



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNDCL-S, MNRL-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 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 and pet deposits in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenants. The landlords submitted documentary evidence that the tenants were served notice of this application and this hearing by registered mail on October 17, 2019. Canada Post tracking information was submitted in the landlord's evidence that shows that the item was signed for and accepted by the tenants on October 18, 2019. Based on the submissions of the landlord, I find the tenants were served in accordance to section 89 of the *Act*. Therefore, I continued in the absence of the tenants.

Issue to be Decided

Are the landlords entitled to a monetary award for loss and damage arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenant's security and pet deposits in partial satisfaction of the monetary award requested?

Are the landlords entitled to the recovery of the filing fee?

Background, Evidence

The landlord's undisputed testimony is as follows. The one-year fixed term tenancy began on May 15, 2019 but ended early on September 30, 2019 with the monthly rent of \$1950.00 payable on the first of each month. At the outset of the tenancy the tenants paid a \$975.00 security deposit and \$975.00 pet deposit which the landlord still holds. TK testified that the tenants participated in the written move in condition inspection report but did not show up for the move out inspection. TK testified that the tenants had not paid their rent in full and had a balance of \$650.00 owing. PK testified that the unit was left extremely dirty with numerous items requiring repairing, cleaning and painting. PK testified that he and TK did much of the labour in attempts to mitigate the loss and control expenses. TK testified that as a result of the poor condition of the unit at move out and the amount of time required to clean, paint, patch and repair the unit; they were unable to rent the unit for October 1, 2019 and suffered a loss of rent for that month.

The landlord is applying for the following:

1.	Unpaid Rent September	\$650.00
2.	Loss of Rent October	1900.00
3.	Labour, Supplies, Repairs, Parts and Cleaning	2518.22
4.	Filing Fee	100.00
5.	Minus Security Deposit	-975.00
6.	Minus Pet Deposit	-975.00
7.		
8.		
9.		
10.		
	Total	\$3268.22

Analysis

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.

The landlords provided extensive documentation to reflect the poor cleanliness of the unit, the damage to walls, baseboards, window cases, doorways, carpets, counters, doors and floors throughout. In addition, the landlord provided undisputed testimony, receipts, condition inspection report and photos to support the balance of their application. The landlords have provided sufficient evidence to support the entirety of their claim and is entitled to \$5118.22. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$5218.22. I order that the landlord retain the \$975.00 security deposit and \$975.00 pet deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$3268.22. 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 24, 2020

Residential Tenancy Branch