



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDCL-S, MNDL-S, LSRD, FFL, MNSDB-DR

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
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties participated in the teleconference and confirmed that they had served each other all of the documentation they wished to rely on in this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

The landlord's testimony is as follows. The tenancy began on November 1, 2022 and ended on January 31, 2024. The tenants were obligated to pay \$3,850.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$2,000.00 security deposit and \$1,000.00 pet deposit. During the hearing the parties agreed that due to overpayments of rent, the adjusted amount of deposit that the landlord presently holds is \$2,925.00. The landlord testified that the tenants moved out without notice. The landlord testified that the tenants stole many items from the home and left it dirty with lots of garbage behind. The landlord testified that he has only provided estimates at this time as he is awaiting the outcome of this hearing. The landlord advised that if he is successful in this claim he will seek to enforce the order and if he is not successful in his application he will attempt to make an insurance claim.

The landlord is applying for the following:

1.	Rent from January 2024 Hearing	\$1,775.00
2.	Cleaning	1,000.00
3.	Fridge – estimate	2,490.00
4.	Freezer – estimate	2,900.00
5.	Generator – estimate	600.00
6.	Curtain and rods – estimate	4,000.00
7.	Work bench	728.00
8.	Tools - estimate	2,000.00
9.	Utilities	238.00
10.	Security system – estimate	5,000.00
11.	Basketball hoop – estimate	771.00
12.	Filing Fee	100.00
	Total	\$21,602.00

The tenant gave the following testimony. The tenant testified that she adamantly disputes the landlord's allegations that she stole any items from the home. The tenant testified that she went to the police station on her own accord after hearing that he was claiming that she stole some items only to find out that there was no investigation. The tenant testified that many of the so called stolen items were items that were damaged when a power pole was hit in the front of the home causing electrical shortage on many of the appliances. The tenant testified that the landlord rented the unit right after she moved out so there is no merit to his claim. The tenant testified that the utilities is

inconsistent with the timeline in which they lived there and should be dismissed as well. The tenant testified that the landlord is attempting to claim for old appliances or items that didn't work at any point during the tenancy. The tenant testified that she owes the landlord \$1,775.00 for unpaid rent and nothing else and that he can retain that amount from the deposit and that the remaining \$1,150.00 should be returned to her.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Firstly, I address the landlords claim and my findings as follows.

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.

Utilities

The landlord did not provide sufficient and specific costs incurred. The landlord gave general estimates of the amount of unpaid utilities. In addition, there was a dispute as to when the tenants occupied the unit that the landlord did not clarify or provide sufficient evidence to corroborate his submission. Based on the insufficient evidence before me, I dismiss this portion of the landlord's application.

Cleaning

The landlord requested \$1000.00 for cleaning but did not provide sufficient documentation to support this portion of his claim, accordingly; I dismiss this portion of his application without leave to reapply.

Stolen items

The landlord submits that the tenants stole numerous items from the home as outlined above. The landlord testified that the police investigated the matter but then closed the file because the tenants moved away and were unable to contact them. The tenant attended the police station and was advised that there was no ongoing investigation of theft. The tenant testified that she adamantly disputes this claim. As noted above, for a party to be granted a monetary order, they must satisfy **all four** elements. The landlord has not provided sufficient evidence that the tenants stole the items and as of this date has not incurred any out-of-pocket costs as he's not replaced them, therefore, has not provided proof of actual loss. As a result, I dismiss this portion of the landlord's claim without leave to reapply.

The landlord's request to recover the filing fee is dismissed without leave to reapply as he has not been successful in any portion of his application.

Although the tenant filed an application seeking the return of double her deposits, she advised that she did not provide her actual forwarding address as required per section 38 of the Act, prior to her Direct Request application and therefore the doubling provision does not apply. The tenant advised that she does in fact owe the landlord \$1,775.00 in unpaid rent. The landlord confirmed that amount.

Although I have dismissed the landlord's application in its entirety. The parties requested that I facilitate the offsetting of orders. The tenant agrees that she owes the landlord \$1,775.00 in unpaid rent and requests that amount be awarded to the landlord and that the remaining \$1,150.00 of the deposit be returned to her to give closure to this matter. I am happy to assist the parties and I order that the landlord retain \$1,775.00 from the deposits in full satisfaction of the unpaid rent claim on file #910129906 and that the landlord return the remaining \$1,150.00 to the tenant. I grant the tenant an order under section 67 for the balance due of \$1,150.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order of \$1,150.00.

The landlord'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 04, 2024

Residential Tenancy Branch