



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNDL-S, FFL**

Introduction

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

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage 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 and their property manager attended 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.

The landlord testified that they served the tenant with the notice of hearing and evidence by registered mail sent to the forwarding address provided by the tenant on October 10, 2021. 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 October 15, 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 the landlord entitled to the security and pet damage deposits for this tenancy?

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 landlord gave undisputed evidence regarding the following facts. This tenancy began on April 1, 2021 and ended on September 30, 2021. Monthly rent was \$1,150.00 payable on the first of each month. A security deposit of \$575.00 and pet damage deposit of \$575.00 were collected at the start of the tenancy and are still held by the landlord. The parties participated in a move-in inspection and prepared a condition inspection report.

The tenant failed to participate in a move-out inspection despite the landlord offering multiple opportunities and the landlord completed the inspection report in the tenant's absence on September 20, 2021. The landlord noted some cleaning, garbage disposal and work that was required due to the condition of the rental unit.

The landlord submitted photographs of the suite, detailed invoices and estimates of the work done and provided testimony about the suite and the work that was required. The landlord submits that the total cost of the work done to restore the rental unit to its pre-tenancy condition is \$2,154.05 and seeks a monetary award in that amount.

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 present case, I am satisfied with the landlord's preponderance of evidence including the condition inspection report, their undisputed and cogent testimony, the multiple photographs taken at the end of the tenancy, and the estimates and invoices from third-party companies regarding the work done, to find that the landlord incurred damages and loss attributable to the tenants.

I am satisfied, on a balance of probabilities, that the amount claimed by the landlord is commensurate with the state of the rental unit and reasonable expenditure to restore the rental unit to its pre-tenancy condition. I find the description of the work to be for restoration rather than improvements to the rental suite.

I find the landlord has met their evidentiary burden to demonstrate that the tenant caused damage to the rental unit, that the landlord has incurred losses due to the damage attributable to the tenant and that the amount of these losses are reasonable. I therefore issue a monetary award in the landlord's favour in the amount of \$2,154.05 as claimed.

As the landlord was successful in their application, they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,104.05, allowing for the recovery of the damages and losses and the filing fee, and to retain the security and pet damage deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 12, 2022

Residential Tenancy Branch