Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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
- 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 landlord. No one was in attendance on behalf of the tenants. The landlord submitted documentary evidence that the tenants were served notice of this application and this hearing by registered mail on August 3, 2019. Canada Post tracking information was submitted in the landlord's evidence that shows that the item was signed for and accepted by the tenants on August 7, 2019. Based on the submissions of the landlord, I find the tenants were served in accordance to section 89 of the *Act*. Therefore, I continued in the absence of the tenants.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on May 3, 2019 and ended on July 24, 2019 by way of executing an order of possession granted by the Branch in a separate hearing. The tenants were obligated to pay $2500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $1250.00 security deposit which the landlord still holds. The landlord testified that the tenants left the unit dirty and damaged at move out. The landlord testified that the tenants did not pay July 2019 rent of $2500.00. The landlord testified that he incurred a cost of over $2000.00 to have bailiffs remove the tenant's belongings. The landlord testified that his total claim for this hearing is $6032.88, however, he only seeks to retain the security deposit of $1250.00 as he has no interest in having any further dealings with the tenants.

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

The landlord provided extensive documentation, undisputed testimony, receipts and photos to support their application. The landlord has provided sufficient evidence to show that his loss far exceeded the security deposit. As the landlord only seeks the deposit, I hereby find that the landlord is entitled to retain the deposit.

Conclusion

I order that the landlord retain the $1250.00 security deposit in full satisfaction of the claim.

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: November 25, 2019

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Residential Tenancy Branch