



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. Legal Counsel for the Tenant was given opportunity to make submissions on behalf of the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on December 2, 2021 and ended on May 31, 2022. Rent of \$1,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$750.00.

The Landlord confirms that the monetary claims of \$18,256.67 as damages to the unit and \$1,500.00 for lost rental income has been covered by the Landlord’s insurance.

The Landlord seeks to amend their application made June 10, 2022 to reduce the total claimed amount to \$5,000.00, being the deductible paid by the Landlord to the insurance company. The Landlord confirms that they knew in October 2022 that their insurance covered their monetary losses claimed herein.

The Tenant does not agree to the amendment at this hearing and submits that the Landlord was asked some time ago to withdraw this application. The Tenant provides a copy of an email from the Landlord's insurer dated November 10, 2022 confirming that the Landlord's monetary claim of \$19,756.67 had been settled with the insurance company.

Analysis

Rule 4.1 and 4.6 of the RTB Rules of Procedure provide that an applicant may amend an application to alter claims made in the original application as soon as possible and not less than 14 days before the hearing. It is undisputed that the Landlord knew several months in advance of the hearing that the monetary claims for damages to the unit and for lost rental income had been fully met. There is no evidence that the Landlord faced circumstances that prevented the Landlord from making an amendment to its application to alter their claim. It is undisputed that the Tenant sought to have the Landlord withdraw the application some time in advance of the hearing. As the Landlord had ample time to make an amendment and provide evidence to support the amendment I decline to accept an amendment at this hearing.

Section 62(4) of the Act provides that the director may dismiss all or part of an application for dispute resolution if there are no reasonable grounds for the application or part. Based on the undisputed evidence that the Landlord's total monetary claim of \$19,756.67 for damages to the unit and lost rental income has been met, I find that there are no reasonable grounds for these monetary claims and I dismiss them.

As the Landlord has not been successful with their total monetary claims I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim. In effect the Landlord's application has been dismissed in its entirety.

Section 72(2) of the Act provides that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. As the Tenant has not been ordered to pay any monetary amount to the Landlord there are no deductions that may be made from the Tenant's security deposit. I therefore dismiss the Landlord's claim to retain the security deposit and order the Landlord to return the security deposit plus zero interest of **\$750.00** to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$750.00**. If necessary, 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 Act.

Dated: February 28, 2023

Residential Tenancy Branch