



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL, MNDCL, MNDL, MNRL-S

Introduction

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

- Authorization to recover the filing fee from the tenant pursuant to section 72;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to retain the deposit for this tenancy pursuant to section 38.

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. The landlord appeared and was 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 notice of application and evidence by registered mail sent on September 28, 2020. The landlord provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find the tenant is deemed served with the materials on October 3, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposit for this tenancy?

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

Background and Evidence

This periodic tenancy began on May 15, 2019. Monthly rent was \$1,250.00 payable on the first of each month. A security deposit of \$625.00 was collected at the start of the tenancy. The landlord testified that there was a condition inspection report prepared at the start of the tenancy but none was submitted into documentary evidence. The tenancy ended sometime in September 2020 when the tenant vacated the rental unit.

There was a previous hearing under the file number on the first page of this decision wherein the presiding arbitrator ordered that:

The Landlord is entitled to recovery of the \$100.00 Application filing fee for this proceeding, pursuant to Page: 4 section 72 of the Act. The Landlord is authorized to retain \$100.00 of the Tenant's security deposit in full satisfaction of this award.

Despite the terms of the earlier decision the landlord testified that they believe the value of the security deposit they hold is \$625.00 and they included a claim for the filing fee for their earlier application in their present claim.

The landlord now seeks a monetary award in the amount of \$3,525.00 for the following items:

Item	Amount
Unpaid Rent Sept 2020	\$1,250.00
Rental Income Loss Oct 2020	\$1,250.00
Filing Fees and Mailing	\$225.00
Vanity Cabinet Replacement	\$400.00
Cleaning Cost	\$300.00
Door Latch Replacement	\$100.00
TOTAL	\$3,525.00

The landlord submits that the tenant failed to pay rent for the month of September 2020 as required under the tenancy agreement and there is an arrear of \$1,250.00 as at the date of the hearing.

The landlord further submits that they suffered rental income loss of \$1,250.00 for the month of October as the tenant left the suite in a state of disarray requiring cleaning and repairs before it could be offered to new occupants.

Despite having been issued an order to recover the filing fee for their previous application, the landlord applies to recover the cost of that application and the present one as well as the cost of mailing.

The landlord testified that the cost of cleaning, repairs and work required due to the condition of the suite is \$800.00. The landlord submitted some photographs of the suite as evidence of the damage. No receipts were submitted for the cost of replacement of the items the landlord submits were broken nor was there a receipt or invoice for the cost of professional cleaning.

Analysis

Section 24 and 36 of the *Act* provide that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the reporting requirements of the *Act* and prepare a condition inspection report in accordance with the Regulations.

While the landlord testified that they prepared a condition inspection report I find that in the absence of one being submitted into documentary evidence, I am not satisfied on a balance of probabilities that the landlord has met their statutory obligation. Consequently, I find that the landlord has extinguished their right to retain the deposit pursuant to sections 24 and 36 of the *Act*

As set out in Residential Tenancy Policy Guideline 17 a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the right to file a monetary claims for damages arising out of the tenancy.

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 accept the evidence of the landlord that there was a valid tenancy agreement between the parties wherein the tenant was obligated to pay monthly rent in the amount of \$1,250.00 by the first of each month. I accept the evidence of the landlord by way of an

image of a dishonored cheque that the tenant failed to pay rent for the month of September 2020. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$1,250.00 the rental arrear for this tenancy.

I find that the landlord has provided insufficient evidence for the other portions of their claim. In the absence of a proper condition inspection report prepared by the parties at the start of the tenancy I find there is insufficient evidence to support the landlord's position that they incurred costs for cleaning and repairs attributable to the tenancy. I find the photographs submitted to simply show some images of wear and tear no greater than would be expected from ordinary use. I find the landlord's characterization of the condition of the suite to be hyperbolic and not at all in line with what is shown in the images submitted. I find little evidence that any loss of rental income loss is due to the tenant. The landlord has provided little evidence that they were unable to find a new occupant due to a breach on the part of the tenant. I further note that the landlord has provided no receipts, invoices or estimates to demonstrate that the monetary amount sought is accurate or based on any information.

I find that the landlord has not met their evidentiary onus and consequently dismiss this portion of their claim.

The cost of mailing is simply the costs associated with pursuing an application and not damages arising from any breach on the part of the tenant. Consequently, I dismiss this portion of the landlord's claim.

The landlord claims the costs of filing both this application and the previous application for which they were already issued a monetary award. I find that the principle of *res judicata* and fairness prevents me from ordering a second award for an issue already determined.

I note that the landlord's attempt to double dip by making a second claim for a matter already determined, failing to disclose their earlier monetary award and the present value of the deposit for this tenancy, is conduct that warrants censure. While the landlord was partially successful in their present application, as they were not wholly successful I find it appropriate not to issue an order allowing for the recover of the filing fee.

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 of \$525.00 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 \$725.00 on the following terms:

Item	Amount
Unpaid Rent Sept 2020	\$1,250.00
Less Balance of Security Deposit	-\$525.00
TOTAL	\$725.00

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: January 12, 2021

Residential Tenancy Branch