



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant'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; 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 tenant. No one was in attendance on behalf of the landlord. The tenant submitted documentary evidence that the landlord was served notice of this application and this hearing by registered mail on September 23, 2022. Canada Post tracking information was submitted in the tenant's evidence that shows that the item was unclaimed by the landlord. Based on the submissions of the tenant, I find the landlord was served in accordance to section 89 of the *Act*. Therefore, I continued in the absence of the landlord.

Issue to be Decided

Is the tenant entitled to a monetary award for damage or loss arising out of this tenancy?

Is the tenant entitled to the recovery of the filing fee?

Background, Evidence

The tenants undisputed testimony is as follows. The tenancy began on May 1, 2022 and ended on August 31, 2022. The tenant was obligated to pay \$2400.00 per month. The tenant testified that she is seeking one months rent as compensation for the landlord entering her unit without permission and for constant noise. The tenant testified

that the landlord, his two sons, and girlfriend lived upstairs and made a lot of noise. The tenant also seeks the recovery of the filing fee for a total claim of \$2500.00.

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.

The tenant did not provide sufficient evidence of mitigation as required under section 7(2) of the *Act*, and as noted above. In addition, the tenant has failed to provide sufficient evidence as to how she calculated the amount sought and what loss she incurred. Based on these deficiencies, I must dismiss this application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety 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: June 01, 2023

Residential Tenancy Branch