



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL, MNDL, MNDCL**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. Both the named landlord and their family member, a co-landlord attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their application and evidentiary materials by email sent to the tenant's email address in accordance with a Substituted Service decision of August 25, 2020. The landlord provided documentary evidence of the email being sent on August 30, 2020 as well as subsequent correspondence from the respondent confirming receipt of the materials. Based on the evidence I find the tenant was sufficiently served with the landlord's materials on August 30, 2020 in accordance with section 71 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. The monthly rent for this tenancy was \$1,900.00 payable on the first of each month. The landlord collected a security deposit of \$950.00 which they still possess. The landlord was issued an Order of Possession in their favour as a result of a previous hearing under the file number on the first page of this decision.

The tenant failed to pay rent or vacate the rental unit in accordance with the Order of Possession and the landlord incurred costs to have the order enforced. The landlord submitted into evidence copies of receipts for the costs of enforcing the order and gaining possession of the rental unit. The tenant failed to pay rent for the month of March, 2020 and the landlord incurred rental income loss for the month of April, 2020 as the tenant left the rental unit in an uninhabitable state.

The landlord needed to perform significant cleaning and repairs on the rental unit including shampooing carpets, fixing some flooring, painting damaged walls, disposing of garbage and general cleaning. The landlord submitted all receipts for the work done to the rental unit as well as a condition inspection report and various photographs showing the condition of the suite.

The landlord testified that the tenant left numerous personal items in the rental suite which the landlord removed and stored in accordance with the *Act* and regulations. The landlord seeks a monetary award for the costs of storage in accordance with the *Act* and submits receipts showing these disbursements.

The landlord submits that the total amount of damages and loss incurred due to the tenant is \$7,536.32. The landlord provided detailed receipts and explanation of their losses.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied with the evidence of the landlord that they incurred significant costs due to the failure of the tenant to pay rent as required under the Act, vacate the rental unit in accordance with the Order of Possession, or maintain the rental unit in a reasonable state. I find that the landlord has provided sufficient evidence through their itemized list, their testimony and photographs and receipts to demonstrate that the cost for cleaning and work on the rental unit was reasonable and proportional to the damage caused by the tenant.

I find that the landlord has provided sufficient evidence to demonstrate that the total cost of their losses is \$7,536.32. Accordingly, I issue a monetary award in that amount in the landlord's favour.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$6,686.32, allowing the landlord to recover their filing fee and retain the security deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 30, 2020

Residential Tenancy Branch