$637.50)
TOTAL CLAIM	\$837.50

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.

I have considered all the landlord's evidence and testimony. I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claim. I accept the landlord's testimony as credible as it was supported by documentary evidence and was uncontradicted. I accept the landlord's testimony that the landlord took reasonable steps to find a replacement tenant as soon as the landlord learned the tenant planned to vacate early. I accept the landlord's testimony as reasonable that it was not possible to find a replacement tenant on such short notice.

I grant the landlord authorization to apply the security deposit to the monetary award.

As the landlord has been successful in the landlord's claim, I grant the landlord reimbursement of the filing fee.

Accordingly, I award the tenant a monetary order of **\$837.50** calculated as follows:

ITEM	AMOUNT
One month's rent	\$1,275.00
Cleaning and repair expense	\$100.00
Reimbursement of filing fee	\$100.00
(less security deposit)	(\$637.50)
TOTAL AWARD	\$837.50

Conclusion

The landlord is entitled to a monetary order in the amount of **\$837.50**. 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 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 06, 2020