



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's application and evidence. The tenant testified that they served the landlord with their evidentiary materials by leaving it in their mailbox on October 21, 2021. While both parties expressed some doubt that they had been duly served with all of the pages of the respective materials, I am satisfied on a balance that each party has been sufficiently served, that there is no issue of procedural unfairness or prejudice to the parties, and find that each party has been sufficiently served with the respective materials in accordance with section 71(2) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on February 1, 2019 and ended on October 31, 2020. The security and pet damage deposit for this tenancy have been dealt with in full in an earlier decision under the file number on the first page of this decision. No condition inspection report was prepared at any time for this tenancy.

The landlord submits that the rental unit had some damage at the end of the tenancy for which they incurred costs to repair. The landlord submitted some photographs as well as invoices for third party companies hired to perform some work. The landlord seeks a monetary award in the amount of \$1,672.99.

The tenant disputes that there was any issues with the rental unit and that there was the need for any work.

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 the absence of a proper condition inspection report prepared by the parties in accordance with the regulations I find there is insufficient evidence to support the landlord's position. There is little persuasive evidence as to the condition of the rental unit at the start of the tenancy and I find little evidence that the issues the landlord raises occurred during the tenancy.

There is no evidence of when the photographs submitted were taken and I find the photographs are out of focus, close-ups which are generally unhelpful in indicating the condition of the rental unit at the end of the tenancy. I find the photographs and testimony are insufficient to establish that the rental unit was damaged to the extent the landlord claims or that the damage is a result of the actions or inactions of the tenant. I find that the landlord has failed to meet their evidentiary onus to establish their monetary claim and consequently I dismiss it in its entirety without leave to reapply.

As the landlord was unsuccessful in their claim, they are not entitled to recover their filing fee from the tenant.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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: November 1, 2021

Residential Tenancy Branch