



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, RPP, FFT

Introduction

This hearing dealt with the tenant'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, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on January 22, 2021, and deemed received under section 90 of the Act five days later. I find the landlord has been deemed served in accordance with the Act. 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 tenant entitled to a monetary award for the return of his security deposit?

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation, or tenancy agreement?

Is the tenant entitled to an order to have his personal property returned?

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

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy was to begin on September 1, 2020. The tenant paid a security deposit of \$500.00. The tenant testified that the landlord delayed the move in on several occasions as he wished to conduct more renovations to the unit prior to the tenant moving in. The tenant testified that the landlord offered him a discounted rental rate if he was able to pay one years rent in advance. The tenant paid \$16,000.00 to the landlord but was never given keys to the unit. The tenant confronted the landlord and demanded his money back; the landlord responded, "sorry bro, I'm an addict, I don't have your money". The tenant testified that he is seeking the recovery of the pre-paid rent of \$16,000.00, the \$500.00 security deposit and the \$100.00 filing fee for this application for a total claim of \$16,600.00.

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.

The tenant provided extensive documentation, undisputed testimony and e-transfer receipts to support his application. I find that the tenant is entitled to the entirety of their claim including the filing fee for a total award of \$16,600.00. The tenant advised that the personal property he was seeking to have returned is his money, which has been addressed as noted above.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$16,600.00. 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: April 16, 2021

Residential Tenancy Branch