



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Warrington PCI Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that she received the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) that Landlord ES testified she posted on the tenant's door on August 13, 2013. Respondent SG (the tenant) testified that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on October 24, 2013. The landlord also provided written evidence that another copy of the landlord's hearing package was sent to the other Respondent (UG), the tenant's mother, on October 24, 2013. I am satisfied that the landlord served the above documents to the Respondents in accordance with the *Act*. I am also satisfied that the landlord sent copies of the landlord's written evidence to the Respondents in accordance with the *Act*.

Preliminary Issues

At the commencement of the hearing, I asked the landlord's representatives to clarify why the second Respondent was included in the landlord's application. Landlord Representative EH (the agent) testified that the second Respondent was included because she had allegedly co-signed the original intent to lease the rental premises from the landlord. I noted that no copy of the document referred to by the agent had been entered into written evidence. The agent also confirmed my understanding of the

Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord that Respondent SG was the only named tenant in this Agreement. The agent did not dispute the tenant's claim that she was the only person who signed the Agreement on behalf of the tenant. Under these circumstances, I advised the parties of my finding that Respondent UG was not a party to this application and that the landlord had no recourse to seek a monetary Order under the Act against Respondent UG.

At the beginning of the hearing, the tenant said that she was not feeling well and asked for an adjournment of the hearing. She said that she had attempted to see a doctor at the hospital the previous night but had been unwilling to wait through the lengthy lineup to be examined. She said that she had called the Residential Tenancy Branch (the RTB) the previous day to request an adjournment, but was told that she would have to request one at the hearing.

The landlord's representatives said that they objected to granting an adjournment. After obtaining some preliminary information from the parties as to the nature of the landlord's application and to determine if there was any possibility of the parties resolving this dispute themselves, the tenant advised that she no longer wished an adjournment. She testified that she would prefer to proceed with the hearing after all. On this basis, there was no need for me to make a ruling with respect to the tenant's request for an adjournment. I proceeded to hear the landlord's application for a monetary award of \$2,037.00.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's deposits 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 tenancy began as a one-year fixed term tenancy on February 1, 2010. At the expiration of the initial term, this converted to a periodic tenancy. Monthly rent by the time the tenancy ended on October 2, 2013 was set at \$1,226.00, payable on the first of each month. The landlord continues to hold the tenant's \$575.00 security deposit paid on January 21, 2010 and \$575.00 pet damage deposit paid that same date. The landlord also continues to hold a \$100.00 deposit for remote openers issued by the landlord to the tenant.

The landlord entered into written evidence a copy of the report of the January 27, 2010 joint move-in condition inspection of the rental unit. Although the tenant confirmed that

she signed that report, she said that it did not actually reflect the true condition of the premises when she moved into the rental unit. The landlord's representatives testified that they posted a number of inspection requests on the tenant's door during the final few days of this tenancy scheduling joint move-out inspections of the premises. The tenant said that she never received these requests. The landlords did not enter into written evidence copies of these written requests to conduct a joint move-out condition inspection. The landlord's representatives gave undisputed sworn testimony that the tenant did not advise them that she was leaving the rental unit, did not leave her keys or key fobs/remotes with them, and did not provide her forwarding address to the landlords. Landlord Representative ES conducted her own move-out condition inspection on October 2, 2013. She entered into written evidence a copy of her report of that inspection and photographs of the condition of the premises she said she took a few days after the tenancy ended.

The landlord's application for a monetary award of \$2,037.00 included the following items listed in a "Move Out Statement" of October 15, 2013 entered into written evidence by the landlord:

Item	Amount
Unpaid August 2013 Rent	\$1,226.00
Unpaid August 2013 Parking	110.00
Unpaid September 2013 Rent	1,226.00
Unpaid September 2013 Parking	110.00
Less Security and Pet Damage Deposits (\$575.00 + \$575.00 = \$1,150.00)	-1,150.00
Remote Control Deposits	-100.00
Carpet Cleaning	75.00
Window Cover Cleaning	50.00
Suite Cleaning – 4 hours	260.00
Key Replacements	100.00
Replacement of Fobs/Remotes	130.00
Total Monetary Order Requested	\$2,037.00

The landlord also requested the recovery of the landlord's \$50.00 filing fee for this application.

At the hearing, Landlord Representative ES confirmed that the landlords had not submitted any actual receipts to demonstrate actual losses arising out of this tenancy. She said that her company charges "standard costs" which are pre-set for various types of repairs and deficiencies that are discovered at the end of a tenancy. No written

evidence was presented to outline these standard costs or to show that the tenant had agreed to the imposition of these standard costs. ES noted that the landlord has not charged for some of the items damaged during this tenancy. She said that the photographs she took accurately reflect the condition of the rental unit at the end of this tenancy. She said that the premises have not been re-rented because repairs are necessary.

The tenant gave undisputed sworn testimony that the carpets in this rental building were old and were not in good shape when her tenancy commenced. She said that each time a tenant left, the landlord replaced the carpets. She gave undisputed sworn testimony that one of the landlord's building managers had told her to not worry about shampooing the carpets because they would have to be replaced when her tenancy ended. She claimed that she returned all of her keys and fobs by placing them in the building manager's mail slot at the end of this tenancy.

Analysis

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. The tenant did not dispute the landlord's claim that she failed to pay either her August or September 2013 rent. As such, I find that the landlord is entitled to a monetary award of \$1,226.00, the monthly rent, for both of these months. I dismiss the landlord's application for the recovery of unpaid parking fees as these were established by way of a separate agreement and one not covered under the *Act*.

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.

In the absence of any actual receipts for costs incurred as a result of damage for which the tenant was responsible, I can only rely on the written record of the joint move-in condition report, the move-out condition inspection report of the landlord, the photographic evidence and the sworn testimony of the parties.

My review of the joint move-in condition inspection report leads me to conclude that the carpets required cleaning at the beginning of this tenancy. This report showed that most of the rooms in the rental unit required carpet cleaning. I have also taken into consideration the tenant's undisputed testimony that the carpets are quite old and were likely going to be replaced before they were rented to another tenant. I am not satisfied that the landlord has demonstrated to the extent required that the tenant is responsible for the carpet cleaning costs claimed by the landlord. I dismiss the landlord's claim for carpet cleaning without leave to reapply.

Section 37(2) of the *Act* requires a tenant at the end of a tenancy to leave a rental unit "reasonably clean and undamaged." Based on a comparison of the move-in and move-out reports, and in particular after reviewing the landlord's photographs, I accept the landlord's claim that the tenant did not leave the rental unit reasonably clean and undamaged. While there is some evidence that the premises were not totally clean when this tenancy began, I find that the landlord is entitled to a monetary award for cleaning as the tenant is responsible for some of the costs of cleaning this rental unit at the end of her tenancy.

The landlord claimed \$260.00 for 4 hours of suite cleaning, at an apparent rate of \$65.00 per hour. Without actual receipts to support this expenditure and based on the landlord's own evidence that 4 hours of cleaning were required, I find that the landlord is entitled to a monetary award of \$100.00 for all cleaning, including the cleaning of the window coverings.

I find that the tenant has not demonstrated to the extent required that she took proper care to ensure that her keys, fobs and remotes were properly returned at the end of this tenancy. I accept that the landlord likely did incur some costs in rekeying and reprogramming fobs, especially to common areas of the building. As the landlord has not provided any actual receipts to substantiate these costs, I allow the landlord a monetary award of \$100.00, the same amount of the remote control deposits. In coming to this decision, I note that the *Act* places responsibility for the costs of rekeying and changing locks on the landlord when a new tenancy begins.

I allow the landlord to retain the tenant's deposits plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to obtain unpaid rent, damage, losses and the recovery of the filing fee, and to retain the tenant's deposits:

Item	Amount
Unpaid August 2013 Rent	\$1,226.00
Unpaid September 2013 Rent	1,226.00
Cleaning	100.00
Replacement of Fobs/Remotes	100.00
Less Security and Pet Damage Deposits (\$575.00 + \$575.00 = \$1,150.00)	-1,150.00
Remote Control Deposits	-100.00
Filing Fee	50.00
Total Monetary Order	\$1,452.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

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 23, 2014

Residential Tenancy Branch

