



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAPE LIVING CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-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 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 March 1, 2022 by a pre-agreed e-mail address as part of their tenancy agreement. Based on the submissions and documentation 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 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 13-month fixed term tenancy began on May 1, 2021 but ended early on December 7, 2021. The tenant was obligated to pay \$2790.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$1380.00 security deposit which the landlord still holds. The landlord testified that the tenant left the unit dirty and damaged at move out and without any notice. A condition inspection report was conducted at move in with the tenant present but despite attempts by the landlord to contact the tenant, the tenant did not attend the move out inspection. The landlord testified that the tenant received the first months rent free as a rent incentive but only if the tenant stayed the entire agreed upon fixed term of 13 months.

The landlord testified that the tenant did not he now seeks recovery of that month along with the unpaid rent for December 2021. The landlord advised that he was originally seeking liquidated damages but will accept the loss of Decembers rent instead. The landlord testified that the unit required some painting due to the tenant damaging some walls. The landlord testified that there were other damages to the unit but was unable to provide copies of those invoices and is prepared to waive those claims.

The landlord summarized his claim by stating that he is seeking the recovery of the free months rent \$2790.00, the loss of rent for December 2021 \$2790.00, and \$787.50 for painting along with the \$100.00 filing fee for a total claim of \$6467.50.

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, receipts and photos to support their application. I find that the landlord is entitled to the \$6367.50 as claimed. I also find that the landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$6467.50. I order that the landlord retain the \$1380.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$5087.50. 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: November 28, 2022

Residential Tenancy Branch