



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for unpaid rent and 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.

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 the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord gave the following testimony. The tenancy began on August 1, 2017 and ended on September 30, 2019 as a result of the tenant being given a court order not to be found on the property. The monthly rent of \$1600.00 was due on the first of the month. The tenant paid an \$800.00 security deposit at the outset of the tenancy that the landlord presently holds in trust. The landlord testified that move in and move out condition inspection reports were conducted in writing. The landlord testified that the tenant had his son attend at the move out as he refused to come. The landlord testified that the unit was brand new when the tenant moved in. The landlord testified that the tenant damaged the front door, large mirror, faucet, door handle, dining room light, and sink and vanity. The landlord testified that the unit was left so dirty that his wife spent two full days cleaning it.

The landlord testified that the tenant gave notice on September 24, 2019 that he would be moving out on September 30, 2019. The landlord testified that as a result of the short notice and the poor condition of the unit, he was unable to rent it for October 1, 2019. The landlord testified that he spent most of the month of October just cleaning and repairing the unit to make it rentable. The landlord is seeking \$1097.07 in cleaning and repair costs, \$1600.00 for the loss of rent for October 2019 and the \$100.00 filing fee for this application for a total claim of \$2897.07.

The tenant gave the following testimony. The tenant testified that he was willing to work this out with the landlord. The tenant testified that he agrees to the damage to the door but disputes the remainder of the landlords claim. The tenant testified that the damage is attributed to normal wear and tear and that the landlord should not be granted the majority of his claim. The tenant testified that there were many issues while living in the unit. The tenant testified that other the cost to repair the door, he should be given the balance of his deposit of \$340.03.

Analysis

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 arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

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.

Damages and Cleaning - \$1197.07

The tenant had an agent attend at the move out inspection on his behalf. The agent signed off and agreed with the damages and lack of cleanliness in the unit. Additionally, the landlord provided photos and receipts to support their claim. Based on all of the above, and on a balance of probabilities, I find that the landlord has provided sufficient evidence to support this portion of their claim, accordingly; I grant the landlord \$1097.07.

Loss of Rent October – \$1600.00

Section 45 of the *Act* addresses the issue before me as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Further, I find that the unit was in a condition that was not rentable or ready for occupation on October 1, 2019. Based on the above and my finding, I find that the landlord is entitled to one month's loss of revenue of \$1600.00.

As the landlord has been successful in their claim, I find that they are entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$2897.07. I order that the landlord retain the \$800.00 deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$2097.07. This order may be filed in the Small Claims 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: February 06, 2020

Residential Tenancy Branch