



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 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.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

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

Is the landlord entitled to retain all or a portion of the tenant's security 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 landlord testified that the tenancy began on June 1, 2014 and ended on January 31, 2022. The tenant was obligated to pay \$1435.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$667.50 security deposit which the landlord still holds. The landlord testified that the tenant left the unit very dirty. The landlord testified that he and the tenant conducted written condition inspection reports at move in and move out.

The landlord testified that he and the tenant agreed that the suite needed a cleaning company to come and clean the suite and both parties agreed that the tenant would cover those costs. The landlord testified that the cleaners spent 31 hours cleaning the unit for a total cost of \$890.00. The landlord is also seeking the loss of use for the days he could not use it in the amount of \$666.25 which is a prorated amount of the rent. The landlord is also seeking the recovery of the \$100.00 filing fee for this application.

The tenant gave the following testimony. The tenant testified that he agrees that some cleaning was required but not to the extent that the landlord is alleging. The tenant testified that he would think a maximum of 8 hours would have been required to clean the unit as there was only four minor issues that needed to be resolved. The tenant does not agree with the amount of cleaning being sought by the landlord.

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.

Cleaning - \$890.00

The landlord provided extensive documentation, receipts, and photographs to support this portion of their application, accordingly; I find that the landlord is entitled to \$890.00.

Loss of Use \$666.25

The landlord used the space for his only personal use and no longer as a rental when the subject tenant moved out. In addition, the landlord testified that he had trouble hiring a company to clean the unit and wasn't able to get it done until February 13, 2022. The landlord has failed to provide sufficient evidence as to what the actual loss was, or any "out of pocket" costs incurred, accordingly; I dismiss this portion of the landlord's application.

Filing Fee - \$100.00

The landlord is entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The landlord has established a claim for \$990.00. I order that the landlord retain the \$667.50 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$322.50. 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: October 04, 2022

Residential Tenancy Branch