



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes MNRL-S MNDL-S MNDCL-S FFL

Introduction

The landlord seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"). The landlord also seeks to recover the cost of the filing fee under section 72.

Preliminary Issue: Dispute Resolution Hearing and Disconnection

The landlord and his spouse were present for the hearing, which began at 1:30 PM and concluded around 1:44 PM. However, it should be noted that the landlord's call disconnected at approximately 1:40 PM. After waiting a brief period for reconnection, the hearing was ended. The landlord had already finished giving his testimony and I was in the process of explaining post-hearing procedures when the call disconnected.

If the landlord or his spouse have any further questions or require clarification (that they might have had) they may submit a request for clarification on-line.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

The landlord testified under oath that the *Notice of Dispute Resolution Proceeding* and accompanying documentary evidence were served to the tenant via Canada Post registered mail on May 27, 2022. Supporting evidence, including a Canada Post tracking number, was presented into evidence. The Canada Post tracking information website confirms delivery on May 30, 2022.

Based on this testimony and evidence, it is my finding that the tenant was properly served in accordance with the Act and the *Rules of Procedure*. The tenant did not participate in the hearing.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy began on August 22, 2019 and ended on May 5, 2022. Monthly rent, due on the fifteenth day of the month, was \$2,400.00. The tenant paid a \$1,200.00 security deposit and a \$600.00 pet damage deposit. There was a written tenancy agreement.

The landlord seeks \$2,400.00 in compensation for unpaid rent for the month of April.

The landlord also seeks \$800.00 for, as described in the particulars: “Den area was heavily smoke damaged. Tenant burned candles, burned oil lamp, wax and grease marks on walls, blinds, closet doors, ceiling, floors and electrical heating register. Tenant alleged she had it professionally repainted. [. . .]” (I refer to this claim as the claim for smoke damage.) The landlord confirmed under oath that the amount sought was for the extensive amount of time spent by him and his wife cleaning the rental unit.

Documentary evidence submitted in support of the claims included videos and photographs, a condition inspection report, and other documents.

Analysis

Claim for Unpaid Rent

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold, or not pay, the rent. There is no such right asserted in this dispute.

Taking into careful consideration all of the undisputed, sworn evidence before me, it is my finding that the landlord has proven their claim on a balance of probabilities. The landlord is therefore awarded \$2,400.00 in compensation for unpaid rent.

Claim for Smoke Damage

The Act requires that any party who fails to comply with its provisions must compensate the other party for any resulting damage or loss. Additionally, an arbitrator has the authority to determine the amount of compensation and order a party to pay it if non-compliance causes damage or loss. (See sections 7 and 67 of the Act.)

Section 37(2)(a) of the Act requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

Taking into careful consideration all of the undisputed evidence before me, it is my finding that the landlord has proven their claim on a balance of probabilities. But for the tenant's breach of the Act the landlord and his wife would not have had to spend a considerable amount of time cleaning and painting the rental unit.

The landlord is therefore awarded \$800.00 in compensation for his and his wife's time.

Claim for Application Filing Fee

The landlord succeeded in his claim and is thus entitled to additional \$100.00 to pay for the cost of the application (section 72 of the Act).

Summary of Award, Retention of Deposits, and Monetary Order

In total the landlord is awarded \$3,300.00.

The landlord is ordered and authorized to retain the security and pet damage deposits totalling \$1,800.00 in partial satisfaction of the amount awarded.

A monetary order in the amount of \$1,500.00 is granted to the landlord with this decision. The landlord must serve a copy of the monetary order upon the tenant who is ordered to pay this amount within 15 days from the date of receiving this decision.

Pursuant to section 85(2) of the Act the monetary order may be filed in the Provincial Court and enforced as a judgment of that court.

Conclusion

The application is hereby granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 24, 2023

Residential Tenancy Branch