



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LL: MNDL-S, FFL

TT: MNSDS-DR, FFT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- a monetary order for compensation for damage or loss pursuant to section 67;
- authorization to retain the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

The landlord testified that they served the tenant with the notice of hearing and evidence by registered mail sent on October 28, 2021 to the forwarding address provided by the tenant. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on November 2, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to the security deposit for the tenancy?

Is either party entitled to recover their filing fee from the other?

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 landlord provided undisputed testimony on the following facts. This tenancy began on August 1, 2020 and ended on September 30, 2021. Monthly rent was \$2,200.00 payable on the first of each month. A security deposit of \$1,100.00 was paid at the start of the tenancy and is still held by the landlord. The tenant provided a forwarding address to the landlord on or about October 20, 2021.

The landlord found the rental unit required considerable cleaning, work and repairs due to its condition at the end of the tenancy. The landlord provided multiple photographs of the suite and invoices and estimates from third party companies regarding the cost to restore the suite to its pre-tenancy condition.

The landlord submits that they are waiving their right to the full amount of the damages, loss and filing fees and are simply seeking an order to retain the security deposit for this tenancy.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Therefore, as the tenant failed to attend the hearing to make any submissions or present evidence in support of their claim I find the tenant has not met their evidentiary burden and accordingly dismiss their claim in its entirety.

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.

I am satisfied with the preponderance of evidence provided by the landlord including cogent, detailed testimony, multiple photographs of the condition of the suite and third-party invoices that the rental unit suffered damage attributable to the tenancy. I find sufficient evidence to find that the condition of the suite goes beyond the expected wear and tear from normal occupancy and includes damage to the drywall and structure of the rental unit, fixtures and electrical systems. I am satisfied that the cost of repairs and monetary expenditures borne by the landlord are reasonable and commensurate to the damage. I find the costs incurred to be for the purposes of restoring the rental unit rather than improvements or renovations. I am further satisfied with the invoices and estimates that the cost of the damage exceeds the amount of the security deposit for this tenancy.

Therefore, pursuant to section 67 I find the landlord has met their evidentiary burden to establish that they have incurred damages and loss attributable to the tenant's breach. I find that the amount of the losses exceed the amount of the deposit but as the landlord has waived their right to the full amount of their claim and in accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the

tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour.

Conclusion

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

The landlord is authorized to retain the full amount of the security deposit for this tenancy of \$1,100.00.

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: May 20, 2022

Residential Tenancy Branch