



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the attached submitted documentary evidence via Canada Post Registered Mail on October 15, 2018. The landlord stated that a copy of the Canada Post Customer Receipt Tracking number was submitted as confirmation of service. I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act. Although the tenant failed to attend, I find that the tenant was sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2013 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 14, 2013. The monthly rent was 735.00 payable on the 1st day of each month. A security deposit of \$367.50 was paid.

The landlord seeks a monetary claim of \$367.50 which consists of:

\$450.00	labour, 9 hours @\$50.00/hr for 2 people
\$75.00	gas (trips to remove items/debris)
\$50.00	toilet repair (toilet lid and toilet lever)
\$100.00	filing fee

The landlord claims that the tenant vacated the premises leaving approximately 2 trailers full of driftwood that was left on the property. The landlord also claims that another trailer load was required to remove debris consisting of wood chips, bark, tree part and sticks plus 5 old pallet boards. The landlord stated that the tenant abandoned all these items on the property without the consent of the landlord requiring him and another person to load these things onto trailers and transport them on two trips to the ocean and yard waste depot and once to the metal recycling depot. The landlord estimated that it took 9 hours from 9am to 6pm in one day to remove everything. The landlord stated that the \$25.00 an hour was based on general labour costs. The landlord also seeks compensation of \$75.00 for gas used to transport the trailers to each of the dump site locations for an approximate 34 mile distance in total.

The landlord also claims that the toilet was left broken (tank lid and flush handle) and that the tenant was responsible for this damage as they were not damaged a few days prior to the tenant vacating the rental premises. The landlord based the compensation amount for the cost of a replacement lid and new toilet lever. The landlord stated that he purchased a new toilet lever, but that the toilet lid was replaced with no costs incurred.

In support of these claims the landlord has provided copies of a letter dated October 11, 2018, a copy of the signed tenancy agreement dated March 14, 2013.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed affirmed evidence of the landlord and find that the landlord has established a claim for compensation. I find that the landlord has provided sufficient evidence that the tenant vacated the rental unit leaving it with numerous items left on the rental premises as claimed by the landlord. This required the landlord multiple trips transporting the items and removing them from the rental property. I accept the landlord's estimation of labour required based upon the landlord's direct testimony describing the amount of items/"debris" left by the tenant for a claim of \$450.00 for 9 hours of labour for two persons.

I also accept the landlord's claims that the tenant vacated the rental unit damaged with a broken toilet lid and toilet lever. I accept that the landlord had to replace the toilet lid and the toilet lever, however, the landlord bases the amounts claimed on an estimate. No invoices/receipts were provided. The landlord provided testimony that an alternate lid was used that did not require any costs. As such, I find that the landlord has failed to justify the claims for replacement items for the toilet. This portion of the claim is dismissed.

The landlord has been successful in establishing a monetary claim of \$450.00. Having been successful in the application for dispute, I grant the landlord recovery of the \$100.00 filing fee.

The landlord is authorized to retain \$367.50 from the already held \$367.50 security deposit in partial satisfaction of the claim. I find that although the landlord's monetary claim filed was for \$367.50, the landlord's monetary claim included clear details of a total amount of \$675.00.

Conclusion

The landlord is granted a monetary order for \$182.50.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: February 05, 2019

Residential Tenancy Branch