



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding NYSTAR DEVELOPMENTS CORP
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT, MNRL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for unpaid rent and 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:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This matter was scheduled for a conference call at 1:30 p.m. on this date. The landlord participated in the teleconference, the tenant did not. The landlord gave sworn testimony that their application, evidence, and notice of hearing package was served to the tenant by registered mail on February 16, 2023 and provided Canada Post tracking information and slips. Pursuant to sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords package five days after mailing on February 21, 2023.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant did not participate in this hearing. In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses and damages 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 recover the filing fee for this application from the tenant?

Background and Evidence

AL testified that the tenancy began on March 1, 2021 and ended on January 31, 2023. The monthly rent of \$1550.00 was due on the first of each month. The tenant paid a security deposit of \$775.00 which the landlord still holds. AL testified that he is asking for a monetary order of \$960.00 for the following : \$490.00 for rubbish and garbage removal from the suite, \$250.00 for suite cleaning, \$200.00 for fridge repair and \$20.00 for unpaid utilities. AL testified that the tenant moved out without notice and that the unit smelled badly due to all the garbage and rubbish left behind. AL testified that he made numerous attempts to work with the tenant and offered several opportunities to participate in a move out inspection but the tenant refused.

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.

AL testified that he provided the receipt and corresponding photos to support the garbage removal claim of \$490.00. I find that the landlord has provided sufficient evidence to support this claim and find that they are entitled to that amount.

AL testified that he neglected to submit the receipts for the remaining claims. Based on the insufficient supporting documentary evidence, I dismiss the landlords claim for suite cleaning, fridge repairs and unpaid utilities without leave to reapply.

The landlord is entitled to the recovery of the filing fee of \$100.00 for this application. The landlords total award is \$590.00. I hereby order that the landlord retain that amount from the security deposit in full satisfaction of their claim and return the remaining \$185.00 to the tenant. The tenant will be given a monetary order to reflect that amount.

Conclusion

The landlord has established a claim for \$590.00. I order that the landlord retain that amount from the deposit in full satisfaction of the claim and I grant the tenant an order under section 67 for the balance due of \$185.00. This order may be filed in the Small Claims 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: October 30, 2023

Residential Tenancy Branch