



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord'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*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant. The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on March 26, 2021. Canada Post tracking information was submitted in the landlord's evidence that shows that the item was signed for and accepted by the tenant on March 30, 2021. Based on the submissions of the landlord, I find the tenant was duly served in accordance with section 89 of the *Act*. Therefore, I continued in the absence of the tenant.

Issue to be Decided

Is the landlord entitled to a monetary award for losses and damages arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on September 8, 2017 and ended on April 18, 2019. The tenant was obligated to pay \$1900.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$950.00 security deposit which the landlord still holds.

The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that the tenant didn't pay any rent for February 2019 to the day he moved out. The landlord testified that the unit was empty until July 15, 2019 due to a slow market and the unit not being in a condition to be re-rented. The landlord testified that he rented it for \$1650.00 per month from July 15, 2019 to January 15, 2020. The landlord testified that the term of the tenancy was to end on August 31, 2022 so he requests the unpaid rent, the loss of rental revenue and the shortfall over that time.

The landlord testified that the tenant didn't leave him the keys or fob which caused him to incur costs to replace them. The landlord testified that he also seeks the move in and move out fee for this tenant and the new tenants because of the lease ending early. The landlord testified that it's always been his practice to cover the costs of the move in and move out fee.

The landlord is applying for the following:

1.	Unpaid February 1 2019 – July 15, 2019	\$10,450.00
2.	Shortfall July 15, 2019-January 15, 2020	1500.00
3.	Move in-Move out Fees Strata	600.00
4.	Lost Fob	100.00
5.	Key Replacement	30.55
6.	Filing Fee	100.00
7.		
8.		
9.		
10.		
	Total	\$12,780.55

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.

I address the landlords claim and my findings as follows.

Unpaid Rent and shortfall

Based on the documentation before me and the undisputed testimony of the landlord, I find that the landlord is entitled to the unpaid rent for February 2019 to April 2019 for an amount of \$5700.00.

The landlord is not entitled to any loss of rental revenue or shortfall for May 2019 to January 15, 2020 for the following reason. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord failed to provide documentary evidence including copies of rent advertisements, to show when it was advertised for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done.

I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit.

Move in and Move out Fee – strata

The landlord testified that he pays the fees for all his tenants as it is his practice. I find his testimony contradictory as he now wants the tenant to pay for his move in and move out fee along with the new tenants. I find the landlords submission to be illogical and unreasonable. He cannot offer to cover the cost only later to then state he wants those

costs paid to him. Based on the insufficient documentation before me and the contradictory testimony of the landlord, I dismiss this portion of his claim.

Lost Fob

The landlord provided a scribbled note as a receipt for two new fobs. I find this documentation to be lacking and not sufficient, accordingly; I dismiss this portion of the landlords' claim.

Key Replacement

The landlord provided sufficient documentation to support this claim, accordingly, I find that the landlord is entitled to \$30.55.

The landlord is also entitled the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$5830.55. I order that the landlord retain the \$950.00 security deposit in partial satisfaction of the claim pursuant to the offsetting provision under section 72 of the Act, and I grant the landlord an order under section 67 of the Act for the balance due of \$4880.55. 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: August 20, 2021

Residential Tenancy Branch