



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

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 and pet 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 both parties. The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on October 21, 2021. Canada Post tracking information was submitted in the landlord's evidence that shows that the item was unclaimed by the tenant and returned to the landlord. The tenant stated she wasn't served anything. Based on the submissions of the landlord and the supporting documentation, I find the tenant was deemed served in accordance with section 89 and 90 of the *Act*. I explained the deeming provision to the tenant on several occasions to provide clarity.

Preliminary issue – tenants' evidence #1

The tenant advised that she sent in "about 15 pages" of evidence to the Branch but did not serve the landlord. It was explained to the tenant that the Residential Tenancy Branch Rules of Procedure require that a respondent must serve the Branch and the applicant at least seven days prior to the hearing. As the tenant did not serve any documentation to the landlord, I am unable to consider it as part of this decision and therefore is inadmissible.

Preliminary Issue #2 – Adjournment Request

At the outset of the hearing, I explained some procedural issues with the parties including adjournments. Neither party made an adjournment request when I provided the explanation. However, after 30 minutes into the hearing, the tenant requested an adjournment on the basis she has some unrelated issues she wanted resolved. It was explained in great detail that this decision would only address the issues before me at this time and that both parties were at liberty to file their own separate application if there were further issues that needed dispute resolution. The adjournment request was denied.

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 and pet 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 testimony is as follows. The tenancy began on June 1, 2020 and ended on September 30, 2021. The tenant was obligated to pay \$1100.00 per month in on the first of each month and at the outset of the tenancy the tenant paid a \$550.00 security deposit and \$550.00 pet deposit. The landlord testified that the in October 2020 the tenant threw rabbit litter and feces down the drain causing a blockage in the line requiring the sump pump to be cleared out. The landlord provided the plumbers bill showing the cause of the blockage to which, the tenant refused to pay for. The landlord seeks \$194.25 for that service call.

The landlord testified that the tenant left the unit dirty and unready at the time of move out. Written condition inspection reports were done at move in and move out with the tenant present at both inspections. The landlord testified that the tenant refused to sign the move out inspection. The landlord testified that they had to hire a company to clean the unit and to remove all of her belongings to a storage unit and numerous bags of garbage to the dump at a cost of \$695.64 which the landlord seeks to recover. The landlord testified that from the \$1100.00 in deposits, they have returned \$210.11 to the tenant leaving them with \$889.89. ($\$1100.00 - \$210.11 = \889.89). The landlord

requests to keep that amount and be granted a monetary order of \$100.00 to recover the filing fee for this application.

The tenant gave the following testimony. The tenant testified that the landlords could not prove the blockage in the line was from her bunnies as there was a dog and cat living in other units. The tenant testified that she had “a lot going on” at the time of move out so she couldn’t be expected to do what the landlord wanted. The tenant testified that she has some issues she wants heard as well and thought they would be addressed in this hearing without the need to file an application.

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.

Plumbing Bill - \$194.25

The landlord’s documentary evidence clearly shows that the cause was from rabbit feces and the subject tenant was the only tenant that had a rabbit, accordingly; I find that the landlord is entitled to \$194.25.

Cleaning - \$695.64

The landlord provided the condition inspection report and bill to support their claim. Although the tenant stated that she didn’t want to pay the bill, she did not dispute the scope of work that the landlord undertook to clean and vacate the unit; she instead gave excuses as to why she was unable to carry out her obligation to clean and empty the suite at the appointed time. Based on the above, I find that the landlord is entitled to \$695.64. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$989.89. I order that the landlord retain the \$889.89 in deposits that they presently hold in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$100.00. 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: June 09, 2022

Residential Tenancy Branch