



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

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; 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 unpaid rent?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The one-year fixed term tenancy began on January 1, 2020 but ended early on July 31, 2020. The tenant was obligated to pay \$2225.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$1112.50 security deposit which the landlord still holds. The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that the tenant

failed to pay the rent for the months of April – July. The landlord testified that the tenant didn't pay the parking fees, late fees or NSF charges incurred.

The landlord is applying for the following:

1.	Unpaid rent April 2020- July 2020	\$8350.00
2.	Parking	150.00
3.	Late fees/ NSF charges	50.00
4.	Filing Fee	100.00
5.		
6.		
7.		
8.		
9.		
10.		
	Total	\$8650.00

The tenant gave the following testimony. The tenant testified that she agrees with the amount claimed by the landlord except for the parking fees. The tenant testified that her parking spot was always taken by someone else and doesn't feel she should pay for something she didn't get to use. The tenant testified that she agrees with the other amounts claimed but doesn't feel she has to pay the rent as she was told by the resident manager to not pay and "do what you gotta do".

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.

The tenant did not provide sufficient documentation that she was relieved of any responsibility to pay the rent. In addition, the tenant did not provide sufficient evidence that she didn't have access to her parking spot. Furthermore, the tenant acknowledges

that she did live in the unit for without paying the rent for four months. Based on the above, the landlord's documentation and the tenants own testimony, I find that the landlord has provided sufficient evidence to support the entirety of their claim and are entitled to \$8650.00. Although the landlord has not applied to retain the deposit, applying the offsetting provision under section 72 of the Act, I order that the landlord retain the deposit in partial satisfaction of the claim.

Conclusion

The landlord has established a claim for \$8650.00. I order that the landlord retain the \$1112.50 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$7537.50. 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: October 09, 2020

Residential Tenancy Branch