



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, FFL

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; 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 unpaid rent or damages?

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

Background and Evidence

The landlord's testimony is as follows. The tenancy began on July 1, 2019 and ended on July 2, 2020. The tenant was obligated to pay \$1550.00 per month in rent on the first of each month. The landlord testified that her own personally drafted written condition inspection report was conducted at move in and move out. The landlord testified that the Branch's condition inspection report "wasn't good enough" to match her suite. The landlord testified that the tenant caused some damage to the suite and overhauled the

unit. The landlord testified that she and the tenant had come to an agreement to allow her to retain the deposit and that would be the end of the matter. The landlord testified that after the tenant moved out and after she had given him a good reference, he demanded his deposit back; which she has returned. The landlord testified that she did not advertise the unit as she did not want to have tenants again after the tenant moved out.

The landlord is applying for the following:

1.	Ceiling bathroom	\$75.00
2.	Box spring	100.00
3.	Drywall damage	150.00
4.	Plumber charges	100.00
5.	Paint charges and paint	300.00
6.	Damage to swivel bar chairs	50.00
7.	Unpaid Rent	1550.00
8.	Filing Fee	100.00
9.		
10.		
	Total	\$2,425.00

The tenant gave the following testimony. The tenant testified that the landlords condition inspection report was a hand-drafted report that lacks the basic requirements as per the Residential Tenancy Regulations. The tenant testified that the landlord was the one that was manipulating him into trying to retain the deposit despite that they had extinguished their right to it for the inadequate inspection report. The tenant testified that he and the landlord had come to an agreement to allow him to store his items in the unit until July 2, 2020. The tenant argues that the landlord has not provided enough evidence to be successful in this 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;**

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of

probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I address the landlords claim and my findings as follows.

Damages 775.00

The landlord crafted their own inspection report; however, it does not comply with the requirements under section 20 of the Residential Tenancy Regulations. In addition, the landlord did not provide receipts to corroborate their claim. Without a proper condition inspection report or other supporting documentation, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord **failed to provide sufficient evidence** to show the changes in the condition of the unit, that the tenant caused the damage, what the costs of those damages are, and the loss incurred, accordingly I dismiss this portion of the landlords claim.

Rental Loss \$1550.00

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. The landlord testified that they did not advertise the unit and chose not to re-rent the unit. In addition, I find that there was an agreement that the tenant was able to move out on July 2, 2020. As the landlord did not put the suite back on the market and chose not to re-rent the unit, they did not incur any loss, accordingly; I dismiss this portion of their application.

The landlord has not been successful in this application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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: November 26, 2020

Residential Tenancy Branch