



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF, O, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The corporate landlord identified above (the landlord) applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72; and
- other remedies, outlined in the landlord's amended application as unpaid rent owing for August, September and October 2013.

The female tenant named both Respondents as outlined above in her application for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of the security deposit for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

At the commencement of this hearing, the tenant's agent, confirmed by the female tenant (the tenant), advised that he intended to withdraw the tenant's application. Although I accepted the withdrawal of the tenant's application, I noted that part of the tenant's application, involving the request to obtain a return of the security deposit for this tenancy, included the landlord's application for dispute resolution. Despite the tenant's agent's withdrawal of the application to obtain a return of the security deposit, this issue is before me in the context of the landlord's cross application to seek a decision regarding the landlord's application to retain that deposit. I have dealt with the landlord's application to retain the security deposit. For this reason, I find that the tenant does not have leave to reapply to obtain a return of the security deposit.

The landlord's agent testified that the tenant's application for a monetary award for losses and damages arising out of this tenancy had already been considered and dismissed in an August 2, 2013 decision and an August 12, 2013 review consideration decision. As neither party provided any reference to these previous decisions before this hearing was convened, I was unaware of the issues considered in decisions of Arbitrators appointed under the Act on August 2 and 12, 2013. In agreeing to the withdrawal of the tenant's application, I advised the parties that my decision to confirm the withdrawal of the tenant's current application does not have any effect on the final and binding nature of any previous decisions issued by previous Arbitrators with respect to this tenancy. I attach no new rights to apply for dispute resolution to the tenant(s) as a result of confirming the tenant's withdrawal of the current application.

The tenant's agent confirmed that the tenants received copies of both the landlord's original dispute resolution hearing package seeking a monetary award of \$882.04 sent by the landlord on August 28, 2013, and the landlord's amended dispute resolution hearing package seeking a monetary award of \$4982.04, sent by the landlord on November 13, 2013. Both of these hearing packages were sent and received by registered mail. I am satisfied that the landlord served these packages as well as a written evidence package to the tenants in accordance with the Act.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, losses and damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy for a partially furnished rental unit commenced on February 1, 2013. Monthly rent was set at \$1,400.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the tenant's \$700.00 security deposit paid by January 21, 2013.

The landlord and the tenants conducted a joint move-in condition inspection on January 15, 2013. Although the landlord entered into written evidence a copy of the January 25, 2013 joint move-in condition inspection report, this report was in the format of a "personal property inventory" than a standard move-in condition inspection report. This document essentially listed the furnishings and items included in the partially furnished rental unit as opposed to containing a detailed description of the condition of the rental unit at the commencement of this tenancy.

The female tenant participated in a joint move-out condition inspection on August 14, 2013, when this tenancy ended. The landlord entered into written evidence a copy of this much more detailed joint move-out condition inspection report prepared by the landlord's agent at this hearing and signed by her and the female tenant. This report noted many deficiencies in the condition of the rental unit at the end of this tenancy, which the landlord maintained arose during the course of the tenancy. This document included a signed statement from the female tenant in which she agreed to deductions from the security deposit for this tenancy in the stated amounts of \$500.00 for an estimated 20 hours of cleaning that would be required, for the replacement of light bulbs in the amount of \$50.00, and for a lost key fob, and a series of required repairs which included repairs to the bathroom, the garberator, and a screen door.

The landlord's agent gave undisputed sworn testimony regarding the rent payment history of the tenants and entered into written evidence a copy of the rent ledger for this tenancy. She testified that the June 2013 rent was paid on time and the July 2013 rent was eventually paid in full, although a little late. She gave undisputed sworn testimony that the tenants did not pay anything towards their August 2013 rent and vacated the rental unit without making any further payments on August 14, 2013.

The landlord's amended application for a monetary award of \$4,982.04 included the following items:

Item	Amount
Unpaid August 2013 Rent	\$1,400.00
Loss of September 2013 Rent	1,400.00
Loss of October 2013 Rent (Actual Loss \$1,400.00, but only \$1,300.00 Claimed)	1,300.00
Replacement of Key Fob	40.00
Cleaning	500.00
Repairs	342.04
Total Monetary Order	\$4,982.04

The landlord entered into written evidence copies of receipts for each of the last three items outlined above.

At the hearing, the tenant's agent maintained that the Order of Possession issued in accordance with a settlement reached between the parties at a June 13, 2013 teleconference hearing was illegal. He asserted that the Arbitrator should not have included in her June 13, 2013 decision a provision enabling the landlord to act on a 2-Day Order of Possession in the event that the tenants failed to pay their rent on time in

August 2013. I noted that the circumstances regarding the exercise of the 2-Day Order of Possession were not before me. A decision or an order issued by an Arbitrator on a previous hearing is final and binding.

The female tenant (the tenant) confirmed that she did not pay the August 2013 rent on time and did not eventually pay anything towards the August 2013 rent. She testified that the rental unit was filled with many of the possessions of the previous tenant when she commenced her tenancy. She said that it took her 15 to 20 hours to clean and remove these items from the rental unit at start of her tenancy. She said that the windows had not been cleaned before she began her tenancy. She also observed that the cleaning conducted by the landlord at the end of this tenancy was done by an internal cleaner and not an outside agency.

The tenant's witness testified that he helped the tenants move into the rental unit. He said that the carpets were dirty when the tenant took occupancy of the rental unit and the cupboards will filled with dishes, silverware and other goods. He said that the drapes were also dirty at the beginning of this tenancy.

At the hearing, the landlord's agent testified that the landlord started placing advertisements on the landlord's rental website and in the building on August 2, 2013. She testified that on November 19, 2013, a new tenant signed a tenancy agreement for these premises. The new tenant took possession on December 1, 2013, for a monthly rent of \$1,400.00.

Analysis – Landlord's Claim for Unpaid Rent and Loss of Rent

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. In this case, I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the January 31, 2014 date specified in that agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for August 2013, the last month of their fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord's agent testified that the landlord started advertising the availability of the rental suite on the landlord's own rental website on August 2, 2013. While this indicates

some attempt to re-rent the premises, the tenant's agent noted at the hearing that the landlord had not produced any written evidence regarding the advertisements placed by the landlord, the timing of those advertisements, or any information regarding the number of showings arranged to re-rent the premises and minimize the loss of rent.

Given that the tenants remained in the rental unit until August 14, 2013, and there was some question as to whether the 2-Day Order of Possession could enable the landlord to obtain vacant possession of the rental unit by then, I accept that the landlord may not have been able to re-rent the premises during the month of August 2013. For that reason, I issue a monetary award in the landlord's favour in the amount of \$1,400.00 for unpaid rent for August 2014.

By August 14, 2013, the landlord had vacant possession of the rental unit, which after considerable cleaning and repair would have been ready for occupancy by September 2013. The landlord has provided some sworn evidence that measures were taken to re-rent the premises, measures that eventually proved successful in finding a new tenant by December 1, 2013. I am not satisfied that this corporate landlord demonstrated to the extent necessary that adequate steps were taken to advertise the availability of this rental unit to a broader range of prospective tenants. The landlord's agent testified that the only advertising conducted was at the rental site and on the corporate landlord's rental website; no other rental websites were used to advertise the availability of this rental unit. As the landlord's rental website did prove successful, showings likely occurred. However, the landlord's agent had no details regarding these showings.

Under these circumstances and on a balance of probabilities, I find that the landlord only partially satisfied the duty under section 7(2) of the *Act* to minimize the tenants' exposure to the landlord's loss of rent. I allow the landlord a monetary award one-half month's loss of rent for September 2013, a sum of \$700.00. This award enables the landlord to recover one full month's rent from the date the tenants vacated the rental unit on August 14, 2013, until mid-September 2013. By mid-September 2013, I find that the landlord's failure to provide adequate evidence to demonstrate a broader range of efforts to re-rent the premises disentitles the landlord to a monetary award for loss of rent for the last half of September and October 2013. I dismiss the landlord's claim for loss of rent for one-half of September and October 2013, without leave to reapply.

Analysis – Damage Arising out of this Tenancy

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.

Based on the undisputed testimony and written evidence presented, I find that the landlord is entitled to a monetary award of \$40.00 for the tenants' loss of a key fob. The landlord provided a copy of the relevant receipt for the replacement of this item.

Section 38(4)(a) of the *Act* allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." I find that the female tenant did sign a statement on the joint move-out condition inspection report in which she agreed to allow the landlord to deductions from her security deposit in the amount of \$500.00 for cleaning the rental unit and for a series of repairs and replacement of items. However, this statement only noted that these deductions could be taken from the \$700.00 security deposit for this tenancy. As the total eventually claimed by the landlord for these items exceeded the amount of the security deposit, I limit the landlord's eligibility to a monetary award for cleaning and repairs to \$700.00. I do so as I find that the female tenant only agreed to allow the landlord to deduct amounts from the security deposit and not for a separate claim for damage to the rental unit. Under these circumstances and as I am also satisfied that the landlord has provided receipts to show the expenses incurred for these items, I allow the landlord to retain the \$700.00 security deposit to cover cleaning and repairs to the rental unit, which the female tenant agreed to by signing the statement on the joint move-out condition inspection report. No interest is payable over this period.

I have also considered the landlord's claim for an additional \$142.50 for the recovery of expenses for cleaning and repairs to the rental unit beyond those agreed to by the tenant on the joint move-out condition inspection report. I find that the tenant and the tenant's witness provided sufficient evidence to demonstrate that the rental unit was not provided to the tenants in a clean state at the beginning of this tenancy and that the tenant did have to remove items left behind from the previous tenant. The joint move-in condition inspection report submitted by the landlord does not reveal the actual condition of the rental unit at that time as it is not a true condition inspection report. Under these circumstances, I disallow the landlord's claim for cleaning and repairs beyond the value of the security deposit (i.e., \$700.00) agreed to by the tenant at the joint move-out condition inspection.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allow the landlord to recover the following items and to retain the security deposit:

Item	Amount
Unpaid August 2013 Rent	\$1,400.00
Loss of Rent – First Half of September 2013	700.00
Replacement of Key Fob	40.00
Authorization to Retain the Tenants' Security Deposit for Cleaning and Repairs	700.00
Less Value of Security Deposit	-700.00
Filing Fee	50.00
Total Monetary Order	\$2,190.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenant's application is withdrawn.

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: December 11, 2013

Residential Tenancy Branch

