



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR-DR, MNR-DR, 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; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Order of Possession

At the outset of the hearing both parties confirmed that the tenants have moved out and that the landlord has possession of the unit, accordingly; I dismiss the landlords request for an order of possession without leave to reapply.

Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?
Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on May 1, 2019 and ended on April 7, 2021. The tenants were obligated to pay \$2500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1250.00 security deposit which the landlord still holds. The landlord testified that in November 2020 the tenants asked for a rent reduction. The landlord testified that he wanted to help them out and acted in good faith by reducing their rent to \$2200.00 per month for the following six months. The landlord testified that the tenants left without notice on April 7, 2021 without paying the rent for that month. The landlord testified that since they breached the rental agreement, he wants the original full amount of rent payable. The landlord testified that the tenants moved out without paying the utilities due in the amount of \$229.82. The landlord also seeks the recovery of the \$100.00 filing fee for this application.

BM gave the following testimony on behalf of the tenants. BM testified that the utilities were in his own name and that he will address those costs with the municipality himself. BM testified that the landlord has not provided proof that he paid the utilities. BM testified that he agrees that they did not pay the April 2021 rent, but it should be for the negotiated amount of \$2200.00.

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. I address the landlords claim and my findings as follows.

I address the landlords claim for the unpaid utilities. The landlord failed to provide sufficient evidence that he has paid it, accordingly, I dismiss this portion of his claim

Regarding the unpaid rent, the tenant and landlord agreed that the rent was reduced for six months which included the month in question. Based on that agreement, I find that the landlord is entitled to the reduced amount of \$2200.00.

Although the landlord has not applied for the security deposit, applying the offsetting provision under section 72 of the *Act*, the landlord is entitled to retain the \$1250.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord has established a claim for \$2300. I order that the landlord retain the \$1250.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$1050.00. 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: September 03, 2021

Residential Tenancy Branch