



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S FFL

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Extensive discussions took place over a 34 minute period in which the landlord initially stating that the notice of hearing package and the submitted documentary evidence was served to the tenants via email when in fact the tenants were served via Canada Post Registered Mail to the listed mailing address as shown on the application for dispute. The landlord was unable to provide a date of service or any proof of service. I find on a balance of probabilities that the landlord served the tenants with the notice of hearing package and the submitted documentary evidence and are deemed sufficiently served as per section 90 of the Act.

Discussions were made with the landlord regarding an application for substitute service on the RTB-13 form. However, a review of the entire online file shows no application for

substitute service filed nor any decision by an Arbitrator authorizing substitute service via email. A review of the landlord's evidence shows that the landlord submitted as part of her evidence a copy of an RTB-13 form.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation, for damage and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a monetary claim of \$5,900.00 which consists of:

\$1,344.00	Damages and Cleaning
\$67.16	seat cover and tool
\$2,210.00	loss of work, 3 days
\$100.00	Strata Move-Out Fee
\$100.00	change move-out date?
\$740.00	broke lease/subletting
\$100.00	Filing Fee
\$1,000.00	Compensation, stress/anxiety
\$5,661.00	

The landlord provided written details which states in part that the tenants prematurely ended the tenancy after two months with no notice. The landlord stated that the tenants were subletting the rental unit without permission and did not return 1 of the 4 keys to the rental unit.

The landlord states that the tenants vacated the rental unit leaving it dirty and damaged. The landlord refers to the submitted copy of the invoice dated March 1, 2021 for \$1,344.00 which also provides a description of the repairs and cleaning performed for the landlord. The landlord seeks \$67.16 based upon the submitted receipt dated February 23, 2021 for \$67.16 for the cost of a new toilet seat and a hex key for replace it. The landlord also seeks compensation of \$2,210.00 for the loss of employment income. The landlord stated that she is a therapist and had to cancel 26 appointments

over 3 days at \$85.00 per appointment. The landlord stated that she had to cancel her work due to the stress/anxiety/insomnia to deal with the tenants move-out. The landlord seeks \$100.00 for a strata move-out fee. The landlord seeks \$100.00 for the cost of changing the move-out date with the tenant. The landlord stated that the tenant contacted the landlord on the last day requesting that the move-out day be delayed by 1 day and in exchange the landlord may deduct \$100.00 from the security deposit held by the landlord. The landlord cancelled her claims during the hearing for \$740.00 for “broke lease/subletting” and \$1,000.00 for stress/anxiety.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has established a claim for monetary compensation. The landlord has been found successful for:

\$1,344.00	Damages and Cleaning
\$67.16	seat cover and tool
\$100.00	change move-out date?
\$100.00	strata move-out fee
\$100.00	Filing Fee
 \$1,711.16	

The landlord provided undisputed affirmed testimony regarding these claims that the tenants vacated the rental unit leaving it dirty and damaged. The landlord provided undisputed affirmed testimony that the tenant signed a “form k” binding them to the strata bylaws which require a \$100.00 strata move-out fee. The landlord provided

copies of the invoice/receipts for the compensation requests and undisputed testimony that the tenants agreed to a \$100.00 deduction from the security deposit.

On the remaining claim filed by the landlord I find that insufficient evidence has been provided by the landlord to establish the loss of employment income of \$2,210.00. Despite the landlord providing undisputed affirmed testimony that she cancelled her work due to stress/anxiety/insomnia due to communications with the tenants, the landlord has failed to provide sufficient evidence to satisfy me that the tenants are responsible for the stress/anxiety/insomnia referred to by the landlord. I also note that no financial records or scheduling evidence was provided in support of this claim.

The landlord has established a monetary claim of \$1,711.16. In offsetting this claim, I authorize the landlord to retain the \$740.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$871.16.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforce 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: July 08, 2021

Residential Tenancy Branch