



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

The Landlord and the Tenant attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenancy agreement shows that this tenancy began on November 11, 2018, as a one-year fixed term tenancy, that rolled into a month-to-month at the end of the initial fixed term. Rent in the amount of \$2,300.00 was payable on the first day of each month, and the Tenant had paid a security deposit of \$1,150.00 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

Both the parties agreed that the tenancy ended on July 2, 2020, due to an order of possession that had been issued by the Residential Tenancy Branch. Both parties also agreed that a Bailiff had been hired by the Landlord to enforce the order of possession.

The Landlord testified that it had cost them \$525.00 in Bailiff fees to have the order of possession enforce; the Landlord is requesting the recovery of their Bailiff fees. The Landlord submitted a copy of the Bailiff's bills into documentary evidence.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that this tenancy ended due to a breach of the Act by the Tenant, which resulted in an order of Possession being issued by the Residential Tenancy Branch. I also accept the agreed-upon testimony of both parties that the Order of Possession had been served on the Tenant, and that the Tenant did not move out in accordance with that Order. In this case, the Landlord is seeking to recover the costs associated with enforcing the Order of Possession.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have reviewed the documentary evidence provided by the Landlord, and I find that the Landlord has provided sufficient evidence to show that the Landlord suffered a loss due to the Tenant's breach of the *Act* and the value of that loss. I also find that the Landlord took reasonable steps to try and minimize their loss. Therefore, I find that the Landlord is entitled to the recovery of the costs associated with having the Tenant removed from the rental unit, in the amount of \$525.00.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord permission to retain \$625.00 of the security deposit they are holding for this tenancy in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining \$525.00 the security deposit that they are holding for this tenancy to the Tenant within 15 days of receiving this decision.

If the Landlord fails to return the security deposit to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their security deposit for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the *Act* if an application to recover their security deposit is required.

Conclusion

I grant permission to the Landlord to retain \$625.00 from the security deposit they are holding for this tenancy.

I order the Landlord to return the remaining \$525.00 of the Tenant's security deposits to the Tenant within 15 days of receiving this decision.

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 4, 2020

Residential Tenancy Branch