



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, 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 landlords lawyer. 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 February 9, 2022. Canada Post tracking information was submitted in the landlord's evidence. Based on the submissions of the landlords' lawyer, I find the tenant was served in accordance to section 89 of the *Act* and deemed served five days later on February 14, 2022 in accordance with section 90 of the *Act*, therefore, I continued in the absence of the tenant.

Preliminary Issue

Counsel advised that the property was sold on February 1, 2022 and that the deposits were not clearly addressed in the adjustment of sale costs and advised me that they would seek a monetary order and not seek to retain the deposit, accordingly, I dismiss that portion of the landlords application.

Issues to Decide

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's counsel provided the following submissions. The tenancy began on August 1, 2021 and was in effect until February 1, 2022 when the landlord sold the property. The tenant was obligated to pay \$2400.00 per month. The tenant failed to pay \$900.00 of the rent for November 2021 and the full amount for both December 2021 and January 2022 leaving an amount of unpaid rent of \$5700.00. Counsel submits that the landlord seeks that amount along with the recovery of the \$100.00 for the filing fee for this 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.

The landlord provided extensive documentation, undisputed submissions from their lawyer to support the balance of their application. The landlord has provided sufficient evidence to support the remainder of their claim and is entitled to the unpaid rent and filing fee for a total award of \$5800.00.

Conclusion

The landlord has established a claim for \$5800.00. I grant the landlord an order under section 67 for the balance due of \$5800.00. 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: September 12, 2022

Residential Tenancy Branch