



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, MNDCL-S

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
- an order authorizing the landlord the recovery of the filing fee for this 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 to be Decided

Is the landlord entitled to a monetary award for damage 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 the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began in March 2008 with the monthly rent of \$1537.00 due on the first of each month. The tenant paid a security

deposit of \$750.00 which the landlord still holds. The landlord testified that the tenant's cheque did not clear for the month of January 2020 and that along with the unpaid rent, he incurred a \$35.00 bank charge for insufficient funds. The landlord testified that the tenant advised on January 8, 2020 that he vacated the unit and that he was ending his tenancy.

The landlord testified that he did not take back possession of the unit until mid January and spent "a week or two" cleaning it. The landlord testified that he started advertising the unit on January 27, 2020 and was unable to rent it for February. The landlord testified that he did rent it for March 1, 2020 but seeks the loss of revenue for February. The landlord also seeks unpaid parking bill for 13 months x \$65.00 = \$845.00. The landlord testified that the strata runs the parking and that any unpaid amounts are charged to the landlord of the tenant that does not pay.

The landlord is applying for the following:

1.	Unpaid Rent and NSF charge for January 2020	\$1572.00
2.	Loss of Revenue February 2020	1537.00
3.	Unpaid Parking	845.00
4.	Filing fee	100.00
5.		
6.		
7.		
8.		
9.		
10.		
	Total	\$4054.00

The tenant gave the following testimony. The tenant testified that he does not dispute the unpaid rent for January or the late fee and takes responsibility for those costs. The tenant disputes the loss of revenue for February as the landlord did little to try to rent the unit. The tenant disputes the parking charge as he did not use a parking spot from January 2019 to January 2020 as claimed. The tenant testified that he did not sign any parking agreement for that time period nor was he ever advised of these costs until receiving the landlord's application.

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

Unpaid January Rent and Late Fee –

The tenant advised that he had no issue paying this cost, accordingly; I find that the landlord is entitled to \$1572.00.

Loss of Revenue

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for February 2020 rent loss of \$1537.00, without leave to reapply. I find that the landlord failed to provide documentary evidence including copies of rent advertisements, to show when it was advertised for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done.

I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit.

Parking Fee

The landlord did not provide a parking contract that showed that the tenant had agreed to rent a spot for any time period. Based on the insufficient evidence before me, I dismiss this portion of the landlord's application.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$1672.00. I order that the landlord retain the \$750.00 security deposit and \$5.66 in accrued interest in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$916.34. 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: July 06, 2020

Residential Tenancy Branch