



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:58 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and the landlord's partner attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord called witness F.H. who affirmed to tell the truth. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the landlord's partner, the landlord's witness and I were the only ones who had called into this teleconference.

The landlord and the landlord's partner were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord and the landlord's partner testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

The landlord confirmed his email address for service of this Decision.

Preliminary Issue- Service

The landlord testified that he personally served the tenant with this application for dispute resolution and evidence on November 25, 2022 and that this service was witnessed by F.H.

F.H. testified that he witnessed the landlord serve the tenant with a package on November 25, 2022.

Based on the landlord’s undisputed testimony and the testimony of witness F.H. I find that the tenant was personally served with the landlord’s application for dispute resolution and evidence on November 25, 2022 in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue- Issues Previously Decided

In a previous Residential Tenancy Branch Decision dated November 30, 2022, the following of the landlord’s claims were decided:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- an Order of Possession for cause, pursuant to sections 47 and 55; and
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67.

The file number for the previous decision is located on the cover page of this decision. I dismiss the above claims as they are res judicata.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?

2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to authorization to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's application for dispute resolution states that this tenancy started on April 1, 2021. The landlord confirmed that this tenancy has ended.

The landlord testified that he is seeking \$3,500.00 for damage to his garage door, garage door opener, mailbox, weedwhacker, and front door. The landlord testified that the tenant dented the garage door, front door and mailbox. The landlord testified that the garage door will no longer open and close properly. The landlord testified that it will cost \$2,500.00 to repair the garage door. No receipts or estimates for same were entered into evidence. The landlord entered into evidence photographs of the garage door. The photographs are grainy and black and white and no damage is obvious in the photographs.

The landlord testified that the tenant threw a number of his possession into a pond, including the weedwhacker, wrecking them. The landlord entered into evidence a photograph of items in a pond. The landlord did not provide a breakdown of the amount claimed for the garage door opener, mailbox, front door or weedwhacker. No receipts or estimates for same were entered into evidence.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

I find that the landlord has not proved, on a balance of probabilities, the value of any of the losses claimed as no supporting documentary evidence such as receipts or estimates were entered into evidence. Pursuant to section 67 and Policy Guideline 16, I dismiss the landlord's claim for \$3,500.00 for failure to prove the value of the alleged loss.

As the landlord was not successful in this application for dispute resolution, I find that the landlord is not entitled to recover the \$100.00 filing fee.

Section 38(3) of the *Act* states:

A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord,
- and

(b)at the end of the tenancy remains unpaid.

While the landlord is not entitled to retain any security deposit paid by the tenant based on this application for dispute resolution, the landlord is entitled to retain a security deposit paid by the tenant pursuant to the Monetary Order provided in the previous hearing, so long as at the end of the tenancy, the amount the tenant was ordered to pay remains unpaid.

Conclusion

The landlord's application for dispute resolution is dismissed without leave to reapply.

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: March 28, 2023

Residential Tenancy Branch