



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL MNDL MNRL

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the 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 which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of hearing and evidence personally on September 7, 2019 in the presence of a witness. The landlord submitted into evidence a signed statement from the witness attesting that they witnessed the service of the materials on the tenant. Based on the evidence I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

During the hearing the landlord applied to amend the amount of the monetary award claimed. The landlord said additional invoices for repairs and work have been issued since filing the application and the total amount of the monetary claim is \$7,613.87. As additional invoices coming due is reasonably foreseeable, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to increase the landlords' monetary claim to \$7,613.87 as claimed.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee from the tenant?

Background and Evidence

This tenancy began in July 2018 and ended June 30, 2019. Monthly rent was \$1,800.00 payable on the first of each month. A security deposit of \$900.00 was collected and is still held by the landlord. No condition inspection report was prepared for this tenancy.

There was an earlier hearing under the file numbers on the first page of this decision in which the landlords were issued an Order of Possession and a monetary award to recover the filing fee for the earlier application.

The landlords submit that the tenant did not pay rent for the month of June 2019 and there is an arrear of \$1,800.00 for this tenancy.

The landlords submit that the rental unit was left in a state of disarray requiring considerable cleaning, repairs and maintenance work. The landlords submitted into documentary evidence some photographs of the rental property as well as invoices and receipts for work performed. The landlords described the condition of the suite as being worn from the tenant's keeping animals on the property and attributes all of the work performed to the tenancy.

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.

No condition inspection report was prepared for this tenancy. In the absence of a proper report showing the state of the rental unit at the outset, I find that there is insufficient evidence to establish that the costs of work undertaken are attributable to a violation on the part of the tenant. I find that the photographs and invoices submitted by the landlord are insufficient to show on a balance of probabilities that the costs arose due to the tenancy.

The *Act* requires a landlord to prepare a proper condition inspection report at the start of the tenancy specifically to avoid such ambiguities. The landlord failed to act in accordance with the *Act*, and I find that there is insufficient evidence in support of their claim for a monetary award for damage. Accordingly, I dismiss this portion of the landlord's application.

I accept the evidence of the landlord that the tenant vacated the rental unit at the end of June 2019 and had not paid the rent owed for that month. I accept the evidence of the landlord that monthly rent was \$1,800.00. I therefore issue a monetary award in the landlord's favour in the amount of \$1,800.00 for the rental arrear for this tenancy

I find that the landlord's claim for filing fees for the previous hearing is a matter that has been definitively ruled upon by another arbitrator and I am barred by the principles of *res judicata* from making an additional order in regard to the filing fee of the earlier application.

I find that the landlords were partially successful in their application and therefore entitled to recover the filing fee of \$100.00 for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,000.00 which allows the landlords to recover the unpaid rent for this tenancy, the filing fee for this application and retain the security deposit. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: January 2, 2020

Residential Tenancy Branch