



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 August 16, 2021. The landlord gave testimony that the landlord's evidence was unclaimed by the tenant and that the package was returned to the landlord on October 2, 2021. Based on the submissions of the landlord, I find the tenant was 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 damage 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 June 1, 2019 and ended on July 23, 2021. The tenant was obligated to pay \$3600.00 per month and at the outset of the tenancy the tenant paid a \$1800.00 security deposit which the landlord still holds. The landlord testified the tenant refused to move out despite being served a Two Month Notice to End Tenancy for Landlords Use of Property. The landlord applied for an order of possession and was granted one that ended the tenancy on June 30, 2021. The landlord testified that the tenant still refused to move out. The landlord had the order enforced and executed by bailiffs on July 23, 2021. The landlord seeks to recover the following costs.

The landlord is applying for the following:

1.	Bailiff and moving the tenant's items	\$8404.72
2.	Supreme Court filing to execute order of possession	120.00
3.	Filing fee	100.00
4.		
5.	Less Deposit	-1800.00
6.		
7.		
8.		
9.		
10.		
	Total	\$6824.72

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 landlord provided extensive documentation, undisputed testimony and receipts to support their application. The landlord is entitled to the entirety of their claim.

Conclusion

The landlord has established a claim for \$8624.72. I order that the landlord retain the \$1800.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$6824.72. 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: January 06, 2022

Residential Tenancy Branch