



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL, FFT

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 on January 13, 2022 by a pre-arranged email address for service with both parties filling out and signing the RTB 51 form. 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 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 undisputed testimony is as follows. The tenancy began on June 20, 2021 for a one year term but ended early on December 6, 2021. The tenant was obligated to pay \$1475.00 per month in rent in advance plus the utilities. At the outset of the tenancy the tenant paid a \$700.00 security deposit and \$700.00 pet deposit which the landlord still holds. The landlord testified that the tenant did not pay the rent for December 1-15, 2021 and seeks recovery of that cost. The landlord testified that the tenant broke the contract by not living there for the full term triggering the liquidated damages clause as per the tenancy agreement.

The landlord testified that the tenant had an additional occupant for five months at a cost of \$125.00 per month as per their tenancy agreement. The tenant did not pay the utilities causing them to be cut off and the landlord incurring the outstanding charges and reconnection fee. The landlord testified that she received a monetary order in a separate hearing for \$1575.00 so she applied the deposits to that and wants this decision to address the remaining \$175.00. The landlord seeks to recover the filing fee as well.

The landlord is applying for the following:

1.	Unpaid Rent December 1-15, 2021	\$688.33
2.	Liquidated Damages	300.00
3.	Additional Occupant charges	625.00
4.	Fortis reconnection fee	90.00
5.	Unpaid Utilities	183.06
6.	Unpaid amount from Direct Request Proceeding	175.00
7.	Filing Fee	100.00
8.		
9.		
10.		
	Total	\$2161.39

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.

The landlord provided extensive documentation, undisputed testimony and receipts to support all of the claims except for item #6 on the above table. For absolute clarity I provide the following for the benefit of the parties to avoid any future confusion. The landlord was granted a monetary order of \$1575.00 through the Direct Request Process on January 4, 2022. The issue of the deposits was not addressed in that decision. The landlord has incorrectly applied those deposits to that decision and now seeks the recovery of the remaining \$175.00. The original monetary order of \$1575.00 stands alone and separate from this decision. The result will be that the deposits are applied to this proceeding. Although in the end, the final and full amount owing to the landlord is the same, the appropriate process and calculation is required. The landlord will not be penalized, nor will they benefit from this calculation, but this clarification was necessary based on the landlord's comments during the hearing.

The landlord is entitled to all the claims except the \$175.00. I find that the landlord is entitled to \$1886.39 plus the \$100.00 filing fee for a total monetary award of \$1986.39.

Conclusion

The landlord has established a claim for \$1986.39. I order that the landlord retain the \$700.00 security deposit and \$700.00 pet deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$586.39. 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: August 09, 2022

Residential Tenancy Branch