



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lion's Court Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act; to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The application included a claim for liquidated damages, as damage or loss under the Act. I have also considered a claim for damage to the rental unit; as monetary amounts for drapery cleaning and lights bulbs were contained in the detail section of the application.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$975.00 for liquidated damages?

Is the landlord entitled to compensation for drapery cleaning and lights bulbs in the sum of \$284.50?

May the landlord retain the \$975.00 security deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on December 11, 2011 for a 12 month fixed term ending November 30, 2012. Rent was \$1,950.00 per month, due on the first day of each month. A security deposit in the sum of \$975.00 was paid.

The landlord and tenants confirmed that a move-in condition inspection report was not offered to the tenant for signature; nor was a copy of a report given to the tenants. The landlord said that the initial report indicated the drapes should be cleaned at the end of the tenancy. A copy of this report was not supplied as evidence.

The parties agreed that the tenants gave verbal notice on September 31, 2012; followed by written notice the next day. The landlord located new occupants effective November 1, 2012.

There was no dispute that the landlord received the tenant's forwarding address, sent via email on November 15, 2012; the landlord applied claiming against the deposit on November 28, 2013.

The day prior to vacating the tenants were sent an email that contained a copy of a "cleaning guide" for tenants, which indicated that the drapes or blinds must be cleaned. There was drapery throughout the living room and master bedroom. The tenants said that the drapes were not to their liking at the start of the tenancy and they had intended to ask to have them cleaned, that they did not make the request but hung their own drapes over the landlord's. The tenants said that the cleaning guide sent the night prior to moving gave them no time to respond, even if they had felt they had dirtied the drapes; which they did not.

At 8 a.m. on November 1, 2012 the male tenant and the landlord met to complete a move-out condition inspection; a copy of a checklist containing 22 items was supplied as evidence. Neither the landlord nor the tenant signed the checklist. The tenant said that he was in the kitchen while the landlord went through the unit. When the landlord showed the tenant the checklist the tenant said he was surprised that the landlord had wanted them to clean the drapes; although no notation was made on this section of the checklist. The checklist submitted as evidence listed 5 missing light bulbs and had an unsigned notation which indicated that the tenant "refused to sign for deductions." No deductions or other comments were recorded on the checklist.

The landlord supplied a copy of an invoice dated November 5, 2012, issued by a company; S.M.Inc. The invoice charged \$272.00 for drapery cleaning the equivalent of 136 drape pleats, totalling \$272.00 and \$12.50 for 5 light bulbs; plus HST; totalling \$318.64. No evidence showing payment of this amount was provided.

The tenants said that the drapes were in good condition at the end of the tenancy and that they did not accept the invoice as legitimate, as there was no information provided that the drapes had actually been cleaned, other than the charge made. The tenants then completed a title search for the company that invoiced the landlord for the drapery cleaning.

The tenants supplied copies of the results of a BC Company Summary Search completed via BC Registry Services. The tenants discovered that there was no company listed that matched the name on the invoice supplied as evidence by the landlord, S.M. Inc; the billing company does not exist as a registered company in British Columbia.

The tenants had talked with a government employee who told them the closest named company was a S.M. Corp.; the names of the director and secretary had the same last name of the landlord. The tenants provided a print-out of the S.M. Corp. record; this

entity was recorded as active and had not filed an annual report since October 27, 2012. The tenants obtained a copy of the registry in the landlord name used on the application; that company had last filed an annual report on March 13, 2012.

The tenants submitted that the landlord had not shown any good faith, that the invoice appeared to be issued by a company that was not registered and did not exist and that they questioned the validity of the invoice.

The landlord, when asked to respond, said she could not comment as she does not deal with that part of the business.

The tenants did not deny that light bulbs could have been burned out; they were busy when they moved out and could have missed this detail.

The tenants said that the hearing could have been avoided if the landlord had called them and talked to them about the drapes and light bulbs.

The landlord has claimed compensation in the sum of \$975.00 as liquidated damages. The fixed term tenancy was to end effective November 30, 2012 and the tenants vacated on October 31, 2012. The tenancy agreement included a term which provided, in part:

If the tenant ends the fixed term before the end of the original term as set out above, the landlord may, at the landlord's option, treat this Tenancy Agreement as being at an end. In such event, the sum of \$975.00 shall be paid to the landlord as liquidated damages, and not as a penalty, to cover the administrative costs of re-renting the said premises.

(reproduced as written)

The landlord said that they had to make expenditures for advertising and that it took time to locate new occupants for November.

The tenants stated that when they spoke to the landlord on September 30 they were not reminded of their obligation to remain until November 30; if they had they would have waited 1 month before ending the tenancy. The tenants believed that the landlord acted in bad faith, that they had a responsibility to at least mention the fixed term and the need to remain in the unit for another month.

The tenants find the sum claimed for liquidated damages exceeds any reasonable amount. They had considered renting at another location, where the rent owed was greater and the liquidated damages required payment of \$300.00. The tenants expected to see evidence of advertising costs; but the landlord had only used a popular, free website. The tenants had allowed multiple viewings and the unit was rented for November, 2012. The tenants pointed to section 7 of the Act, which required the landlord to minimize any claim made and, in the absence of any evidence of a loss suffered, such as advertising or administration costs, the liquidated damages clause should not be enforced.

The landlord stated that the tenants signed the agreement knowing they would have to pay the liquidated damages amount and that the charge for drapes was calculated by the pleat, as it is the easiest way to reach a price.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the claim made against the deposit; section 24(2) of the Act provides:

Consequences for tenant and landlord if report requirements not met

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the landlord has claimed both compensation for damage or loss under the Act; and for damage to the rental unit and, was therefore, entitled to retain the deposit until the hearing was held and decision issued.

In relation to the claim for drapery cleaning; I find that this portion of the claim is dismissed. There was no move-in condition inspection report that indicated the drapery had been cleaned at the start of the tenancy and no term of the tenancy agreement that required the drapes to be cleaned at the end of the tenancy. The day prior to the tenant's vacating the landlord delivered a cleaning guide requiring a significant number of drapes to be cleaned; the landlord had to understand the tenants would not likely be able to have the drapes cleaned by the next day.

The checklist completed at the end of the tenancy was bereft of any comments in relation to the state of the drapes. A tenant is required to leave a unit reasonably clean and there was no evidence before me that this did not occur. Further, I find that the tenants have raised sufficient doubt in relation to the invoice issued for the drapery cleaning. The landlord could not provide any response to the submission that the company that billed for the drape cleaning actually existed. In the absence of an adequate response to what I find was a fair and reasonable question posed by the tenants, I find that the landlord has failed to prove verification of the sum expended for drapery cleaning and the cost of light bulbs.

Based on the acknowledgment of the tenants I find that the landlord is entitled to nominal compensation for 5 light bulbs, in the sum \$10.00. The tenants did not dispute that some bulbs may have needed replacement.

In relation to the claim for liquidated damages, I have considered Residential Tenancy Branch policy which suggests that liquidated damages must be a genuine pre-estimate

of the loss at the time the contract is entered into; otherwise the clause may be found to constitute a penalty and, as a result, be found unenforceable.

Policy suggests that an arbitrator should determine if a clause is a penalty clause or a liquidated damages clause by considering whether the sum is a penalty. The sum can be found to be a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. Policy also suggests that generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

I have considered the liquidated damages sum that formed a part of the tenancy agreement signed by the parties and find that the sum is not a true reflection of the administrative costs of re-renting the premises. The landlord provided no evidence of any costs incurred and instead imposed a sum that I find is well beyond what one could reasonably expect to incur when re-renting a unit for the final month of a fixed term agreement. At the most the landlord would have suffered a loss equivalent to 1 month's rent plus advertising and staff costs; however, with the assistance of the tenants, they located new occupants, with no loss of rent revenue. There was no evidence before me that the landlord used any advertising service outside of free web-based sites. There was no evidence before me as to the amount of time spent by the landlord showing the unit and any costs incurred for showings of the unit that was equivalent to \$975.00.

Therefore, I find that the liquidated damages sum is extravagant in comparison to the greatest loss that could have followed the tenant's giving notice 1 month early. Further, I find that the sum indicated as liquidated damages is oppressive and lacks fairness when considered in relation to the actual amount the landlord might expect to spend when using free advertising and the assistance of tenants to allow flexible showings of the unit.

In the absence of any detailed breakdown of the loss the landlord could expect to have suffered, equivalent to \$975.00, I find that the amount imposed as liquidated damages has not been shown to be a reasonable sum. Therefore, I find that the liquidated damages amount is a penalty and the claim is dismissed.

As the parties could have settled the matter of light bulbs without the necessity of a hearing, by fully completing move-in and move-out inspection reports and providing the tenants with copies of the reports, I decline filing fee costs to the landlord.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenants are entitled to return of the \$975.00 deposit, less \$10.00 for light bulbs.

Based on these determinations I grant the tenants a monetary Order in the sum of \$965.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord has established a claim in the sum of \$10.00.

The balance of the landlord's claim is dismissed.

The tenants are entitled to return of the balance of the security deposit; \$965.00; a monetary Order has been issued in that sum.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 05, 2013

Residential Tenancy Branch

