



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 an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

1. Attendance of Tenant

The tenants (“the tenant”) did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 30 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

2. Recording

The persons attending were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. They confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

3. *Delivery of Decision*

The landlord confirmed their email address to which a copy of the Decision and any Order will be sent.

4. *Service of Documents*

As the tenant did not attend the hearing, the landlord provided affirmed testimony that the landlord served each tenant separately with the Notice of Hearing and Application for Dispute Resolution by registered mail sent to the residential address for each tenant provided to the landlord. The landlord mailed the documents on March 10, 2022 that were deemed received under section 90 of the *Act* five days later, on March 15, 2022.

The landlord provided the Canada Post Tracking Numbers in support of her testimony regarding service which are referenced on the first page.

Further to the landlord's testimony and supporting documents, I find the landlord served each tenant with the Notice of Hearing and Application for Dispute Resolution March 15, 2022 pursuant to sections 89 and 90.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

Authorization to recover the filing fee for this application pursuant to section 72

Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The landlord submitted a copy of the tenancy agreement and provided the following details about the background of the tenancy:

ITEM	DETAILS
Type of tenancy	Fixed term, tenant evicted
Date of beginning	Oct 9, 2021
Date of ending	Feb 28, 2022
Monthly rent payable on 1 st	\$1,500.00
Security deposit	\$750.00
Date of application	Mar 2, 2022
Forwarding Address	Provided

No condition inspection report was conducted on moving in or moving out as the landlord was in the hospital.

The landlord testified that the tenants vacated leaving personal possessions, furniture and garbage. The landlord submitted a receipt from a disposal company for \$262.50.

The landlord returned the balance of the security deposit of \$387.50 to the tenant on March 13, 2022. The landlord holds the balance of \$387.50 for the security deposit.

The landlord accounted for the security deposit as follows:

ITEM	AMOUNT
Disposal expense (held by landlord)	\$262.50
Filing fee (held by landlord)	\$100.00
Balance of security deposit returned	\$387.50
TOTAL SECURITY DEPOSIT	\$750.00

The landlord requested a monetary order of **\$362.50** to be satisfied by balance of the security deposit held by her.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the tenant) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (landlord) proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy

agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Each of the above four tests are considered in my findings.

I give substantial weight to the landlord's evidence as summarized above and as supported in all material respects by documents. Based on the uncontradicted credible evidence of the landlord, I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claims.

Removal of Personal Possessions, Garbage, Furniture

I accept the landlord's evidence and I find the tenant did not take all items from the unit when they moved out.

I find the tenant's breach of the Act caused the landlord to incur the expense claimed for which the landlord fairly seeks compensation. I find the disposal expense is reasonable given the landlord's testimony and photographs.

I accept the landlord's evidence that they made reasonable efforts to mitigate loss and reduce expenses and had the work carried out in a timely manner.

I find the landlord is entitled to reimbursement of the expense as claimed.

Filing Fee

As the landlord has been successful in this matter, I award reimbursement of the filing fee of \$100.00.

I grant a monetary award to the landlord summarized as follows:

ITEM	AMOUNT
Disposal expenses	\$262.50
Filing fee	\$100.00
TOTAL Monetary Order	\$362.50

The landlord may apply the balance of the security deposit in the amount of \$362.50 as compensation in full for the award.

Conclusion

The landlord is granted a monetary award of **\$362.50 which is satisfied by the balance of the security deposit held by the landlord.**

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 25, 2022

Residential Tenancy Branch